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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)	
)	GN Docket No. 93-252
Implementation of Sections 3(n) and 332)	
of the Communications Act)	
)	
Regulatory Treatment of Mobile Services)	

PETITION FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA") herewith petitions for reconsideration of the *Second Report and Order* in the above-captioned proceeding.¹ Specifically, PCIA requests the Commission to reconsider its determination not to forbear from applying Sections 225 (Telecommunications Relay Services ("TRS")) and Section 226 (Telephone Operator Consumer Services Improvement Act ("TOCSIA")) of the Communications Act of 1934, as amended (the "Act"), to commercial mobile radio service ("CMRS") providers. These provisions are manifestly unnecessary to ensure just and reasonable rates and to protect consumers, and forbearance from TRS and TOCSIA obligations would serve the public interest.

I. INTRODUCTION

On March 7, 1993, the FCC released its *Second Report and Order* in the proceeding to implement sections of the Omnibus Budget Reconciliation Act of 1993 ("OBRA") dealing

¹ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, FCC 94-31 (Mar. 7, 1994), 59 Fed. Reg. 18493 (Apr. 19, 1994) ("*Second Report and Order*").

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with the regulatory treatment of mobile services. The OBRA amendments to Section 332 of the Act divide mobile services into commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") categories and permit the Commission to forbear from most Title II regulation of CMRS providers. In determining whether forbearance is warranted, the Commission must assess, on a section-by-section basis, (1) whether the provision is necessary to ensure just and reasonable rates; (2) whether the provision is necessary to protect consumers; and (3) whether forbearance would serve the public interest.

In most respects, PCIA believes that the *Second Report and Order* effectively implements Congressional intent. Two modifications are necessary, however, to avoid imposing unwarranted and costly obligations on CMRS providers and their customers. First, paging and other non-voice CMRS providers should be exempted from offering TRS and contributing to recovery of TRS costs. Second, CMRS providers should not be required to comply with TOCSIA requirements. As discussed below, forbearance from TRS and TOCSIA obligations is plainly justified under the statutory standard.

II. PAGING AND OTHER NON-VOICE CMRS PROVIDERS SHOULD BE EXEMPTED FROM TRS OBLIGATIONS

The *Second Report and Order* declines to forbear from applying TRS obligations to CMRS providers, explaining that "TRS promotes consumer access to the public switched network," and that "[c]ompetition does not necessarily induce CMRS providers to make this service available."² PCIA does not object to applying TRS requirements to CMRS providers

² *Second Report and Order* at ¶ 208.

of voice services. For non-voice services, however, there is no rationale for requiring CMRS providers to offer services -- as the Commission previously held with respect to one-way paging³ -- or to fund such services.⁴

First of all, extending TRS obligations is not necessary to protect consumers or advance the public interest. Unlike voice services, paging and advanced messaging services are fully accessible to individuals with hearing or speech disabilities. For example, vibrating pagers significantly ease access to the public switched network for individuals with hearing impairments. Similarly, two-way advanced messaging data services offer a convenient entrance to the National Information Infrastructure for individuals with hearing or speech disabilities. Because these services are inherently accessible to the classes of individuals protected under Section 225, no additional consumer benefits would arise from applying TRS obligations to advanced paging, data messaging, and other non-voice CMRS offerings.

Furthermore, enforcing compliance with Section 225 for providers of non-voice CMRS services would violate principles of fundamental fairness. Compliance with TRS would require providers of these services to assist in funding TRS for interstate voice services. Such a funding obligation would increase costs for subscribers, but would produce no concomitant benefits.

³ Telecommunications Relay Services and the Americans with Disabilities Act of 1990, 6 FCC Rcd 4657, 4660 (1991); *recon.*, 8 FCC Rcd 1802 (1993), *further proceedings*, 8 FCC Rcd 5300 (1993).

⁴ Although the Commission has stated that "[t]he issue of which carriers should contribute to the TRS fund is beyond the scope of this proceeding," *id.*, PCIA's petition raises the broader issue of whether there is a class of CMRS providers for which the Commission should forbear from applying Section 225 in its entirety. Forbearing from applying Section 225 of necessity would also exempt a class of carriers from TRS funding obligations.

Finally, there is no basis for differentiating non-voice CMRS offerings from non-voice satellite services, which the Commission previously has exempted from participating in and contributing to the TRS system. As Motorola noted in its comments, similar treatment of paging would be "consistent with Congressional intent that TRS contributions come from providers of interstate telephone voice transmission services, rather than from one-way services such as paging."⁵ The same principle applies to other non-voice commercial mobile radio services.

Under these circumstances, Section 225 should not be applied to any non-voice CMRS offerings.⁶ PCIA consequently urges the Commission to reconsider its initial conclusion not to forbear from TRS participation and funding requirements with respect to non-voice CMRS.

III. FORBEARING FROM ENFORCEMENT OF TOCSIA OBLIGATIONS IS IN THE PUBLIC INTEREST

The *Second Report and Order* states that the record does not support forbearance from applying TOCSIA requirements to CMRS providers. As discussed below, PCIA believes the Commission's decision to continue enforcing TOCSIA obligations in the mobile context ignores both substantial record evidence and the forbearance standard set forth in Section 332 of the Act.

⁵ Motorola at 19.

⁶ PCIA notes that the only commenters listed as providing support for retaining Section 225 obligations also argued that store-and-forward paging systems should be viewed as non-interconnected, private systems, and therefore were implicitly arguing against applying Section 225 obligations to paging. See NYNEX Comments at 15; Mtel Comments at 7.

As an initial matter, contrary to the statement in the *Second Report and Order*, several commenters have provided extensive evidence that imposing TOCSIA obligations on CMRS providers is unnecessary to protect consumers and inconsistent with the public interest. For example, GTE explained that "there was no evidence in the [Congressional] record of customer abuses stemming from mobile phone service."⁷ Similarly, McCaw pointed out that because Section 226 measures "were enacted to remedy perceived deficiencies in other segments of the telecommunications market, they should not apply to [CMRS] providers unless there is a documented need," and further noted that "the commercial practices of [CMRS] providers has elicited few customer complaints."⁸ In contrast, no party alleged that the kinds of practices that TOCSIA was intended to combat, such as overcharges, call splashing, and blocked access, occur in the public mobile services market. Rather, all of the record evidence in this proceeding demonstrates that TOCSIA provisions were not targeted at mobile services, and are not necessary to protect consumers.

Second, as GTE noted, applying TOCSIA requirements to mobile services is costly, technically difficult and often achieves absurd results. For example, in many markets where toll fraud has become a problem, cellular carriers have been forced to utilize credit card billing for interexchange calls to reduce overhead and keep rates low. If TOCSIA requirements are applied to CMRS carriers, all providers offering this type of service would be considered operator service providers under Section 226. Aside from the technical question of whether existing switches used by CMRS carriers could be configured to brand

⁷ *Second Report and Order* at ¶ 203.

⁸ McCaw Comments at 11 n.31.

calls, this adds tremendous expense to the cost of offering service. Furthermore, cellular operators providing roamer service to rental cars with credit card phones cannot enforce TOCSIA aggregator requirements, since the underlying carrier has no relationship with the mobile public phone service provider. Indeed, in such cases the underlying carrier does not even know what rates the customer will be charged.

Finally, the TOCSIA tariffing requirements are inconsistent with the Commission's determination to forbear from regulating CMRS under Section 203 of the Act. Any CMRS provider could unknowingly be called upon to serve a roamer using a mobile public phone. As a result, all CMRS carriers must assume that they may be converted into operator service providers, and accordingly must file tariffs to comply with TOCSIA -- even though the Commission has properly found such tariffs to be contrary to the public interest.⁹

In short, TOCSIA obligations are unwarranted, burdensome, and ill-suited to the mobile services context. Accordingly, PCIA urges the Commission to reconsider the Second Report and Order to the extent it continues to apply TOCSIA requirements to CMRS providers.

IV. CONCLUSION

PCIA supports the Commission's recent actions to deregulate significant aspects of the offering of CMRS services. For the reasons cited above, however, PCIA urges the Commission to reconsider the determinations in the *Second Report and Order* to continue to apply Sections 225 and 226 of the Act to CMRS carriers. Applying TRS obligations to

⁹ See Second Report and Order at ¶ 179.

paging carriers and other non-voice CMRS providers, and TOCSIA obligations to CMRS providers generally, is unnecessary to protect consumers, or ensure just and reasonable rates, and is inconsistent with the public interest. Forbearance is plainly appropriate under the statutory standard.

Respectfully submitted,

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