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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Sections 3(n) and 332)
of the Communications Act)
)
Regulatory Treatment of Mobile Services)

GN Docket No. 93-252

To: The Commission

RESPONSE OF BELLSOUTH

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and Mobile Communications Corporation of America (collectively "BellSouth") hereby respond to the various Petitions for Reconsideration and Petitions for Clarification that have been filed in response to the Commission's *Second Report and Order* (FCC 94-31, released March 7, 1994) (the "*Second Report*") in this proceeding. BellSouth generally supports the Commission's decisions in the *Second Report*. BellSouth urges prompt confirmation of those decisions, except as noted below, on reconsideration.

In reaching the conclusions announced in the *Second Report*, the Commission was appropriately driven by two clear congressional mandates. As the Commission noted, Congress intended "to ensure that similar services would be subject to consistent regulatory classification . . . to achieve regulatory symmetry in the classification of mobile services." (*Second Report*, at para. 13). Congress *also* desired "to ensure that an appropriate level of regulation be established and administered for CMRS providers . . . [acknowledging] that neither traditional state regulation, nor conventional regulation under Title II of the Communications Act, may be necessary in all cases to

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promote competition or protect consumers in the mobile communications marketplace." (*Second Report*, at para. 14).

Viewed in light of these mandates, the rulings in the *Second Report* on which reconsideration is sought are clearly appropriate, and the petitions should generally be denied. For example, a number of parties have urged reconsideration of the Commission's conclusions concerning LEC to CMRS interconnection. McCaw Cellular Communications, Inc. ("McCaw") and MCI Telecommunications Corporation ("MCI") each urge clarification of the Commission's discussion of so-called mutual compensation requirements. Both parties argue that the concept of "mutual compensation" is so integral to the Commission's interconnection policies that it should not be left to interpretation by any state regulatory authority, even as such arrangements relate to purely intrastate communications.

In the *Second Report*, the Commission found that there is no basis for distinguishing between a LEC's obligation to offer interconnection to a Part 22 licensee and all other CMRS providers. While preempting state and local regulations as to the kind of interconnection to which CMRS providers are entitled, the FCC appropriately determined that it would *not* preempt state regulation of LEC intrastate interconnection rates. In imposing the principle of mutual compensation, the Commission clearly stated that such a requirement would be in keeping "with actions we have already taken with regard to Part 22 providers." It has been the long-standing policy of the Commission that financial matters, such as mutual compensation arrangements, that involve solely intrastate communications are matters of state jurisdiction.^{1/} Given that the Commission is merely

^{1/} See, e.g., *Indianapolis Telephone Company v. Indiana Bell Telephone Company, Inc.*, 1 FCC Rcd 228 (Common Carrier Bureau) aff'd, 2 FCC Rcd 2893 (1987).

extending its interconnection policies to other CMRS providers, there is no basis for the clearly expansive "clarification" that either MCI or McCaw suggests. Mutual compensation, like other rate issues relating to purely intrastate communications, has been appropriately reserved for state regulatory authorities; that decision should not be upset on reconsideration.

On the other hand, the National Association of Regulatory Utility Commissioners ("NARUC"), the Pennsylvania Public Utility Commission, the New York Department of Public Service and the National Cellular Resellers Association ("NCRA") have argued that the Commission has prematurely, and incorrectly, preempted state authority over the rates associated with interconnection to the facilities of a CMRS licensee. Since the filing of the Petitions (and as promised in the *Second Report*) the Commission has initiated a separate rulemaking, CC Docket 94-54, to consider interconnection matters. Nevertheless, since it has been raised by these petitioners, the state preemption issue is ripe for resolution in this proceeding.

Contrary to the assertions of these state regulatory agencies and associations, this is *not* a matter of policy for the Commission's interpretation. Rather, Congress was quite clear in preempting state jurisdiction over *all* CMRS rates, including, but not limited to rates for services and interconnection rates. There is nothing in the plain language of the statute^{2/} to suggest otherwise. Given this clear Congressional

^{2/} Section 332(c)(3)(A) states, in part:

Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service. . .

(continued...)

mandate, the Commission should simply re-affirm that the states are statutorily preempted from regulating the interconnection rates charged by a CMRS licensee to another CMRS licensee.

The Commission's decisions on other key issues should be similarly affirmed. For example, as Congress anticipated, the Commission appropriately decided to forbear from imposing several Title II requirements on CMRS licensees. Most significantly, the Commission relieved CMRS licensees of the Section 203 tariff filing obligations and Section 214 entry and exit regulations. Nevertheless, the NCRA and MCI argue that the Commission erred in not requiring facilities-based cellular carriers to file tariffs.^{3/}

MCI's and NCRA's position should be rejected. Consistent with the three-pronged legislative tests,^{4/} the Commission properly determined that existing marketplace

^{2/}(...continued)

Given the plain language in the statute, no further inquiry is necessary. Nevertheless, it is noteworthy that the legislative history provides no support for the position espoused by those who would distinguish jurisdiction over the rates for interconnection from the preempted jurisdiction over any other rates charged by CMRS providers.

^{3/} MCI also argues that tariffs should be required of any CMRS licensee that is affiliated with a dominant local exchange carrier.

^{4/} Section 332(c)(1)(A) requires the Commission to find the following before forbearing from regulation:

- (1) Enforcement of such provision is not necessary in order to ensure that the charges, practices, classification or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory.
- (2) Enforcement of such provision is not necessary for the protection of consumers
- (3) Specifying such provision [for forbearance] is consistent with the public interest.

forces and other factors can serve to ensure that rates and practices will remain reasonable without requiring tariff regulation. The Commission has also properly demonstrated that tariff filings are not necessary to protect consumer interests. In fact, tariff filings make it more difficult for a competitive marketplace to work, because they impose an artificial obstacle to prompt competitive response to market demands.^{5/} Neither Petitioner has provided any information to overcome these conclusions.^{6/} For all of these reasons, the decision to forbear from requiring CMRS licenses to file tariffs pursuant to Section 203 should be affirmed.

The Personal Communications Industry Association ("PCIA") has requested reconsideration of the decision not to forbear from imposing the Telephone Relay Services requirements of Section 225 of the Act on CMRS licensees. Specifically, PCIA urges that the TRS requirements should not be imposed on CMRS providers of non-voice services. BellSouth supports such limited reconsideration.

Under Section 225, the Commission has required all interstate service providers (other than one-way paging services) to provide telecommunications relay services. It has determined to recover TRS costs by charges assessed on all interstate telecommunications service providers based on their relative share of gross interstate revenues for telecommunications services. The Commission's decision not to forbear from imposing such obligations on CMRS licensees was largely based on the access to

^{5/} *Second Report* at para. 177.

^{6/} It should be noted that the Commission reached its decision after choosing to consider each wireless industry segment separately. Had it chosen to consider the CMRS industry as a whole, it could also have recognized the impact of additional CMRS competitors in the developing mobile communications marketplace in concluding that the public interest would best be served by dynamic and vigorous competition free of any constraints inherent in a program of tariff regulation.

the network that TRS provides for the hearing impaired. However, as PCIA notes, non-voice services are generally available to all hearing impaired persons, and it is unfair to impose the costs of supporting TRS voice services on non-voice CMRS providers whose services are inherently accessible to all consumers protected under the law. BellSouth agrees and urges that the Commission excuse CMRS providers of non-voice services from compliance with Section 225 of the Act.

As a final matter, GTE Service Corporation ("GTE") and McCaw have noted certain areas for additional regulatory parity that also warrant further reconsideration. As noted above, Congress expected that all CMRS providers would be subject to similar regulatory regimen except where there are substantial differences in their service offerings. Both GTE and McCaw have identified several regulatory burdens for cellular carriers that will not be imposed on other CMRS licensees.^{7/}

BellSouth joins these parties in urging further Commission attention to achieving effective regulatory parity. To the extent that different regulatory requirements are identified during reconsideration of the *Second Report* or in adopting rules in response to the *Further Notice of Proposed Rulemaking*^{8/} in this docket, the Commission should generally eliminate those differences. It should impose on *all* CMRS providers those rules and regulations that will interfere as little as possible with the development of a competitive marketplace for mobile and wireless communications services.

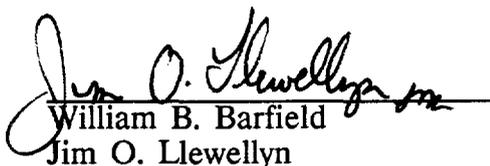
^{7/} Both note, for example, that PCS licensees will be able to dedicate certain frequencies or channels to the provision of Private Mobile Radio Services. These services will therefore be free of Title II regulation, but cellular licensees are currently required to utilize all of their licensed spectrum for the provision of common carrier services.

^{8/} FCC 94-100, released May 20, 1994.

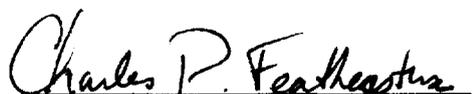
Congress desired that the Commission implement a regulatory scheme that utilizes a broad definitional approach to categorizing services and a simple regulatory structure to assure regulatory parity in a highly competitive marketplace. The decisions announced in the *Second Report* generally achieve those congressional objectives. For the reasons discussed herein, those decisions should generally be affirmed on reconsideration and the various petitions seeking substantial changes should be denied.

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Certificate of Service

I, Abby Gurewitz, hereby certify that on this 16th day of June, 1994, copies of the foregoing "Response of BellSouth" were mailed via first class United States mail, postage prepaid, to the parties named below.

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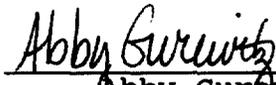
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