

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Implementation of Sections 3(n) and) GN Docket 93-252
332 of the Communications Act)
)
Regulatory Treatment of Mobile Services)

**OPPOSITIONS/COMMENTS TO PETITIONS FOR RECONSIDERATION
OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for
Regulatory Policy and Law

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

1250 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036

Philip L. Verveer
Jennifer A. Donaldson
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W., Suite 600
Washington, D.C. 20036-3384

Of Counsel
June 16, 1994

No. of Copies rec'd 0711
List A B C D E

TABLE OF CONTENTS

SUMMARY iii

INTRODUCTION 1

I. THE COMMISSION PROPERLY EXERCISED ITS AUTHORITY TO FORBEAR FROM REGULATING THE RATES OF CMRS PROVIDERS AND TO PREEMPT STATE REGULATION OF INTRASTATE CMRS INTERCONNECTION RATES 2

II. THE COMMISSION PROPERLY REFUSED TO IMPOSE INTERCONNECTION REQUIREMENTS ON CMRS PROVIDERS AT THIS TIME 8

III. THE COMMISSION PROPERLY ESTABLISHED PROCEDURES GOVERNING STATE PETITIONS TO ADOPT AND/OR MAINTAIN RATE REGULATIONS GOVERNING CMRS PROVIDERS 11

IV. THE COMMISSION PROPERLY ADOPTED A BROAD DEFINITION FOR CMRS 15

V. CTIA SUPPORTS SEVERAL PROPOSALS TO CLARIFY THE CMRS ORDER 16

CONCLUSION 20

SUMMARY

In adopting the Second Report and Order governing mobile services, the Commission successfully implemented its statutory mandate to establish regulatory parity and to subject all commercial mobile services to minimum regulatory mechanisms in light of a competitive marketplace. For this reason, the Commission should reject requests for wholesale revision of the commercial mobile services regulatory regime.

Petitioners' proposals to significantly modify the Commission's careful treatment of tariff forbearance, CMRS interconnection, state petitions to regulate CMRS rates and the inclusive CMRS definition are not supported by any convincing new evidence. Rather, they involve assertions already considered and rejected by the Commission. Accommodating them will introduce uncertainty and delay to the ultimate detriment of mobile services consumers.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

RECEIVED
JUN 16 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Sections 3(n) and) GN Docket 93-252
332 of the Communications Act)
)
Regulatory Treatment of Mobile Services)

**OPPOSITIONS/COMMENTS TO PETITIONS FOR RECONSIDERATION
OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA"),¹ by its attorneys, respectfully submits its Oppositions/Comments to the petitions for reconsideration filed in the above-captioned proceeding.²

INTRODUCTION

Faced with the significant task of introducing "regulatory parity" among the mobile services and forbearing from unnecessary regulation of commercial mobile radio services ("CMRS"), the Commission has successfully reconciled many views to establish an overall scheme of CMRS regulation consistent with the public

¹ CTIA is a trade association whose members provide commercial mobile services, including over 95 percent of the licensees providing cellular service to the United States, Canada, Mexico, and the nation's largest providers of ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry.

² See Regulatory Treatment of Mobile Services, Second Report and Order in GN Docket 93-252, 9 FCC Rcd 1411 (1994) ("CMRS Order").

interest and statutory mandate. The paucity of petitions for reconsideration in general, especially those requesting major modification to the CMRS Order, is a testimony to the careful effort put forth by the Commission in adopting the CMRS regulatory regime.

Efforts by several parties now to drastically alter this regulatory scheme by, for example, reimposing tariff requirements on CMRS or subjecting such providers to mandatory interconnection obligations, are not only contrary to statute, but will also introduce uncertainty and delay into the CMRS regulatory process. Moreover, for the same reasons, the Commission should also reject proposals to relax the regulations governing state rate regulation of CMRS and to narrow the CMRS definition. In all, the Commission's CMRS Order should be reaffirmed on reconsideration as it promotes competition and fairness in the dynamic mobile service industry consistent with Congressional intent.

I. THE COMMISSION PROPERLY EXERCISED ITS AUTHORITY TO FORBEAR FROM REGULATING THE RATES OF CMRS PROVIDERS AND TO PREEMPT STATE REGULATION OF INTRASTATE CMRS INTERCONNECTION RATES

Several petitioners, the National Cellular Resellers Association ("NCRA"), MCI, the National Association of Regulatory Utility Commissioners ("NARUC") and the New York State Department of Public Service ("NYDPS") make various claims that the Commission has improperly decided to forbear from regulating CMRS end-user and access charges and has improperly preempted state regulation of intrastate CMRS interconnection rates. CTIA

submits that the Commission acted within its statutorily-granted authority to subject all CMRS providers to tariff forbearance and to preempt such state authority; therefore, the Commission should deny all claims to reimpose these obligations.

Relying upon two sentences found in paragraph 17 and footnote 362 of the CMRS Order, NCRA broadly declares that the Commission has fundamentally misapplied § 332's forbearance test. It argues that the Commission has improperly focussed upon whether to impose regulation versus whether to forbear from regulation, that it has improperly engaged in a balancing of the forbearance factors versus separate consideration of each factor and that it has improperly relied upon reduction of administrative burdens as a reason to forbear from regulating CMRS rates.³

NCRA's proof of misapplication of the statutory forbearance test is hardly persuasive. Its argument is based upon only two statements made in an entire 100+ page document. Moreover, of the 30-page forbearance analysis, it only examines one footnote. Such an analysis is hardly comprehensive enough to demonstrate a fundamental misapplication of statutory mandate. The Commission's forbearance discussion, meanwhile, considers each of the three statutory tests and details reasons why the requirements are met for each proposed section of Title II which is forborne.

³ See NCRA Petition for Reconsideration at 13-16.

Moreover, NCRA restates its claims previously rejected by the Commission that cellular operators should have to file tariffs.⁴ It also argues that the cellular carriers remain properly classified as dominant, that competition from PCS is not imminent, that tariffs serve useful purposes and that the Commission itself acknowledges that the cellular market is not fully competitive.⁵

Similarly, MCI claims that CMRS provided end-user services should also be tariffed and that CMRS providers should have to file interstate access tariffs.⁶ Specifically, concerning end-user tariffs, MCI claims that cellular service is being provided in some markets by dominant carriers and that in some cellular markets there is only one facilities-based cellular carrier.⁷ Concerning access tariffs, MCI's contentions include: (1) that the Commission did not properly find that forbearance was consistent with the public interest (the third prong of the forbearance test); (2) the Commission did not give proper notice of CMRS access tariff forbearance;⁸ (3) that the Commission has

⁴ Id. at 11-19.

⁵ Id. at 16-19.

⁶ See MCI Petition for Clarification and Partial Reconsideration at 2-12.

⁷ Id. at 3-5.

⁸ This contention is demonstrably wrong as the Commission specifically notes in the CMRS Notice that CMRS providers furnish access services as well as end-user local and IXC services, and the Commission specifically requests commenters to consider such services in the statutory forbearance analysis. See Regulatory
(continued...)

failed to define "CMRS access" and (4) that the potential effect of detariffing CMRS access would be the effective detariffing of LEC access services.⁹

Once again, both NCRA's and MCI's analyses are not persuasive. They merely repeat the same arguments concerning dominance and the asserted lack of competition that the Commission fully considered and rejected in the CMRS Order. To the extent that they now make new claims, they are unable to undermine the Commission's thorough analysis. The CMRS Order diligently analyzes the current state of competition in each of the CMRS categories including factors which facilitate or hinder collusion.¹⁰ Specifically, it finds that the cellular market is sufficiently competitive to muster forbearance under the statutory test;¹¹ the fact that the Commission finds the cellular market "not fully competitive" does not undermine the overall finding of sufficient competition.¹² The Commission states three reasons for its tariff forbearance of cellular services: (1) sufficient competition exists today, with additional competition

⁸(...continued)

Treatment of Mobile Services, Notice of Proposed Rule Making in GN Docket 93-252, 8 FCC Rcd 7988, 7999 (1993). Moreover, as tariffs for access charges would be covered under § 203, it is only logical to assume that forbearance from § 203 will include forbearance from CMRS access charges.

⁹ MCI petition at 7-12.

¹⁰ CMRS Order at 1470-1472.

¹¹ Id. at 1478-1479.

¹² Id. at 1478.

promised in the future; (2) §§ 201, 202 and 208 provide important protections if market failure arises; and (3) because tariffs are not essential to ensure that non-dominant carriers do not unjustly discriminate in their rates, forbearance is consistent with the public interest. There are numerous reasons for this, including the fact that harm to competition arises with the imposition of mandatory and/or voluntary tariffing in a competitive environment.¹³ Each of these three rationales is sufficient for cellular tariff forbearance. The Commission should reject those efforts to reimpose such obligations.

Concerning intrastate interconnection rates, both NARUC and NYDPS claim that the Commission erroneously concluded that the interconnection rates charged by CMRS providers should be preempted from state regulation. They claim that under an analysis of § 2(b) of the Communications Act of 1934, as amended ("Communications Act"),¹⁴ states have exclusive power over intrastate rates unless Congress says otherwise. Both also claim that Congress has not done so here.¹⁵ Specifically, NYDPS claims that in "enacting the Budget Reconciliation Act . . . Congress

¹³ Id. at 1478-1480.

¹⁴ 47 U.S.C. § 152(b).

¹⁵ See NARUC Petition for Reconsideration and Clarification at 7-8 and note 6; NYDPS Petition for Reconsideration at 2-4. NYDPS specifically acknowledges that the "critical question in any preemption analysis is whether Congress intended that federal regulation supersede state law." Id. at 2.

has expressed a clear intent not to preempt the states from regulating the interconnection rates of CMRS providers."¹⁶

Tellingly, both NARUC and NYDPS do not address § 332(c)(3)(A) of the Communications Act,¹⁷ upon which the Commission relied in its decision to preempt state CMRS interconnection rates:

Notwithstanding sections 2(b) and 221(b), 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, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.¹⁸

As the Commission found,¹⁹ such statutory language expresses a clear intent to preempt states from regulating all CMRS rates, including interconnection rates. NARUC and NYDPS provide no new statutory analysis which refutes this clear expression of intent. Therefore, their request to permit states to regain authority to regulate CMRS intrastate interconnection rates should be denied.²⁰

¹⁶ NYDPS petition id.

¹⁷ Section 332 was revised by § 6002(b) of the Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

¹⁸ 47 U.S.C. § 332(c)(3)(A) (emphasis added).

¹⁹ See CMRS Order at 1500.

²⁰ For this reason, the Commission should also reject NARUC's request to address the issue of preemption of intrastate interconnection rates in the Notice governing CMRS interconnection issues. See infra note 29.

II. THE COMMISSION PROPERLY REFUSED TO IMPOSE INTERCONNECTION REQUIREMENTS ON CMRS PROVIDERS AT THIS TIME

Several cellular reseller interests contend that the Commission is obligated on reconsideration to immediately mandate interconnection requirements for CMRS providers.²¹ As demonstrated below, such a proposed mandatory interconnection obligation is contrary to statute and should be denied. Moreover, the Commission has agreed to address the issues surrounding CMRS interconnection and has already initiated a proceeding to that end. Therefore, the concerns raised by these parties are being properly addressed.

Selectively quoting from § 332(c)(1)(B) of the Communications Act,²² NCRA argues that the Commission is obligated to establish rules guaranteeing CMRS-to-CMRS interconnection by August 10, 1994. It contends that under § 332(c)(1)(B), the Commission must order all common carriers, including CMRS providers, to interconnect. Moreover, it argues that cellular resellers have a right to interconnect with cellular operators.²³ Similarly, Cellular Service, Inc. and ComTech, Inc. argue that under an analysis of § 201 of the

²¹ See Cellular Service, Inc. and ComTech, Inc. Petition for Reconsideration at 5-16 and NCRA petition at 2-11.

²² 47 U.S.C. § 332(c)(1)(B).

²³ See NCRA petition at 2-11.

Communications Act,²⁴ cellular resellers are currently entitled to interconnect with cellular operators.²⁵

Section 332(c)(1)(B) of the Communications Act states in full that:

Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.²⁶

In other words, the Commission is obligated under § 332(c)(1)(B) to decide whether to order interconnection in accordance with its authority granted in § 201, not § 332.²⁷ As the Commission itself recognizes, "[t]his provision does not limit or expand the Commission's authority [under § 201] to order interconnection pursuant to the Act."²⁸

Thus, by the plain language of the statute, NCRA lacks even a colorable claim to assert that the Commission is obligated to require CMRS-to-CMRS interconnection by August 1994. As such, its request for reconsideration should be denied.

²⁴ 47 U.S.C. § 201.

²⁵ See Cellular Service petition at 5-10.

²⁶ 47 U.S.C. § 332(c)(1)(B) (emphasis added).

²⁷ The scope of the Commission's authority under § 201 is now in question in light of a recent D.C. Circuit decision. See infra note 30.

²⁸ CMRS Order at 1493; see also id. at 1497. It is interesting to note that NYDPS also agrees with this assessment. See NYDPS petition at 3.

To the extent that NCRA and Cellular Service, Inc. and ComTech, Inc. also argue that cellular operators are required to interconnect with cellular resellers, the Commission adequately addressed their concerns through its adoption on June 9, 1994, of a Notice of Inquiry proposing to examine, among other things, interconnection requirements of CMRS providers to CMRS resellers.²⁹ As the Commission acknowledges, the topic of interconnection raises complex issues that need to be thoroughly addressed before the adoption of service-wide rules. For, as the Commission is aware, such obligations should only be imposed in those extreme circumstances when dominant carriers, i.e., firms possessing monopoly power, control access to essential facilities. Moreover, these issues also are complicated by the D.C. Circuit's decision to vacate the physical collocation requirement in the Commission's expanded interconnection docket.³⁰

Thus, the Commission has acted properly to defer consideration of the CMRS interconnection question to the pending notice.

²⁹ See FCC News Release, "FCC Seeks Comment on Requiring CMRS Providers to Provide Equal Access; Examines LEC Provision of Interconnection to CMRS Providers; Begins Inquiry Into Interconnection Obligations of CMRS Providers (rel. June 9, 1994) see also CMRS Order at 1500, 1514.

³⁰ See Bell Atlantic Tel. Co. v. FCC, No. 92-1619, (D.C. Cir. Jun. 10, 1994). The D.C. Circuit remanded the virtual collocation requirement as well for further consideration.

III. THE COMMISSION PROPERLY ESTABLISHED PROCEDURES GOVERNING STATE PETITIONS TO ADOPT AND/OR MAINTAIN RATE REGULATIONS GOVERNING CMRS PROVIDERS

Several petitioners also claim that the Commission should relax the procedures states are required to follow when petitioning to adopt and/or maintain state rate regulation of CMRS providers. Because the Commission acted within its authority in adopting the procedures at issue, these requests should be denied.

Both NARUC and the Pennsylvania Public Utilities Commission ("PaPUC") argue that states should not be required to identify and provide a detailed description of the specific existing or proposed rules that they would establish if the Commission were to grant state petitions to regulate CMRS intrastate rates.³¹ NARUC claims that a specificity requirement exceeds Congressional intent and establishes bad policy as it would introduce delay into the process of intrastate rate regulation. Moreover, it would require states to divert scarce resources to establish or propose rules that may not be acceptable to the FCC.³²

PaPUC makes the following additional claims: (1) that the FCC should not literally interpret the second prong of the test to establish state rate regulation authority; (2) that the FCC should modify the "18-month rule" (i.e., the rule which requires a party to wait 18 months before petitioning the FCC to suspend

³¹ NARUC petition at 4-7; PaPUC Petition for Limited Reconsideration and Clarification at 3-4.

³² NARUC petition, id.; see also PaPUC petition at 3-4.

state rate regulation authority already granted), to either 18 months or the period of time the FCC authorizes the state rules to remain effective, whichever is greater; (3) states should have 20-30 days instead of 15 days to reply to comments filed in response to their petitions; and (4) states should be expressly permitted by FCC rule to have access to market conditions information necessary to make a showing under § 332.³³

The Commission's decision to require states to specify in detail their proposed regulations³⁴ is not only permissible, but is required under the Communications Act. Section 332(c)(3)(A)³⁵, which contains the demonstration that the state must make in its petition to regulate rates, also requires the Commission, if granting such a petition, to "authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory."³⁶ Moreover, the Conference Report specifically notes:

[i]t is the intent of the Conferees that the Commission, in considering the scope, duration or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that, consistent with the public

³³ PaPUC petition at 2-6.

³⁴ See CMRS Order at 1504-1505.

³⁵ 47 U.S.C. § 332(c)(3)(A).

³⁶ Id. (emphasis added).

interest, similar services are accorded similar regulatory treatment.³⁷

The Commission cannot discharge its statutory duties to ensure rates will be reasonable and not unjustly discriminatory, nor can it ensure that the proposed state regulation is consistent with regulatory parity, without knowing specifically what kind of regulation is being proposed. While this requirement may cast a burden upon state regulators, Congress foresaw that such a requirement was necessary. Therefore, the Commission should deny NARUC's and PaPUC's argument against specificity.

The Commission should also reject PaPUC's other requests for modification. The Commission specifically considered and rejected arguments to read the second prong of the test for state rate regulation other than literally,³⁸ and it is certainly within the Commission's discretion to read the statute literally. Moreover, the Commission was fully within its discretion to adopt an 18-month rule concerning petitions to remove state rate regulations as it was in adopting a 15-day reply period.³⁹ PaPUC makes no convincing showing that such modifications are necessary.

³⁷ H.R. Conf. Rep. No. 103-213, 103rd Cong., 1st Sess. 494 (1993).

³⁸ See CMRS Order at 1505.

³⁹ In comparison with other Commission reply periods in, for example, the reconsideration phase, a 15-day reply period is generous. See 47 C.F.R. § 1.106(h) (seven days); § 1.429(g) (10 days). Moreover, considering the Commission's statutorily-imposed deadline for resolving such state rate regulation petitions, 15 days is sufficient time for replies.

Finally, the Commission should refuse to adopt a rule permitting states to have access to information assertedly necessary to determine the need for state regulation. PaPUC's proposal essentially amounts to a mandatory reporting requirement for CMRS providers which is inconsistent with the Communications Act. Section 332(c)(3) specifically places the burden of proof upon the states to demonstrate market conditions which require state rate regulation. To require CMRS providers to report specific information to states, the Commission risks essentially shifting the burden of proof onto the CMRS providers to demonstrate repeatedly that regulation is not necessary.

Moreover, states do not need internal firm data to determine if there has been market failure necessitating state rate regulation.⁴⁰ Symptoms of market failure should be readily discernible to state regulators and, in any event, will be readily brought to their attention by dissatisfied consumers. Unnecessary reporting requirements can be detrimental to competition because they permit firms to monitor each other's behavior. In other words, reporting requirements can dampen competition just as readily as tariff filings.⁴¹

⁴⁰ A request for such information harkens to a rate-of-return mentality, a mindset which is clearly inappropriate in the competitive CMRS marketplace.

⁴¹ The Commission specifically acknowledged that tariff filings can be harmful in a competitive environment. See CMRS Order at 1479-1480.

IV. THE COMMISSION PROPERLY ADOPTED A BROAD DEFINITION FOR CMRS

One petitioner, the American Mobile Telecommunications Association, Inc. ("AMTA"), contends that the CMRS definition is overly broad and should be revised to exclude traditional SMR and new 220 MHz licenses.⁴² In fact, the Commission's decision to adopt a broad definition of CMRS is fully consistent with Congressional intent and therefore does not merit reconsideration.

In its pleading, AMTA notes that Congress focused on the functional equivalency of ESMR, cellular and PCS, systems which it acknowledges should be classified as CMRS. It claims, though, that the legislative history supports an understanding that "Congress had not reached any comparable conclusion regarding systems of substantially more limited scope in terms of geographic coverage or capacity," *i.e.*, traditional SMR and new 220 MHz licenses.⁴³ Thus, it argues that the FCC should look to the Conference Report and find that these more limited systems should be classified as private mobile radio services ("PMRS"). In making its argument, though, AMTA specifically acknowledges that "Congress clearly intended to leave the classification of such systems, as well as the detailed meaning of the CMRS definitional prongs, to the FCC."⁴⁴ Under AMTA's own analysis,

⁴² Petition for Reconsideration of the AMTA at 4-7.

⁴³ Id. at 5.

⁴⁴ Id.

then, the Commission possesses the discretion to classify such services as CMRS as it did.⁴⁵

AMTA also "recognizes that the Commission must interpret a statute in a fashion consistent with the plain meaning of its language."⁴⁶ This is exactly what the Commission has done by adopting a broad definition of CMRS which encompasses services meeting the literal definition of CMRS and their functional equivalents. Moreover, in the CMRS Order, the Commission properly found that the Conference Report so relied upon by AMTA also supports a broad definition of CMRS.⁴⁷ Because AMTA presents no new evidence demonstrating that the Commission is statutorily obligated to reclassify certain mobile services as PMRS, its proposal on reconsideration should be denied.

V. CTIA SUPPORTS SEVERAL PROPOSALS TO CLARIFY THE CMRS ORDER

Both GTE Service Corporation ("GTE") and McCaw Cellular Communications, Inc. ("McCaw") offer several proposals designed to clarify the CMRS Order. Because they will enhance competition and otherwise further the public interest, CTIA supports these proposals for modification on reconsideration.

⁴⁵ In fact, the Commission only classifies SMR services as CMRS if they offer interconnected service in addition to meeting the other prongs of the CMRS definition (or such services could be considered a functional equivalent to CMRS). See CMRS Order, at 1450-1451. The 220 MHz service similarly rests upon a question of interconnection. Id. at 1452.

⁴⁶ AMTA petition at 5.

⁴⁷ See CMRS Order, at 1445-1446.

GTE notes that PCS and CMRS, especially cellular services, are still subject to regulatory disparity as PCS is granted greater flexibility for its service offerings. Thus, it proposes that cellular operators should be permitted to dedicate spectrum to PMRS offerings, they should have more flexibility in offering fixed services and their application filing requirements should be relaxed.⁴⁸ CTIA concurs that permitting CMRS operators, including cellular, such flexibility will ensure that they can offer the types of services more quickly that consumers want as well as maintain regulatory parity among similar services.

GTE also proposes that the Commission clarify that all services within the CMRS definition be subject to Title II regardless of their classification as enhanced services under Part 64 of the Commission's rules. Specifically, GTE is concerned about CMRS offerings which involve protocol conversions as they could be subjected to differential regulation.⁴⁹ CTIA submits that there is no ambiguity under the Commission's rules, i.e., cellular operators are currently permitted to offer such protocol conversions as incidental services.⁵⁰ To the extent that there is any doubt concerning the regulatory classification

⁴⁸ GTE Petition for Reconsideration or Clarification at 6-10. McCaw also contends that all CMRS providers should be permitted to offer services on a private carriage basis. See McCaw Petition for Clarification at 15-16.

⁴⁹ Id. at 11-12.

⁵⁰ See 47 C.F.R. § 22.308.

of such services, CTIA requests that the Commission take this opportunity to clarify their regulatory status as CMRS.

McCaw also offers several proposals for reconsideration which CTIA supports. First, McCaw contends that the Commission should clarify that the principle of mutual compensation and the standard requiring good faith negotiations apply to intrastate interconnection arrangements.⁵¹ As McCaw explains, extending such requirements to the intrastate arena will ensure more uniformity in treatment and the continued development of a seamless nationwide wireless infrastructure, without undue interference with state authority over LEC interconnection rates.

Second, McCaw requests that the Commission clarify that states lack the authority to mandate interconnection or to require that CMRS facilities associated with network interconnection be unbundled.⁵² CTIA concurs with McCaw that separate state interconnection requirements could undermine CMRS technological innovation and that preemption in this case is consistent with the Commission's policy concerning mobile services interconnection.

Third, McCaw proposes that the Commission clarify that state retention of jurisdiction over the "terms and conditions" of intrastate offerings does not also confer authority to require CMRS providers to file informational tariffs.⁵³ As McCaw

⁵¹ See McCaw petition at 5-7.

⁵² Id. at 7-9.

⁵³ Id. at 9-12.

recognizes, such a tariff obligation may impede competition by enabling firms to predict their rival's behavior and thereby react accordingly. In this competitive CMRS environment, informational tariffs pose more potential costs than benefits.

Finally, McCaw requests that CMRS providers have sufficient latitude in pricing CMRS offerings to meet competition, especially during the three-year transition period.⁵⁴ CTIA agrees with McCaw's assessment that marketplace forces should police against CMRS providers engaging in unreasonable or discriminatory pricing and that pricing flexibility is thereby warranted.

⁵⁴ Id. at 12-14.

CONCLUSION

For these reasons, CTIA requests that the Commission on reconsideration continue to forbear from imposing tariff requirements on all CMRS providers, refrain from imposing burdensome interconnection requirements on CMRS, maintain the showings currently required by states seeking to regulate CMRS and retain the broad CMRS definition consistent with the proposals contained herein.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**



Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for
Regulatory Policy and Law

1250 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036

Philip L. Verveer
Jennifer A. Donaldson
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W., Suite 600
Washington, D.C. 20036-3384

Of Counsel

June 16, 1994

CERTIFICATE OF SERVICE

I, Renée A. Bess, hereby certify that I have this 16th day of June 1994, caused to mailed, by first class mail, postage prepaid, a copy of the Oppositions/Comments to Petitions for Reconsideration of the Cellular Telecommunications Industry Association to the following:

Kathleen H. Burgess, Esq.
Office of General Counsel
STATE OF NEW YORK DEPARTMENT
OF PUBLIC SERVICE
Three Empire State Plaza
Albany, New York 12223

Gail L. Polivy, Esq.
GTE SERVICE CORPORATION
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Larry Blosser, Esq.
Donald J. Elardo, Esq.
MCI TELECOMMUNICATIONS CORPORATION
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Martin W. Bercovici, Esq.
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Attorney for Waterway Communications
System, Inc.

Lewis J. Paper, Esq.
David B. Jeppsen, Esq.
KECK, MAHIN & CATE
1201 New York Avenue
Washington, D.C. 20005
Attorney for Cellular Service, Inc.
and ComTech, Inc.

Cathleen A. Massey, Esq.
MCCAW CELLULAR COMMUNICATIONS, INC.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

Howard J. Symons, Esq.
Gregory A. Lewis, Esq.
Kecia Boney, Esq.
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Of Counsel for McCaw Cellular
Communications, Inc.

Paul Rodgers, Esq.
Charles D. Gray, Esq.
James Bradford Ramsay
NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS
1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

James P. Tuthill, Esq.
Lucille M. Mates, Esq.
Betsy S. Granger, Esq.
PACIFIC BELL
140 New Montgomery St., Room 1525
San Francisco, CA 94105

James L. Wurtz, Esq.
PACIFIC BELL
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Mark J. Golden, Esq.
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036

Maureen A. Scott, Esq.
Veronica A. Smith, Esq.
John F. Povilaitis, Esq.
Commonwealth of Pennsylvania
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. Box 3265
Harrisburgh, PA 17105-3265