

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

RECEIVED

JUN 24 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

To: The Commission

**MOTION FOR ACCEPTANCE OF THE
SOUTHERN COMPANY'S OPPOSITION
TO PETITION FOR RECONSIDERATION**

The Southern Company ("Southern"), by its attorneys, hereby respectfully requests the Commission to accept its late-filed Opposition to the Petition for Reconsideration filed by MCI in the above-captioned proceeding. Petitions for Reconsideration and/or Clarification to the Second Report and Order were published in the Federal Register on June 1, 1994, requiring Oppositions to be filed on June 16, 1994. On June 17, 1994, Southern filed its Opposition to MCI's Petition for Reconsideration, one day after the filing deadline.^{1/} A copy of Southern's Opposition was served on counsel for MCI via first-class, postage prepaid mail.

Southern is participating in all aspects of the Commission's Commercial Mobile Radio Services ("CMRS") proceedings. As the

^{1/} A date-stamped copy of Southern's Opposition is attached.

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Commission is aware, these are very active proceeding with numerous filing deadlines. An inadvertent error was made in computing the deadline for filing Oppositions to the Petitions for Reconsideration filed in the Second Report and Order. Acceptance of the one day late-filed Opposition is merited, however, as MCI is not prejudiced by this filing and will have adequate time to consider and address issues raised by Southern.

Likewise, the Commission has adequate time to consider the issues raised in Southern's pleading. The public interest will be served by a full discussion of the Commission's decision in the Second Report and Order to forbear from applying tariff-filing requirements on CMRS providers. Grant of Southern's Motion will give the Commission the benefit of a complete airing of these important issues.

The undersigned counsel shall ensure that a copy of the instant Motion and another copy of Southern's Opposition are properly served today, by hand delivery, on MCI.

Accordingly, Southern respectfully urges the Commission to grant this Motion and accept for full consideration the accompanying, already-filed Opposition.

Respectfully submitted,

THE SOUTHERN COMPANY



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Dated: June 24, 1994

Its Attorneys

CERTIFICATE OF SERVICE

I, Ana M. Montiel, a secretary at the law firm of Keller and Heckman, do hereby certify that on this 24th day of June, 1994, a true and correct copy of the foregoing Motion and Opposition of the Southern Company to MCI Telecommunications Corporation's Petition for Reconsideration were sent by hand as follows:

Larry Blooser
Donald J. Elardo
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

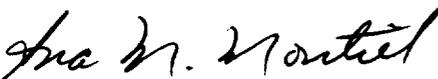
The Honorable James H. Quello, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

The Honorable Andrew C. Barrett, Commissioner
Federal Communications Commission
1919 M Street, N.W.
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The Honorable Rachelle B. Chong, Commissioner
Federal Communications Commission
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The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
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Ana M. Montiel

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

JUN 17 1994

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

**OPPOSITION OF THE SOUTHERN COMPANY
TO PETITION FOR RECONSIDERATION**

The Southern Company ("Southern"), by its attorneys and pursuant to Section 1.429(f) of the Federal Communication Commission's ("Commission's") rules, submits this Opposition to the Petition for Reconsideration filed by MCI Telecommunications Corporation in the above-captioned proceeding.^{1/}

STATEMENT OF INTEREST

1. Southern is a licensee of numerous Specialized Mobile Radio ("SMR") stations throughout Alabama, Georgia,

^{1/} Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket 93-252, Second Report and Order, 9 FCC Rcd. 1411 (1994) ("Second R&O"). Fifteen Petitions for Reconsideration and/or Clarification were filed on May 19, 1994, 59 Fed. Reg. 28,386 (June 1, 1994).

the panhandle of Florida, and southeastern Mississippi.^{2/} As a wide-area interconnected SMR, Southern appears to fall within the definition of a Commercial Mobile Radio Service ("CMRS") provider as set forth in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"). As such, Southern will be affected by the final outcome of this proceeding and will be subject to numerous additional regulations which, heretofore, have not applied to the SMR community.

2. Southern has closely followed the developments of this docket, and it supports the Commission's decision to forbear from requiring CMRS providers to file tariffs.

^{2/} Southern is an electric utility holding company which wholly owns the common stock of five electric utility operating companies, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and a system service company, Southern Company Services, Inc., which together operate an integrated electric utility system which serves over 11 million consumers in a contiguous area of 122,000 square miles, including most of the State of Alabama, almost all of the State of Georgia, the panhandle of Florida, and 23 counties in southeastern Mississippi. Southern is in the process of improving its mobile radio communications, and is implementing a wide-area digitally enhanced 800 MHz system. Southern will sell the excess capacity of its system to state and local government, utilities, industrial and commercial users, and other customers who can use the dispatch, two-way voice, and data transmission capabilities of Southern's wide-area SMR system. The Southern wide-area SMR system will provide service in rural and urban areas corresponding with its utility system operations.

Southern takes issue with MCI's effort to seek reconsideration of this decision.

STATEMENT IN OPPOSITION

3. The impetus for this proceeding was to promote vibrant and fair competition among all providers of mobile services, particularly between the cellular and SMR industries. By keeping its focus on this principle on reconsideration, the Commission should conclude that the issues MCI raises already have been adequately addressed.

4. MCI seeks reconsideration of the Commission's decision to forbear from requiring dominant CMRS providers from filing end-user tariffs. MCI also seeks reconsideration of the Commission's forbearance from requiring all CMRS providers to file interstate access tariffs. Southern opposes the requirement that CMRS providers file tariffs regarding any aspect of rendering mobile service. To mandate such tariff filings would be unnecessary, anticompetitive, and contrary to the interests of the consumer.

A. General Authority to Forbear from Imposing Tariff Filing Requirements

5. The Budget Act clearly gives the Commission the authority to forbear from applying certain Title II provisions of the Communications Act to CMRS providers. The Budget Act states:

A person engaged in the provision of a service that is a commercial mobile service shall . . . be treated as a common carrier for purposes of this Act, except for such provisions of Title II as the Commission may specify by regulation as inapplicable to that service or person.^{3/}

6. Southern recognizes that this discretion is not given in a vacuum, but that the Commission must meet a three-prong statutory test before deciding to forbear from enforcing any Title II regulations. Southern believes that the Commission has met the statutory test in deciding to forbear from the tariff filing requirements of Section 203 of the Communications Act. First, the Commission found that enforcement of Section 203 is unnecessary to ensure that charges, practices, classifications, or regulations for CMRS are just, reasonable, and not unjustly or unreasonably discriminatory.^{4/} Second, the Commission found that

^{3/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 107 Stat. 312, 392 (1993) (emphasis added).

^{4/} Second R&O at ¶174, p. 68.

applying Sections 201, 202, and 208 regarding the complaint process to the CMRS industry is sufficient to protect consumers from unreasonable or discriminatory rates.^{5/}

Finally, the Commission found numerous reasons why forbearance would be consistent with the public interest.

As an example, the Commission found that requiring tariff filings of CMRS providers would encourage carriers to maintain rates at artificially high levels.^{6/} Southern agrees that the Commission's experience accurately demonstrates that detariffing of non-dominant carrier services is in the public interest.^{7/}

B. End-user Tariffs for Dominant CMRS Providers

7. MCI specifically asks that dominant CMRS providers be required to file end-user tariffs. MCI offers no clear definition of "dominant CMRS providers." Hence, it is impossible to determine which CMRS providers MCI proposes to encompass within the meaning of this term. MCI therefore has failed to provide the Commission with an adequate basis to reconsider this aspect of its decision.

^{5/} Id. at ¶ 176, p. 69.

^{6/} Id. at ¶ 177, p. 69.

^{7/} See, e.g., Competitive Carrier, Sixth Report and Order, 99 F.C.C.2d 1020, 1029-30 (1985).

C. Interstate Access Tariffs

8. MCI also asks that all CMRS providers be required to file interstate access tariffs. In the current cellular context, interstate access tariffs disclose the access charge that interexchange carriers pay for access to, and interconnection with, a cellular company's network and end-users. MCI's reconsideration request seems to benefit competing interexchange carriers only and should not be applicable to CMRS providers. Southern believes that the complaint process found in Sections 201, 202, and 208 is a better approach for challenging discriminatory interstate access rates.

9. Moreover, MCI has failed to demonstrate why interstate access tariffs are necessary and how the public interest will be served by such filings. In any event, the Commission has indicated that it will review this issue in more detail in a future proceeding. Reconsideration of this issue is premature and should be delayed until the Commission more fully examines it in that future proceeding.

CONCLUSION

In light of the foregoing, the Southern Company respectfully requests that the Commission act upon MCI's Petition for Reconsideration in a manner consistent with the views expressed herein.

Respectfully submitted,

THE SOUTHERN COMPANY



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Dated: June 17, 1994