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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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In the Matter of	
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Regulatory Treatment of Mobile Services	

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NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Sections 1.49, 1.52, 1.415, 1.419, and 1.429 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure,[1] the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits this reply to the June 16, 1994 oppositions filed by The Bell Atlantic Companies ("BA"), BellSouth Telecommunications, Inc. ("BS"), MCI Telecommunications Corporation ("MCI"), GTE Service Corporation ("GTE"), McCaw Cellular ("MC"), Cellular Telecommunications Industry Association ("CTIA"), Nextel Communications, Inc. ("Nextel"), Pacific Bell and Nevada Bell ("PacTel"), Personal Communications Industry Association ("PCIA"), and NYNEX Corporation ("NYNEX") to NARUC's request for reconsideration of certain aspects of the Commission's April 19, 1994 noticed[2] "Second Report and Order" ("2nd R&O" or "Order") [FCC 94-31], in the above-captioned proceeding.

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[1] 47 C.F.R. §§ 1.49, 1.52, 1.415, 1.419, and 1.429 (1993).

[2] 59 Federal Register 18493 (April 19, 1994).

I. As clearly suggested in our petition for reconsideration, NARUC agrees with the comments of Nextel, at 13, and others, that state rate jurisdiction over CMRS interconnection rates should be examined in the context of a future proceeding.

In NARUC's original reconsideration request, at 7, we asked the FCC to clarify that the Order does not preempt State regulation of CMRS interconnection rates and that ALL CMRS interconnection issues, including preemption, may be raised in the proposed notice of inquiry. There we noted that "[a]s the FCC has clearly stated its intent to act, if at all, in a future proceeding to, inter alia, preempt State regulation over intrastate CMRS interconnection rates, it does not appear that [its preemptive remarks] are ripe for reconsideration, much less appeal."

Several commentors suggest that now that the Commission has actually initiated a notice of inquiry on interconnection issues, the appropriateness of deferring final action on the preemption issues to that proceeding seems clear. Even NEXTEL, certainly no fan of State regulation, states in its pleading, at 13, that, "As an initial matter, the Commission has deferred its determination of CMRS interconnection obligations to a further proceeding. State regulatory jurisdiction over prospective CMRS should be dealt with in that proceeding." Cf. NYNEX at 5, noting "These arguments are premature since the Commission has yet to require interconnection."

Some commentors, like BellSouth, display a somewhat schizophrenic approach to state jurisdictional issues on the one hand correctly arguing, at 2, that "financial matters, such as mutual compensation arrangements, that involve solely intrastate communications are matters of state jurisdiction [citation

omitted]," while on the other hand arguing that the statute just as clearly preempts state rate jurisdiction over CMRS-to-CMRS interconnection rates and that this is, contrary to the assertions of the state commissions, not "a matter of policy for the Commission's interpretation".

First it should be noted that neither NARUC nor New York suggested that state jurisdictional authority in this context was a matter of "policy". What we stated was that the legislative history and text of the §332 amendments make clear that rates charged directly to residential and business consumers is the focus of the act - not interconnection rates. Certainly with its obvious focus on regulatory symmetry - that specific comparable intrastate services be regulated in a similar fashion - had Congress intended to preempt state authority over CMRS-to-CMRS interconnection rates, it also would have preempted state authority over the corresponding LEC-to-CMRS rates. It did not.[3] Indeed, the only discussion of interconnection in the revised statutory text specifically notes that subparagraph (B), which gives the FCC authority to order CMRS related "physical" connections, "shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this subchapter." 47 U.S.C. § 332(c)(1)(B) (1993).

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[3] An examination of the statutory text illustrates the point. The statute, in devising tests for State re-entry into "rate regulation", as well as discussing maintaining existing rate regulation focuses clearly on the "rates" charged residential and business "subscribers" to basic services. Jurisdiction over rates for intrastate interconnection services are simply not addressed.

In any case, a complete assessment of whether the Commission has the authority to and/or should preempt state authority over CMRS-to-CMRS interconnection rates is best left to future proceedings, i.e., at the earliest, in the pending generic proceeding on interconnection.[4] Of course, the best context to test a state's jurisdiction over CMRS-to-CMRS interconnection rates would be a case-specific complaint arising from a state's assertion of authority.[5] As MCI notes in its comments, at 11, it is unlikely that many State commissions will devote significant resources to CMRS-to-CMRS interconnection issues until interested parties -- principally new entrants to CMRS service -- raise these issues at the state level.

II. The FCC lacks a sufficient record to make a generic finding concerning the legality of non-specific state-imposed informational tariffing requirements.

Section 332 says:

> Notwithstanding sections 152(b) and 221(b) of this title, no State...shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, **EXCEPT THIS PARAGRAPH SHALL NOT PROHIBIT A STATE FROM REGULATING THE OTHER TERMS AND CONDITIONS OF COMMERCIAL MOBILE SERVICES**. {Emphasis Added}

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[4] "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." News Release, June 9, 1994, announcing initiation of CC Docket No. 94-54. See BA at 2 noting "[t]he factual record in this initial CMRS rulemaking on the complex issues as to CMRS interconnection was too conflicting to provide a sufficient basis to act..".

[5] NARUC agrees with and adopts by reference MCI's arguments concerning the inadequate record for preemption of State CMRS-to-CMRS rates and other regulations. See, MCI Comments at 11.

Nextel suggests in its opposition, at 13, via the following conclusory statement with no supporting rational, that "informational tariffing is plainly beyond the authority of the states as reflected in the legislative history of the Budget Act."

NARUC respectfully suggests that the legislative history, if anything, "reflects" just the opposite. The conference report contains no specific discussion on the scope of "other terms and conditions". It does, however, note that the House bill provides that "nothing shall preclude a state from regulating the other terms and conditions of commercial mobile services.." and that "Section 332(c)(3)(A) of the Senate Amendment is identical to the House provision" in this respect.[6] Accordingly, it would seem the House Report, at least on this point, is consistent with the intent of the conferees. Interestingly, the House report notes the following:

> It is the intent of the Committee that the states still would be able to regulate the terms and conditions of these services. By "terms and conditions", the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues(e.g. zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a stat's lawful authority. This list is intended to be illustrative only and not met to preclude other matters generally understood to fall under "terms and conditions. {Emphasis Added}[7]

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[6] House Conference Report No. 103-213, pp. 493-4, U.S.Code Congressional & Administrative News, 103rd Congress, Pamphlet No. 7A, September 1993, at 1182-3.

[7] House Report No. 103-111, pp. 260-1, U.S.Code Congressional & Administrative News, 103rd Congress, Pamphlet No. 7, September 1993, at 587-8.

NARUC respectfully suggests that, under some market conditions, an informational tariff might be necessary as a consumer protection device to assist consumers in determining if they are being overcharged. Moreover, it is obvious that States must be able to gather information to be able to exercise the rights given under the statute to reenter rate regulation if necessary to protect the public interest. That is, for the ability to petition the FCC to regain rate authority to have any meaning, States must have the means to gather the information necessary to make the showing required by the FCC. Informational tariffs could well prove an excellent, and perhaps a relatively non-burdensome method for States to keep tabs on the degree of competitive pressures in particular market segments.

However, NARUC respectfully suggests that the Commission lacks the record necessary to make a generic determination concerning the propriety of all "state informational tariff filing requirements", i.e., in the absence of a complaint concerning a specific state regulation and the factual context surrounding that regulation's implementation, the FCC has no factual basis for any such finding.

III. The 47 C.F.R. § 20.13 (a)(2)(4) requirement for States petitioning for CMRS rate authority to "...identify and describe in detail the rules..." is inappropriate from both a legal and policy perspective.

A number of oppositions suggested that the § 20.13 requirement for a states petitioner to provide detailed rate regulations is required by the act. All of those opposing NARUC's request sounded the same theme arguing basically that it is "reasonable to require a state specifically to disclose what regulation it considers

appropriate, so that the Commission can make an informed decision regarding its necessity." PCIA at 4; Cf. Nextel at 13, NYNEX at 5.

Interestingly, none chose to specifically respond to or directly dispute NARUC's arguments concerning the requirements imposed by the specific language of the statute and Congressional intent concerning speedy relief for consumers when conditions warrant.

PCIA did suggest in a footnote that this requirement would not be burdensome for a Commission already regulating CMRS service. Id. However, NARUC's reconsideration request on this point is limited to States applying to ASSERT authority for the first time or reassert authority, not the States that will be filing petitions August 10, 1994. Hence, this aspect of PCIA's argument does not address NARUC's contentions at all.

PCIA goes on to suggest that where a state is imposing a new statutory structure, the state will have "given the matter sufficient thought that such proposals would be relatively easy to develop." The FCC's own staff is likely a better judge of how "relatively easy", in terms of time and scarce staff resources, it is to develop draft detailed regulations. However, even if we assume, arguendo, the PCIA suggestion is true, it still does not address NARUC's contentions concerning the unwonted and unnecessary diversion of scarce staff resources and usefulness of a State submitting draft or proposed rules which often change substantially during the rulemaking process.

In light of the foregoing, NARUC respectfully requests the FCC reject the arguments posed by these oppositions and (i) eliminate the requirement to submit detailed CMRS rate regulation rules for States applying to reassert rate authority, and (ii) at a minimum, clarify that CMRS-to-CMRS interconnection/preemption issues can still be raised in the posed notice of inquiry.

Respectfully submitted,

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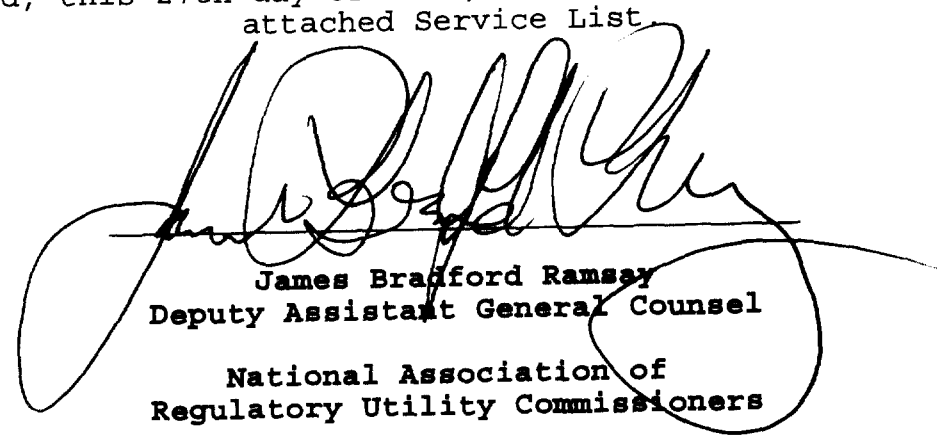
June 27, 1994

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing document was served, by first-class United States mail, postage prepaid, this 27th day of June, 1994, on all parties on the attached Service List.



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