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

To: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Cellular Service, Inc. ("CSI") and ComTech, Inc. ("ComTech"), acting pursuant to Section 1.429 of the Commission's rules and the Public Notice of May 25, 1994 (Report No. 2012), hereby reply to the Oppositions of AirTouch Communications ("AirTouch"), The Bell Atlantic Companies ("Bell Atlantic"), the Cellular Telecommunications Industry Association ("CTIA"), GTE Service Corporation ("GTE"), McCaw Cellular Communications, Inc. ("McCaw"), Nextel Communications, Inc. ("Nextel"), and NYNEX Corporation ("NYNEX") to the Petition for Reconsideration filed by CSI and ComTech with respect to the Second Report and Order, 9 FCC Rcd 1411 (1994).

Introduction

In their petition, CSI and ComTech requested that the Commission recognize the right of cellular resellers to interconnect with the Mobile Telephone Switching Office ("MTSO") of FCC-licensed cellular carriers. Instead of adopting detailed rules, CSI and ComTech proposed that the Commission require the

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licensed cellular carriers to engage in the same kind of good faith negotiations which the FCC has mandated for the cellular carriers' interconnection with Local Exchange Companies ("LECs").

All the parties opposing the petition of CSI and ComTech are licensed commercial mobile service providers who obviously want to minimize the burden of the Commission's resale policies. Although their respective oppositions may be justified by economic self-interest, the opposing parties' arguments do not provide any basis to deny the relief requested by CSI and ComTech.

None of the opponents challenges the detailed legal analysis in CSI's and ComTech's petition that interconnection is required as long as the interconnection is privately beneficial without being publicly detrimental. Nor do the opponents describe any specific harm that will befall their particular systems or the public in general if, as requested by CSI and ComTech, licensed cellular carriers are obligated to engage in good-faith negotiations to implement any right of interconnection. And, lastly, the opponents do not and cannot refute CSI's and ComTech's representation that they are prepared to proceed immediately -- if given a right of interconnection -- to install their switch and enhance the cellular resale services available to the public.

There is thus no reasonable basis upon which the Commission can deny CSI's and ComTech's Petition for Reconsideration.

I. Legal Basis for Interconnection Undisputed

There is universal agreement that a cellular reseller's right to interconnection must be decided under Section 201 of the Communications Act of 1934, as amended, 47 U.S.C. §201. E.g., Petition for Reconsideration at 5-6; CTIA Opposition at 9. The opponents nonetheless claim that interconnection is not available to cellular resellers because cellular carriers do not control bottleneck facilities. E.g., GTE Opposition at 2, 4 (cellular carriers do not enjoy "the type of market power that the Commission has found in the past to justify imposing specific interconnection obligations"); McCaw Opposition at 2 (no need to impose interconnection on entities which "lack control over bottleneck facilities"); CTIA Opposition at 10 (interconnection obligations "should only be imposed in those extreme circumstances when dominant carriers . . . control access to essential facilities"); AirTouch Opposition at 4 ("cellular carriers do not control -- and have never controlled -- monopoly telecommunications facilities"). None of the opponents' claims is supported by any citation to any legal authority whatsoever. That omission is not surprising. There is no legal authority to support the opponents' argument.

As CSI's and ComTech's petition pointed out, any request for interconnection under Section 201 must be assessed in light of Hush-a-Phone v. United States, 238 F.2d 266 (D.C. Cir. 1956), and Carterfone, 13 FCC2d 420, recon. denied, 14 FCC2d 571 (1968). Petition for Reconsideration at 6-8, citing AT&T, 60 FCC 2d 939

(1976). Under that line of cases, a carrier's request for interconnection must be deemed reasonable if the interconnection will serve the carrier's need without harming the connecting carrier's operations.

None of the opponents offers any argument -- let alone any authority -- to challenge the legal analysis in CSI's and ComTech's petition. Nor do the opponents offer any basis for the FCC to treat the interconnection rights of a cellular reseller -- a common carrier subject to FCC jurisdiction -- any differently than any other reseller of common carrier services. See Petition for Reconsideration at 9-10 and authorities cited therein.

The only legal argument advanced by the opponents involves a vague assertion by CTIA that the recent judicial decision involving mandatory co-location in an LEC central office undercuts a cellular reseller's right to interconnection. CTIA Opposition at 9 n.7, 10, citing Bell Atlantic Telephone Companies v. FCC, No. 92-1619 (D.C. Cir., June 10, 1994). That assertion is totally unjustified.

In Bell Atlantic, the United States Court of Appeals for the District of Columbia Circuit concluded that the FCC does not have authority "to grant third parties a license to exclusive physical occupation of a section of the LECs' central offices." Slip Opinion at 9. In reaching that conclusion, the court did not restrict the Commission's traditional authority to order interconnection under Section 201 of the Communications Act of

1934. Quite the contrary. The court acknowledged that that power is "undoubtedly of broad scope." Slip Opinion at 9.

Nothing in Bell Atlantic has any relevance to the interconnection requested by CSI and ComTech. That interconnection will not involve a cellular reseller's "exclusive physical occupation of a section of the" cellular carriers' offices. Rather, it will involve the same kind of interconnection which the Commission ordered in AT&T, supra, and in countless other cases -- including the cellular carriers' interconnection to the LECs.

II. No Need For Further Proceedings

In their petition, CSI and ComTech proposed that the cellular resellers' interconnection right be implemented in accordance with the same general principles to be applied for LEC-interconnection and that, instead of detailed rules, the FCC require licensed cellular carriers to negotiate specific interconnection agreements with cellular resellers. That approach would reduce the demand on the Commission's scarce resources and provide a practical means to implement a right of interconnection. Petition for Reconsideration at 15-16.

None of the opponents explains why licensed cellular carriers cannot engage in good-faith negotiations. For its part, AirTouch simply says that "there is no need or right for such federally mandated negotiations regarding the resellers' request to interconnect a new 'reseller's switch' to competitive cellular

facilities."¹ AirTouch Opposition at 2 n.6. Other opponents merely lament that the matter is complex and that the Commission needs to develop a record before it can authorize resellers to interconnect with licensed cellular carriers. E.g., GTE Opposition at 4 ("interconnection issue is complex and controversial"); Bell Atlantic Opposition at 14 (Commission properly recognized "the complexity of interconnection issues"); McCaw Opposition at 2 (interconnection issue mired in "undisputed complexity"); NYNEX Opposition at 3 ("this issue is complex"); CTIA Opposition at 10 (interconnection for cellular resellers "raises complex issues").

In touting the alleged complexity of the issue, the opponents raise the specter that interconnection by resellers will -- somehow, some way -- result in incalculable harm to the cellular carriers' facilities. E.g., GTE Opposition at 4 (FCC must determine "whether blanket interconnection rights might jeopardize network reliability or constrain the ability of cellular carriers to upgrade their MTSOs"); McCaw Opposition at 13 n.36 ("a reseller switch would degrade the quality of service made available to the resellers' customers"); Bell Atlantic Opposition at 16 (FCC must determine "whether the costs of interconnection are justified by benefits").

¹AirTouch's adamant refusal to negotiate is consistent with its posture in the past. CSI has made repeated efforts to engage in meaningful discussions concerning a reseller's switch and has been rebuffed at every juncture.

At the outset, it bears emphasizing that the Bell Operating Companies ("BOCs") -- which include Bell Atlantic and NYNEX -- advanced a completely different view of interconnection in urging Judge Harold H. Greene to relieve the BOCs of the restriction under the Modified Final Judgment on the BOCs' provision of interexchange service in conjunction with their respective cellular operations. In a joint filing, the BOCs vigorously rejected any suggestion that they would unfairly exploit their competitors' need for interconnection to the LECs because (1) "local interconnections are only a tiny portion of the costs of running a cellular operation"² and (2) the FCC has been "vigilant" in assuring BOC competitors of interconnection through informal negotiation and other means. Memorandum of The Bell Companies in Support of Their Motion for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Services Across LATA Boundaries, Civil Action No. 82-0192 (D.D.C. June 20, 1994) at 9-10, 27 n.28.

As in the case of the cellular carriers' right of interconnection to the LEC, good-faith negotiations will resolve most, if not all, of the so-called complexity in the resellers' interconnection arrangements. Individualized discussions will ensure that any interconnection . . . accounts for the particulars of each carrier's facilities and needs. Indeed, that very

²Although the reference was to a cellular carrier's interconnection with an LEC, there is no reason to believe that any different assessment would apply in conjunction with a cellular reseller's interconnection with a cellular carrier.

real -- and likely -- benefit has prompted the Commission to endorse informal discussions among the parties as the most productive course. Cellular Communications Systems, 89 FCC2d 58, 80-82 (1982) (subsequent history omitted) (informal negotiation "provides the flexibility necessary in a dynamic technological environment such as cellular"); Cellular Interconnection Proceeding, 4 FCC Rcd 2369, 2377 n.13 (1989) (FCC staff has assisted parties "in reaching interconnection agreements" and, for that reason, the Commission encourages parties "to take advantage of this informal process prior to the filing of a complaint"). There is no reason to believe that that same process would be any less effective in implementing a cellular reseller's right of interconnection.

III. Resellers Need Interconnection Now

In their petition, CSI and ComTech stated that they are prepared to interconnect their switches as soon as arrangements can be made with the cellular carriers. Petition for Reconsideration at 4, 14. The Opponents challenge that representation and argue that CSI and ComTech (as well as other resellers) should be satisfied to await the resolution of the Commission's notice of inquiry on interconnection rights to providers of commercial mobile radio services. E.g., GTE Opposition at 3; Bell Atlantic Opposition at 15; Nextel Opposition at 14.

It is not for cellular carriers -- who have an obvious interest in reducing competition from resellers -- to counsel

patience on the part of the resellers. The cellular carriers themselves were not prepared to be patient in obtaining interconnection to the LECs, and there is no reason for the cellular resellers to stand idly by in an environment which restricts the services they can provide their subscribers. This is especially so since -- notwithstanding the best efforts of the Commission and its dedicated staff -- the notice of inquiry is not likely to produce any definitive rules for at least a year and probably much longer.

CSI and ComTech reiterate that they are prepared to install a switch now if appropriate arrangements can be reached with the cellular carriers. The Commission should let the marketplace decide whether the enhanced services to be offered through such interconnection will justify the cost.³

³ McCaw contends that "the resellers have consistently failed to demonstrate the feasibility of their switch proposal" in proceedings before the California Public Utilities Commission. McCaw Opposition at 13 n.36. While that may be McCaw's view, it is certainly not the position of the California Public Utilities Commission ("PUC"). The California PUC (1) authorized the establishment of procedures "for [cellular] resellers that want to provide their own switches" and (2) concluded that "[c]ellular resellers should be allowed to acquire interconnected NXX codes on the same basis as the facilities-based carriers." Regulation of Cellular Radio Telephone Utilities, Decision 92-10-026 (Oct. 6, 1992) at 59, recon., Decision 93-05-069 (May 19, 1993) at 13.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission reconsider its decision in the Second Report and Order and, upon reconsideration, recognize the right of cellular resellers to interconnect switches with facilities-based cellular carriers and require parties to engage in good faith negotiations to establish interconnection arrangements in accordance with established policies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 1994, I caused a true copy of the Reply to Oppositions to Petition for Reconsideration to be served by first-class mail, postage prepaid, upon the following parties:

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