

DUPLICATE ORIGINAL

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

In the Matter of:)
)
Further Forbearance from Title II) GN Docket No. 94-33
Regulation for Certain Types of)
Commercial Mobile Radio Service)
Providers)

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REPLY COMMENTS OF
MCCAW CELLULAR COMMUNICATIONS, INC.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

McCaw Cellular Communications, Inc. ("McCaw") respectfully submits its reply comments in the above-captioned proceeding. As discussed below, the record confirms that there is no basis for asymmetrical regulation of CMRS providers within particular services, and that all CMRS carriers should be exempted from TOCSIA requirements.

McCaw's opening comments explained that selective forbearance from the Title II provisions under consideration in this proceeding is unwarranted. Virtually all commenters agreed with McCaw that there is no need to create a favored class of providers because the statutory sections at issue either impose no costs,¹ or are necessary to advance important consumer protection objectives.² In addition, many parties shared McCaw's concern that dissimilar regulation

¹ See McCaw at 2 (Sections 210, 213, 215, 218, 219, 220 impose no affirmative obligations on CMRS providers); see also GTE at 4; NABER at 6; Nextel at 9; CTIA at 2-3.

² See McCaw at 2 (noting that Sections 223, 227, and 228 impose burdens only on entities that voluntarily provide certain non-common carriers services); see also CTIA at 4-5, 7-8; Nextel at 16-17; GTE at 2-3.

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would distort competition and that any effort to identify "small" providers would prove arbitrary and unenforceable.³

A few parties nonetheless seek special treatment.⁴ Their requests must be denied for two reasons. First, none of these commenters even attempts to demonstrate that particular statutory sections impose unique or unjustified burdens on their operations. In fact, several of them concede that the statutory provisions either do not create any compliance costs, or should be retained because they are necessary to protect consumers.⁵ Rather, their opposition to Title II appears to stem from a desire to retain their previously "private" classification to the greatest extent possible, notwithstanding the Congressional mandate that all providers of substantially similar CMRS offerings should be subject to equal regulation.⁶

³ McCaw at 3-4; see also BellSouth at 3, 6 (regulatory distinctions among competitors skew the competitive marketplace and would result in additional burdens for the Commission in identifying eligible entities and policing evasive behavior); Bell Atlantic at 4-7 (asymmetrical regulation would skew competition and raise immense practical problems); Pacific Bell at 4-5 (selective forbearance would be arbitrary, undermine regulatory parity, discourage small providers from expanding, and be an administrative nightmare).

⁴ See, e.g., AMTA at 6; E.F. Johnson at 5; NABER at 4; Geotek at 4.

⁵ See, e.g., NABER at 6-7; Nextel at 9-13; Dial Page at 11.

⁶ As McCaw has explained elsewhere, the Commission should interpret "substantially similar" as broadly as
(continued...)

The second reason for rejecting asymmetrical forbearance is that the proponents of this approach provide no rational basis for identifying the entities deserving additional deregulation. Indeed, the proliferation of suggested criteria -- including number of subscribers,⁷ sophistication of customer base,⁸ amount of spectrum held,⁹ and average revenues or percent interconnected traffic¹⁰ -- show that there is no consensus even among the advocates of special treatment for defining the class of "small" carriers. Rather, each commenter advances a categorization that serves its unique interests.

Moreover, each of the recommended dividing lines is arbitrary and unworkable. Factors such as number of subscribers, average revenues, or percent interconnected traffic are unrelated to the ability of a service provider to comply with the Title II obligations at issue and create artificial incentives to "freeze" an entity's business at levels producing favorable regulatory treatment. In

⁶(...continued)
possible in order to assure that the regulatory parity directive is satisfied. See Comments of McCaw, GN Docket No. 93-252, filed June 20, 1994, at 20-21.

⁷ See, e.g., AMTA at 8; Nextel at 8.

⁸ See, e.g., Geotek at 4-5.

⁹ See NABER at 10; WJG Maritel at 5.

¹⁰ See Utilities Telecommunications Council at 3-4.

addition, such standards inevitably would require burdensome reporting and enforcement mechanisms.

The amount of spectrum held by an entity also is irrelevant to the issue of whether particular statutory requirements are disproportionately burdensome. Carriers with relatively little spectrum may be highly profitable or may be engaged in businesses that create consumer protection concerns. Conversely, carriers with more spectrum may face high operating costs or provide services with little risk of consumer harm.

Nor is sophistication of the customer base a reasonable trigger for selective forbearance. As an initial matter, the make-up of a carrier's customer base is entirely unrelated to the size of the carrier or its ability to bear particular regulatory burdens. And, while sophistication is relevant to the need to impose consumer protection provisions (and to the rigor with which those protections are enforced on behalf of particular customers), there is no rational means of determining what percent of business users a carrier should have in order to merit categorical forbearance. In addition, the nature of any entity's customer base will change as its business expands and evolves, rendering untenable any regulatory decision based on a snapshot of operational

characteristics at a particular point in time.¹¹ Finally, rewarding carriers for serving only business customers would either deprive residential consumers of additional competitive options or create incentives for carriers or residential consumers to misstate the true purpose of subscribing to the service.

In short, asymmetrical regulation of CMRS providers within particular services would be unwise and contrary to the public interest. Instead, the Commission should focus on whether forbearance from specific statutory obligations is justified for all CMRS providers. The record overwhelmingly demonstrates that this is the case with respect to Section 226 of the Act (TOCSIA). As McCaw and more than a dozen other commenters explained, enforcement of TOCSIA is not necessary to protect wireless consumers, creates potentially massive costs, and could be interpreted as undermining the Commission's decision not to require CMRS providers to file tariffs.¹² Consequently, the forbearance standard set forth in Section 332 of the Act is plainly met.

¹¹ Cellular, for example, began as a business-oriented service but has become increasingly attractive to individual consumers as equipment and service prices continue to decline.

¹² See, e.g., McCaw at 4-6; GTE at 6-8; Alltel at 3; AMTA at 15; Bell Atlantic at 8-9; In-Flight at 3-5; NABER at 9; Dial Page at 8; Southwestern Bell at 10-11.

For the foregoing reasons, and those discussed in McCaw's opening comments, the Commission should not engage in asymmetrical regulation of CMRS providers within particular services. It should, however, forbear from applying TOCSIA requirements to all CMRS providers.

Respectfully submitted,

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