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

REPLY COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation ("GTE"), on behalf of GTE's telephone and wireless service companies, respectfully submits its reply comments in the above-captioned proceeding. As explained in its initial comments and further discussed below, GTE believes that selective and disparate forbearance from Title II regulation within CMRS services is unwarranted, but that all CMRS providers should be exempted from Section 225 of the Communications Act ("TOCSIA").

I. SELECTIVE AND DISPARATE FORBEARANCE IS UNWARRANTED.

In its opening comments, GTE explained that there is no basis for asymmetrical application of Title II to different providers within particular CMRS services. GTE noted that Sections 210, 213, 215, 218, 219, and 220 impose no affirmative burdens or material compliance costs on CMRS providers. It also pointed out that Sections 223, 225, 227, and 228 serve important consumer protection goals and impose significant costs only on entities that voluntarily enter certain non-common carrier businesses. In these circumstances, selective forbearance would violate principles of regulatory parity, harm consumers, and create unenforceable classifications.¹

¹ GTE at 2-5.

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The record provides extensive support for GTE's analysis. Many of parties agreed that discriminating between classes of CMRS providers within particular services would violate the Congressional regulatory parity directive, introduce competitive distortions, and produce arbitrary distinctions.² In addition, several commenters concurred with GTE that selective forbearance is unwarranted because the particular sections under consideration either impose no burdens (Sections 210, 213, 215, 218, 219, and 220),³ or are necessary to protect consumers (Sections 223, 225, 227, and 228).⁴

A few parties asked the Commission to create a favored class of small entities.⁵ These entities offered no basis for creating such a distinction, however. For example, none of these commenters cited any specific burdens resulting from application of these Title II provisions to certain types of service providers. Indeed, several of the parties asking for preferential treatment acknowledged that there is no reason to forbear from Sections 210, 213, 215, 218, 219, 220, 223, 225, 227, and 228.⁶

² See, e.g., BellSouth at 1; McCaw at 2; NYNEX at 3.

³ See, e.g., Dial Page at 4; NABER at 6; OneComm at 6; CTIA at 2-3; Nextel at 9; NYNEX at 4. Pacific Bell and Southwestern Bell, in contrast, suggest that forbearance from Sections 213, 215, 218, 219, and 220 is merited for all CMRS providers. Pacific Bell at 13-15; Southwestern Bell at 5-7. GTE does not oppose their suggestion, since it is fully consistent with GTE's position that *selective and disparate* forbearance from these provisions is undesirable. E.F. Johnson (at 8) states that forbearance from these sections is warranted for small CMRS providers. As explained below, however, there is no justification for creating classes of CMRS providers within particular services.

⁴ See, e.g., CTIA at 4-5, 7-8; Nextel at 10, 16-17; The Southern Company at 5, 7; McCaw at 2-3.

⁵ See AMTA at 6-9; Dial Page at 3; E.F. Johnson at 5; Geotek at 4; NABER at 4-5; Nextel at 8; OneComm at 6; US Sugar at 16; Utilities Telecommunications Council at 3-4; WJG Maritel at 5.

⁶ See Dial Page at 11; NABER at 6-7; Nextel at 9-13; OneComm at 6. Some of these parties did ask to be exempted from the obligation to offer TRS capabilities. See Dial Page at 6; NABER at 7-8; OneComm at 8. However, none made a compelling showing that this obligation imposes substantial burdens. As

In addition, the parties seeking special privileges offered no rational basis for defining the favored class. For example, some SMR interests suggested that further forbearance extend to service providers with fewer than 5000 subscribers nationwide.⁷ They made no showing, however, that the relevant Title II provisions create any unique or disproportionate burdens for providers with fewer than 5000 subscribers, or that such providers are less profitable than larger carriers. In addition, they failed to recognize that a numerical standard is untenable in practice: entities could be subject to regulation in some months but not in others as their businesses expand and contract. In addition, any enforcement mechanism, such as reporting requirements or certifications, would actually increase regulatory burdens.

Geotek urged the Commission to focus on the nature of the customer base, forbearing from regulation for carriers that generally serve business customers.⁸ GTE agrees that the sophistication of the customer base is relevant in determining whether customer protection provisions are warranted. However, a dividing line based on the nature of the customer base would be unrelated to the size of the carrier, since large and small CMRS providers both may serve business customers. Moreover, the relative customer mix for particular entities is likely to shift over time, and there is no record basis for concluding that some classes of CMRS providers are more likely to serve business customers than other classes. Indeed, any such presumption could artificially limit competition by restraining the incentive of the favored CMRS providers to expand their business operations.

Nextel explained, the choices available to CMRS carriers for offering TRS provide sufficiently flexible alternatives that providers should not be unduly burdened. Nextel at 11. Although Nextel's statement was made in the context of "new" SMRs, it is equally valid for all CMRS providers. Consequently, forbearance from the obligation to offer TRS capabilities should apply to all CMRS providers or to none.

⁷ See AMTA at 8; Nextel at 8.

⁸ Geotek at 4-5.

Other suggested classifications are equally unavailing. Two commenters — NABER and WJG Maritel — suggested basing the definition of “small” on the amount of spectrum held by an entity.⁹ They provided no evidence, however, that entities controlling small blocks of spectrum would be uniquely burdened by compliance with these Title II provisions, or that the costs of compliance outweigh the benefits for these CMRS providers but not for others. US Sugar proposed that the Commission grant additional forbearance to entities bearing a resemblance to “traditional” SMRs, without providing a workable definition of the favored class or showing any unique circumstances justifying disparate treatment.¹⁰ UTC recommended basing a distinction on average revenues, number of subscribers, or percent interconnected traffic, but like the other proponents of selective forbearance, it did not demonstrate that special handling is warranted.¹¹ Finally, Dial Page essentially sought further forbearance for all CMRS providers except cellular and air-to-ground carriers.¹² Such regulatory handicapping is, of course, entirely indefensible.

Against this background, there is no basis in the record for selective and disparate forbearance. To assure fair competition, protect consumers, and comport with the regulatory parity directive of Section 332, the Commission should extend equal treatment to all providers of similar CMRS offerings.¹³

⁹ NABER at 10-11; WJG Maritel at 5.

¹⁰ US Sugar at 16-19.

¹¹ UTC at 3-4.

¹² Dial Page at 3 (asking for further forbearance for ESMRs, PCS providers, CMRS carriers that previously were classified as private, and paging carriers).

¹³ In this regard, GTE notes that In-Flight asked the Commission to exempt air-to-ground providers from international tariffing and Section 214 requirements. In support of its request, In-Flight correctly pointed out that international air-to-ground traffic is de minimis, tariffing and facilities authorizations are unnecessary to protect consumers, and such requirements impose substantial burdens. In-Flight at 8-9. GTE endorses In-Flight’s request and urges the Commission to

II. THE COMMISSION SHOULD FORBEAR FROM APPLYING TOCSIA REQUIREMENTS TO ALL CMRS PROVIDERS.

GTE's opening comments reiterated its longstanding request that the Commission forbear from applying Section 226 of the Communications Act to all CMRS providers, regardless of size. As GTE explained, forbearance is plainly warranted under the test set forth in Section 332. Enforcement of TOCSIA requirements is manifestly unnecessary to protect consumers or ensure just and reasonable rates, and compliance with these requirements, even where possible, would impose massive costs. In addition, enforcement of TOCSIA would compel all CMRS providers to file tariffs, even if they do not offer public phone services. As the Commission recognized in the Second Report and Order in GN Docket No. 93-252, requiring CMRS providers to file tariffs can take away incentives to introduce new offerings, diminish flexibility, increase rates for consumer, and restrain competition.¹⁴

The record overwhelmingly supports forbearance from Section 226 for all CMRS providers. Fourteen commenters urged the Commission not to apply TOCSIA regulation to CMRS, explaining that there is no evidence of consumer abuses and that compliance with TOCSIA would engender substantial costs, create customer confusion, be inconsistent with the Commission's decision to forbear from tariffing, require CMRS providers to discharge impossible obligations, and waste RF capacity.¹⁵ Notably, these commenters represent virtually every aspect of the CMRS industry, including large and small carriers, cellular companies, SMRs, ESMRs, and air-to-ground service providers.

take whatever steps are necessary to expeditiously forbear from international tariffing and Section 214 obligations for air-to-ground services.

¹⁴ Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1479 (1994) (¶ 177).

¹⁵ See Alltel at 3; AMTA at 15; Bell Atlantic at 8-9; Dial Page at 8; E.F. Johnson at 9 (forbear for "small" CMRS providers); In-Flight Phone Corporation at 3-5; McCaw at 4-5; NABER at 9; Nextel at 14-16; OneComm at 12; Southern at 6; Southwestern Bell at 10-11; Waterway at 2-9; WJG Maritel at 7-9 (for public coast stations).

In contrast, the support for applying TOCSIA is both scant and conclusory. AT&T and NYNEX asserted, without providing evidence of consumer abuses, that TOCSIA is necessary to protect consumers.¹⁶ In addition, AT&T stated, again without support, that the cost of compliance “appears to be minimal.”¹⁷ The record, however, thoroughly documents that the abuses giving rise to TOCSIA have not occurred in the mobile context and that complying with TOCSIA would impose extremely significant costs on all CMRS providers.

CTIA also appears to support continued application of TOCSIA to CMRS providers, unless waiver is justified based on the nature of particular offerings.¹⁸ However, CTIA’s position seems to be based on the misapprehension that Section 226 applies only if CMRS providers “affirmatively choose to offer operator services.”¹⁹ In reality, the Commission has interpreted TOCSIA as involuntarily converting any and all CMRS providers into OSPs, regardless of whether they provide public phone services.²⁰ Under the Bureau’s TOCSIA Declaratory Ruling, as soon as a user of a mobile public phone service, such as a rental car phone, makes or receives a call for which a CMRS provider, however unknowingly, serves as the underlying carrier, that CMRS provider is transformed into an OSP and subject to all of TOCSIA’s branding, tariffing, and enforcement requirements.

In short, the record compels forbearance from applying Section 226 to all CMRS providers. If problems arise in the future, the Commission can determine whether

¹⁶ AT&T at 4 (expressing general support for applying the Act’s consumer protection provisions, but not focussing specifically on TOCSIA); NYNEX at 5.

¹⁷ AT&T at 4 (once again, not focussing on TOCSIA).

¹⁸ CTIA at 6-7.

¹⁹ *Id.* at 5.

²⁰ See GTE at 7 n.13; GTE Petition for Reconsideration, MSD 92-14, filed Sept. 27, 1993, at 13-14; GTE Petition for Reconsideration, GN Docket No. 93-252, filed May 19, 1994, at 4 n.8.

individual enforcement actions will adequately address the situation or broad imposition of some or all TOCSIA requirements is necessary. Saddling the entire CMRS industry with massive, up-front burdens — with no evidence whatsoever of abusive or unreasonable practices — is insupportable and directly contrary to the public interest.

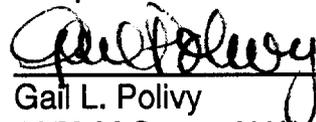
III. CONCLUSION

For the reasons discussed herein and in GTE's opening comments, the Commission should not extend selective and disparate forbearance to classes of CMRS providers within particular services. The Commission should, however, promptly forbear from applying TOCSIA requirements to all CMRS providers.

Respectfully submitted,

GTE Service Corporation on behalf of
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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on the 12th day of July, 1994 to all parties on the attached list.


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