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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PR 94-107 ✓

PR file
~~Doc No.~~ 94-SP5

Petition on Behalf of the)
Louisiana Public Service Commission)
for Authority to Retain Existing Jurisdiction Over)
Commercial Mobile Radio Services Offered)
Within the State of Louisiana)

Brian A. Eddington
General Counsel and Assistant Secretary
Carolyn L. DeVitis
Senior Attorney
Louisiana Public Service Commission
One American Place, Suite 1630
Baton Rouge, Louisiana 70825
Telephone: (504) 342-9888

Paul L. Zimmering
William L. Geary, Jr.
Stephanie D. Shuler
STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON
546 Carondelet Street
New Orleans, Louisiana 70130
Telephone: (504) 581-3200

Special Counsel to the
Louisiana Public Service Commission

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Within the State of Louisiana)

I. INTRODUCTION

This Petition is respectfully submitted on behalf of the Louisiana Public Service Commission ("Louisiana Commission" or "LPSC"), requesting authority for the State of Louisiana to continue exercising authority over the rates charged, services rendered, and the setting of other terms and conditions for commercial mobile radio services ("CMRS"). As will be explained more fully below, the Louisiana Commission has the authority to and, in fact, has exercised that authority to regulate the rates and services of mobile carriers within the State of Louisiana. This regulation has been effective in preventing abuses and has not resulted in limiting competition in the mobile telecommunications market. To the contrary, regulation in this market by the Louisiana Commission has been relatively light-handed and has served to ensure that competition may grow while at the same time preventing Louisiana ratepayers from paying unjust, unreasonable and discriminatory rates in this emerging industry.

A. Necessity To File

In 1993 Congress passed the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A)&(B) 107 Stat. 312, 393, 1993. A portion of that Act amended the Federal Communications Act, and these amendments are now encoded at 47 U.S.C. § 332(c).

The amendments to the Communications Act preempt state regulation of the entry of or the rates charged by any CMRS provider unless certain conditions are met. 47 U.S.C. § 332(c)(3).¹ Notwithstanding the prohibition against state regulation of the rates charged by mobile carriers, states may petition the Federal Communications Commission ("FCC") for authority to regulate the rates charged for CMRS if certain conditions exist. The conditions which are relevant to this petition are as follows:

1. The state had in effect, on June 1, 1993, "any regulation concerning the rates for any commercial mobile service offered in such state". 47 U.S.C. § 332(c)(3)(B); or
2. Market conditions with respect to commercial mobile service in the state fail to protect consumers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. 47 U.S.C. § 332(c)(3)(A)(i).

As is explained more fully below, as of June 1, 1993 Louisiana had, in effect, regulations concerning the rates for CMRS and, therefore, pursuant to 47 U.S.C. § 332(c)(3)(B) is petitioning the FCC for authorization to continue this rate regulation for the benefit and protection of Louisiana ratepayers. The continuation of this regulation will not impede the growth and development of competition in this segment of the communications market.²

1 The same section provides, however, that the State shall not be prohibited from regulating "the other terms and conditions of commercial mobile services".

2 Even if the FCC ultimately determines that the type of rate regulation engaged in by the Louisiana Commission as of June 1, 1993 is inadequate to support a Petition pursuant to 47 U.S.C. § 332(c)(3)(B), the LPSC believes that market conditions with respect to CMRS in Louisiana may fail to protect consumers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. 47 U.S.C. § 332(c)(3)(A)(i). (*See* discussion in Section III.A. & B., *infra*.) Because of the existence of what appear to be unjust and unreasonable rates under the current system of rate regulation in Louisiana, the Louisiana Commission, at its July, 1994 meeting, voted to open a docket to conduct a generic investigation to evaluate the merits of

B. Certificate Of Authority To Petition For Continuous Regulatory Oversight

Both the Constitution of the State of Louisiana and state legislation authorize the Louisiana Public Service Commission to regulate the rates charged and services rendered by all public utilities and common carriers operating within the State of Louisiana. This includes the CMRS carriers which are the subject of this Petition. Attached hereto as exhibit 2, is a sworn Affidavit executed by Mr. Brian Eddington, Assistant Secretary and General Counsel to the Louisiana Public Service Commission, certifying that the Commission is the appropriate authority to file this Petition.

II. AUTHORITY OF THE LOUISIANA PUBLIC SERVICE COMMISSION

A. Constitutional Authority

The Louisiana Commission is the constitutionally-created authority within the State of Louisiana authorized and charged with the responsibility to regulate the rates charged and services rendered by all common carriers and public utilities operating within the State. Article IV, Sec. 21(B) of the Louisiana Constitution of 1974 provides:

(B) Power and Duties.

The Commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary

regulating cellular mobile carriers and other wireless communication providers on a rate of return or some other basis. The results of the investigation will also include recommendations concerning the type of regulation that should be exercised by the Louisiana Commission over such carriers. (Docket No. U-21027.); *see* LPSC Minutes (July 13, 1994) (opening docket to consider rate of return regulation of cellular carriers), attached hereto as exhibit 1. After that investigation is complete the Louisiana Commission may petition the FCC for authority to exercise rate regulation pursuant to 47 U.S.C. § 332(c)(3)(A)(i).

for the discharge of its duties and shall have other powers and perform other duties as provided by law.

Article IV, Sec. 21 is attached hereto as exhibit 3.

No question exists that this grant of authority includes the regulation of electric and gas utilities as well as telecommunications carriers. *See e.g., South Central Bell Tele. Co. v. Louisiana Pub. Serv. Comm.*, 594 So. 2d 357 (La. 1992); *South Central Bell Tele. Co. v. Louisiana Pub. Serv. Comm.*, 373 So. 2d 478 (La. 1979).

B. Statutory Authority

In addition to the broad constitutional mandate provided by Article IV, Sec. 21 of the Louisiana Constitution, state statutes spell out in more detail the Commission's regulatory jurisdiction. Louisiana R.S. 45:1161, attached hereto as exhibit 4, defines public utility as follows:

- (1) "Public utility" means any person, public or private, subject to the general jurisdiction of the Commission but not including carriers by rail, water, electric or motor vehicle or pipelines, or public utilities municipally-owned, or operated, or regulated, unless the electors of such municipality, and electors residing outside the municipality, who are customers of the municipally-owned utility, have manifested their approval of such jurisdiction as is required by Article IV, Sec. 21(c) of the Constitution of Louisiana in the manner provided by R.S. 45:1164.1 through 45:1165.13.

Furthermore, La. R.S. 45:1163, attached hereto as exhibit 5, gives the Louisiana Commission jurisdiction over the rates charged and services rendered by such public utilities. Finally, the Louisiana Commission is charged with the responsibility of ensuring that the rates charged and services rendered by such public utilities are just and reasonable. La. R.S. 45:1176, attached hereto as exhibit 6, provides as follows:

The commission and any parochial or municipal body having similar powers in the fixing of just and reasonable rates charged or to be charged

by public utilities, shall investigate the reasonableness and justness of all contracts, agreements and charges entered into or paid by such public utilities with or to other persons, whether affiliated with such public utilities or not, and shall have the power to disallow as an operating expense of any public utility such part of the amount so paid by it under any such contract or agreement as the commission or parochial or municipal body may find, after hearing, to be unjust or unreasonable and designed for the purpose of concealing, abstracting or dissipating the net earnings of the public utility.

These powers and authorities have specifically been applied to telecommunications carriers. *See e.g., South Central Bell Tele. Co. v. Louisiana Pub. Serv. Comm.*, 352 So. 2d 964, *cert. denied*, 98 S. Ct. 3103 (1977).

C. Radio Common Carrier Jurisdiction

La. R.S. 45:1500 *et seq.*, is a portion of the Louisiana Revised Statutes entitled **RADIO COMMON CARRIERS**. La. R.S. 45:1502, attached hereto as exhibit 7, confers rate regulatory authority over radio common carriers to the Louisiana Commission. That section provides:

The rates of every radio common carrier shall be just, reasonable, and not unduly preferential; the service of every such carrier shall be adequately and not unduly preferential, and the rules and regulations of every such carrier shall be just, reasonable, and not unduly preferential. It shall be the duty of the commissioners to prescribe appropriate rules and regulations, to make such orders as may be necessary and proper, to ensure that such radio common carrier rates, services, rules and regulations are reasonable, just, adequate and not unduly preferential.

R.S. 45:1501C, attached hereto as exhibit 7, defines a radio common carriers as:

The term "radio common carriers" when used in this Chapter includes every corporation, company, association, partnership and persons and lessees, trustees, or receivers, appointed by any court whatsoever owning, operating or managing a radio common carrier or public "for hire" radio service engaged in the business of providing a service of radio communications between mobile and base stations, between mobile and land stations, including land line telephones, between mobile stations or

between land stations, but not engaged in the business of providing a public land line message telephone service or a public message telegraph service.

In addition to the specific grants of authority, the Commission has in fact been actively regulating the operations of telecommunications carriers, including those in the cellular industry, since their introduction in the state. As recently as April, 1994, the LPSC reaffirmed its authority to regulate these entities. *See* LPSC Policy Statement (Apr. 1994), attached hereto as exhibit 8.

The constitutional and statutory authority, the case law in Louisiana, as well as the Commission's practices clearly establish that the Louisiana Commission has the authority to regulate the rates and services of all mobile carriers operating within the State. Those carriers have not challenged the Louisiana Commission's jurisdiction and they regularly file tariffs with the Commission reflecting the rates to be charged and services to be rendered to their customers. In addition, as will be described more fully below, disputes among such carriers and between the carriers and their customers are regularly submitted to the Louisiana Commission for resolution.

III. RATE REGULATORY AND OTHER JURISDICTIONS SHOULD REMAIN WITH THE LOUISIANA PUBLIC SERVICE COMMISSION

A. The LPSC Has Exercised Regulatory Authority Over CMRS Providers Since The Industry's Beginning.

The LPSC has exercised its authority over commercial mobile radio service ("CMRS") providers since they began operating in the state both in the area of rate regulation and in the area of what properly may be characterized as the "terms and conditions" of service. The LPSC retains the right to control the "terms and conditions" pursuant to which CMRS providers

operate in Louisiana even without the filing of this Petition. 47 U.S.C. 332(c)(3)(A). However, because Louisiana seeks to retain its rate jurisdiction over CMRS carriers, the LPSC believes it would be helpful for the FCC to have an understanding of the full range of regulatory activity engaged in by the LPSC and, thus, this Petition discusses both the LPSC's past rate and non-rate regulatory activities concerning CMRS.

The LPSC has exercised its regulatory authority over CMRS providers operating in the state in the following ways: (1) requiring companies to register to operate in the state; (2) addressing customer complaints; (3) remedying discriminatory rates; (4) setting/approving interconnection rates; (5) rate regulation; (6) rate monitoring; (7) remedying unlawful and/or unwarranted practices; and (8) reviewing proposed mergers. In order to effectively protect Louisiana consumers and at the same time foster competition in the CMRS market in Louisiana, the LPSC must retain the ability to exercise its authority to act in all of the ways listed above until such time as the CMRS market functions in a truly competitive manner. The LPSC's exercise of authority in the ways listed above forms a comprehensive CMRS regulatory scheme that has successfully balanced consumer protection and free market interests. This regulatory scheme has been effective and should not be disturbed.

**1. CMRS Providers Must Register With The LPSC
In Order To Operate In Louisiana.**

The LPSC has required CMRS providers to register with it in order to conduct business in Louisiana. This process serves to acquaint the LPSC with those providers who will be operating within the state and vice versa and allows the LPSC to assure itself that the provider is capable of and willing to provide high quality service to Louisiana citizens at reasonable rates. The LPSC requires that a CMRS provider that wishes to provide cellular or

paging services within Louisiana provide the LPSC with the following documentation and information: (1) the applicant's legal name and the name under which the applicant conducts business; (2) address and phone number; (3) corporate structure and organizational documents, including a schematic of affiliated entities; (4) the phone number and title of the company representative who will serve as a liaison with the LPSC; (5) a rate tariff that includes the charges for and the type of service to be provided; (6) a statement of the territory awarded by the FCC; (7) a showing of the applicant's technical capability to support the offered services; (8) annual reports; and (9) verification that the company will comply with LPSC guidelines and requirements.³ See, e.g., Letter from Edward L. Gallegos, LPSC, to Turn-key Communications Internat'l (Feb. 3, 1993), attached hereto as exhibit 9; Letter from Brian Eddington, LPSC (July 21, 1994), attached hereto as exhibit 10. Clearly, these requirements are not designed to exclude CMRS providers or to limit the market; rather, they provide the LPSC with basic background information regarding the companies with whom the LPSC will be dealing and function as ratepayer protection measures. In addition, they provide the information necessary to satisfy the LPSC that the carriers are able to provide the services they are offering in a reliable manner and at reasonable rates.

Reviewing the filings associated with the registration process requires a time commitment on the part of the LPSC's staff. Between January, 1983 and December, 1993, the LPSC received and responded to approximately 43 registration filings from CMRS providers to operate in Louisiana. In addition to this initial registration process, the LPSC also monitors

3 Paging companies registered with the Louisiana Commission also must make a demonstration of public convenience and necessity.

whether CMRS providers offering services in Louisiana have properly registered with the LPSC. The LPSC has issued citations to 10 CMRS providers for operating in Louisiana without authorization from the LPSC between 1983 and 1993. While these numbers may not appear to reflect an excessive amount of activity by the LPSC with regard to CMRS providers, they reflect steady and consistent attention on the part of the LPSC to CMRS services offered in the state.

2. The LPSC Resolves Customer Complaints Regarding CMRS Services Including Those Concerning The Rates Charged By CMRS Providers.

Each year the LPSC receives a large volume of customer complaints about the rates and quality of service offered by cellular service providers in Louisiana. For instance, the LPSC has received approximately 320 complaints regarding cellular rates or service over the last year. *See* Affidavit of Carolyn DeVitis, LPSC Senior Staff Attorney, attached hereto as exhibit 11. The LPSC attempts to resolve, and in most cases is successful in resolving, these customer complaints. Moreover, the LPSC's tracking of these complaints alerts the LPSC to potential large scale problems in rates or services thereby enabling the LPSC to take formal action to remedy severe problems including excessive or discriminatory rates. Notably, though understandably, the FCC has referred customer complaints received from Louisiana cellular subscribers to the LPSC for resolution and has even directed consumers to contact their Better Business Bureau with their concerns. *See* Letter from FCC to LPSC (Aug. 12, 1992), attached hereto as exhibit 12; Letter from FCC to Clifford P. Wood (Dec. 9, 1993), attached hereto as exhibit 13; Letter from FCC to Correspondent (June 30, 1994)⁴, attached hereto as exhibit 14.

4 Despite the fact that the jurisdiction over cellular rates had been conferred upon the FCC at the time that the FCC sent this last letter, the FCC neglected to advise the consumer

The FCC's referral of complaints to the LPSC highlights the LPSC's position -- the FCC should address broad policy issues affecting the CMRS industry but should permit local regulation of the CMRS marketplace in states like Louisiana where the CMRS market is far from fully competitive.

The complaints fall into several categories which are discussed briefly below.

a. **Excessive Charges**

The LPSC has received many complaints about excessive cellular charges. These complaints include customer dissatisfaction with excessive deposit requirements, double billing for calls, sudden substantial increases in rates, and the cost of cellular service generally. For instance, one subscriber complained about being charged \$3.86 for a one minute call. A roaming charge of \$3.09 had been applied to the call. Furthermore, the subscriber's letter indicates that the complainant contacted the FCC about the problem. The FCC, however, merely dismissed the subscriber's concerns saying only that small carriers like to get cells near highways for the purpose of charging people driving between cities. The FCC apparently offered no assistance to the subscriber and showed no interest in the problem. *See* Letter from Thomas G. Doty, Jr. to BellSouth Mobility (Dec. 2, 1992), attached hereto as exhibit 15. Another Louisiana consumer protested "the way that cellular phone companies are allowed to operate." *See* Letter from William Sonnier, Jr. to the FCC (May 7, 1994), attached hereto as exhibit 16. In particular, the consumer objected to the fact that: "They [cellular phone companies] all have almost exactly the same prices, so they cannot be said to be competing, but must be cooperating to set these near identical prices." *See* exhibit 16. Without doubt the

that it would be the responsible body shortly or to offer any assistance to the consumer.

excessive cancellation charges have the inevitable effect of hindering competition by deterring subscribers from changing to competitors' services.

With regard to cellular service providers' cancellation practices, the LPSC has also received complaints about the difficulties subscribers have encountered in obtaining refunds of their deposits. Again, this practice discourages customers from switching to competing providers.

In some of these instances, the LPSC can and does step in to negotiate an equitable resolution of the conflict or remedy a misunderstanding. Other complaints address more complex problems related to the structure of the CMRS marketplace. These problems require formal attention. In recognition of the growing number of complaints arising out of the structure of the CMRS marketplace, the LPSC has opened a docket to address the appropriate manner of regulating CMRS in Louisiana and has filed this Petition in order to retain the authority to remedy these problems. A more complete explanation of the investigation initiated by the Louisiana Commission is contained in section III.C.6, *infra*.

d. Customer Identity Errors

The LPSC has received complaints from individuals who are being vigorously pursued by cellular service providers for the payment of charges incurred by others. In these instances, the cellular service providers had identified the wrong persons as their subscribers. Mistakes can be made; however, in the instances complained of to the LPSC, the cellular service providers continued to pursue the wrong individuals despite the individuals' diligent efforts to correct the error. This pursuit extended to reporting these individuals to collection agencies and credit bureaus potentially damaging their credit ratings and causing them great anxiety. *See*

Correspondence regarding Richard T. Smith, attached hereto as exhibit 18. When alerted to this type of problem, the LPSC will contact the provider to assess what is being done to resolve the problem and to ensure that the consumer's concerns are addressed properly.

e. **Roaming Problems**

A recurring source of problems is roaming charges. Roaming complaints are directed to both the excessive rates charged when a subscriber moves among various companies' service areas and the unavailability of service in certain areas. Interestingly, in at least two of these instances, the complainants addressed the complaint to the FCC. The FCC referred the individuals to the LPSC. *See* Letter from Marilyn A. Post to Century Telephone Enterprises, Inc. (May 28, 1992), attached hereto as exhibit 19; LPSC Consumer Report Form reflecting telephone call from Mr. Camp (May 17, 1993), attached hereto as exhibit 20. Moreover, Radiofone, a cellular provider complained to the LPSC about BellSouth Mobility, another cellular provider's, refusal to allow Radiofone's customers to roam on its service pursuant to a contract entered into among the providers and in alleged violation of an LPSC order that prohibits a utility from terminating service to another utility without a hearing before the LPSC. *See* Letter from Radiofone to BellSouth Mobility (June 22, 1993), attached hereto as exhibit 21; *see also* LPSC General Order (Dec. 7, 1989) (prohibiting utility from terminating service to consuming utility absent notice and an opportunity to cure the cause of termination), attached hereto as exhibit 22. Thus, providers, as well as consumers, view the LPSC as a valuable resource for remedying abuses in the CMRS marketplace. The FCC should not unnecessarily diminish the LPSC's ability to fulfill this role. In particular, the LPSC must be allowed to intervene to control roaming rates, which have exhibited a tendency to be excessive.

f. Service Complaints

Customer complaints about service generally concern poor quality service or the complete unavailability of service. For instance, the LPSC received a letter by which a subscriber terminated a cellular carrier's service due to the lack of service provided in southeastern Louisiana. The carrier's service failures allegedly had affected the subscriber's ability to serve its clients. See Letter from Bonnie Ernst (May 13, 1992), attached hereto as exhibit 23. Another former cellular subscriber wrote:

We refuse to continue to utilize a communication company that cannot provide us with the level of service that the contract provided for. Because you cannot provide the services as you represented them, and because we have been a full paying customer for more than ten years, we will not entertain any cancellation fees. Needless to say, we are very disappointed in the level of service you have been providing. It has come to my attention that we are not alone -- but a substantial number of your clients are as disenchanted as we are with the level of service they are receiving.

Letter from Robert H. Berning, Jr.
(March 17, 1993), attached hereto as
exhibit 24.

In particular, the complaints received documenting the unavailability of service in certain areas and the consumer's desire to have service reflect the fact that the cellular service market has not reached a level of competition that assures widespread service availability. As such, the LPSC's continued regulation is needed until the market is sufficiently competitive to respond to consumer demand for service in rural areas or until, through regulation, Louisiana's goal of universal access to service is achieved.

g. Failure To Provide Itemized Bills

Subscribers have complained about cellular service providers' failure to provide itemized bills. In the absence of itemized bills, subscribers have no real means of checking billing accuracy or evaluating the reasonableness of the rates they are paying in relation to the calls made. Without itemized billing, subscribers are deprived of knowledge essential for evaluating competitors' service packages, in those territories where the packages are not identical, and making an educated selection of the best and lowest cost provider for them.

On July 13, 1994, the LPSC voted to require all cellular carriers to provide itemized bills to all customers at no extra charge. *See* LPSC General Order (July 29, 1994), attached hereto as exhibit 25.

3. The LPSC Regulates CMRS Rates To Prevent Providers From Charging Discriminatory Rates.

The LPSC has acted aggressively to remedy situations in which cellular service providers have assessed discriminatory rates. When a situation in which a cellular service provider is allegedly discriminating in rates is brought to the LPSC's attention or is discovered by it, the LPSC acts quickly to investigate the matter and, if discrimination is found, to prohibit the improper conduct. This may occur either informally by meeting with the provider or formally through an order prohibiting the discriminatory conduct. In order to remedy the conduct, through both the informal and formal means discussed above, the LPSC advises the provider of the appropriate rate to be charged the customer groups involved. In this manner, the LPSC regulates the rate that the provider may charge the groups involved.

For example, the LPSC has encountered several instances of discrimination relating to disparate application of a corporate rate. Providers had been offering special

discounted rates to large corporate subscribers. The programs were intended to attract subscribers like major oil companies who had widescale use for cellular services. Under the plan, the bill was forwarded to the corporation that had contracted for the service with payment to be made in a single sum by the corporate subscriber. This program, however, was abused by the providers who often offered the program to non-corporate entities, though not to the population at large. Thus, for example, an attorney who worked for a three person law firm would be allowed to subscribe to service at the corporate rate for himself individually, with the bill directed to him individually and payment made by him individually -- a situation not intended for the corporate rate. Meanwhile, an individual who called up to contract for cellular service would receive the generally applicable rate instead of the discounted corporate rate.

In these instances, the LPSC has advised the providers that this type of misapplication of corporate rates was inappropriate and that the rate disparity must be rectified. *See, e.g.*, Letter from Marshall B. Brinkley, LPSC, to Radiofone, Inc. (Oct. 19, 1987), attached hereto as exhibit 26; Letter from Marshall B. Brinkley, LPSC, to BellSouth Mobility (Oct. 19, 1987), attached hereto as exhibit 27; Letter from Edward L. Gallegos to resellers (Dec. 14, 1987), attached hereto as exhibit 28; Letters from Edward L. Gallegos, LPSC, to BellSouth Mobility & Radiofone (Feb. 11, 1994), attached hereto as exhibit 29. The providers responded to the LPSC's admonition by submitting letters agreeing to the LPSC's direction with regard to the application of corporate rate packages. *See* Joint Letter from BellSouth Mobility & Radiofone to LPSC (Dec. 7, 1987), attached hereto as exhibit 30; Letter from BellSouth Mobility to LPSC (Mar. 7, 1994), attached hereto as exhibit 31; Letter from Radiofone, Inc. to LPSC (Feb. 24, 1994), attached hereto as exhibit 32. Subsequent to the LPSC's initial

resolution of the discriminatory application of corporate rates, both BellSouth Mobility and Radiofone addressed concerns to the LPSC regarding the other's adherence to the LPSC's resolution regulating corporate rate packages. See Collection of correspondence addressing LPSC regarding discriminatory rates, attached hereto as exhibit 33. Representatives of the LPSC again resolved the discrimination problems raised by the misapplications of corporate rates regarding which the providers had complained. See Letter from Edward L. Gallegos to BellSouth Mobility & Radiofone (Apr. 9, 1992), attached hereto as exhibit 34.

Similar abuses by the providers have been encountered with regard to the special rates made available to governmental agencies. Again, to take advantage of the special, lower rate, the service is supposed to be contracted for by a governmental agency, to be paid for by the agency. Nonetheless, governmental employees and their family members were allowed to take advantage of the special rates even though the services were not contracted for by a governmental agency and even though the bills were paid by the individuals. The general public, however, was excluded from service at the more favorable rate. In this instance, as with the discriminatory application of corporate rates, the LPSC intervened to clarify the appropriate, non-discriminatory application of the rate and halt the discriminatory practices.

**4. The LPSC Regulates The Interconnection Rates
The Landline Providers Charge The CMRS
Providers.**

The LPSC has regulated the rates the landline local exchange companies charge the CMRS providers to interconnect with the public switched network. These rates, in turn, affect the rates at which cellular service providers are able to offer their services. As such, the LPSC has reviewed applications for tariff approvals setting forth interconnection rates with care.

In 1990 the LPSC was asked to approve the interconnection tariff charged by the local exchange company. The Commission analyzed these tariffs prior to acceptance in order to ensure that the resulting rates would be just, reasonable, and non-discriminatory. The 1993 LPSC Order approving the tariff, attached hereto as exhibit 35, was the culmination of an extensive investigation involving the local exchange company, various cellular providers, and the LPSC staff. After prolonged discovery and hearing the LPSC approved an interconnection tariff that was entirely different than the one originally proposed by the local exchange company.

5. The LPSC Has Regulated The Rates CMRS Providers Charge Louisiana Subscribers When Necessary.

In general, the LPSC has not engaged in traditional rate base/rate of return ratemaking with regard to CMRS providers, preferring to defer to market forces as much as possible. However, due to the fact that some of Louisiana's CMRS market is in its developmental stages, (and in any event contains no more than two cellular providers in any geographic area) and thus is not yet fully competitive, the LPSC has monitored the marketplace closely and has intervened when necessary to reduce excessive rates or remedy situations in which providers otherwise have attempted to take advantage of the lack of competition at the subscribers' expense.

One instance in which the LPSC exercised rate regulation over a cellular service provider involved overcharges for roaming. PriceCellular Corporation d/b/a Louisiana 8 Corporation ("Louisiana 8") was operating in the corridor between New Orleans and Baton Rouge, a route frequented by business travellers. The LPSC received complaints that Louisiana 8 was overcharging for roaming in this area and that it was billing customers for calls that the

customers had not made. Louisiana 8 had been assessing roaming charges of \$3.00/day and \$.75/minute. To remedy the problem, the LPSC ordered Louisiana 8 to reduce its roaming charges to \$.33/minute and ordered the company to eliminate its daily charge. *See* LPSC Order No. U-20349 (July 7, 1993), attached hereto as exhibit 36. Subsequently, the LPSC assisted in negotiating the sale of Louisiana 8 to another entity thereby eliminating the threat of similar practices by Louisiana 8. As a condition of the purchase, the purchasing company, Radiofone, reimbursed customers who had been overcharged by Louisiana 8. The LPSC dismissed the proceeding concerning the Louisiana 8 overcharges only after assuring itself that Louisiana 8 had corrected its rates in accordance with the LPSC's July 7, 1993 Order, that customers who had been overcharged were being reimbursed, and upon FCC approval of the sale to Radiofone. *See* LPSC Order No. U-20349-A (Aug. 20, 1993), attached hereto as exhibit 37.

The LPSC also has examined whether cellular service providers should be required to offer a special rate for disabled persons who need cellular service for potential emergency situations. The LPSC considered whether to mandate such a rate in response to a legislative resolution requesting that the LPSC "establish lower rates for car telephones utilized by handicapped persons." *See* House Concurrent Resolution No. 344 (1993), attached hereto as exhibit 38. Acting on House Resolution 344, the LPSC investigated and determined that many cellular service companies already provided an emergency or security rate that would serve this need and that a new rate was not warranted. The LPSC requested that these providers publicize the availability of this rate, and the providers complied with this request. *See* LPSC Minutes Re: House Concurrent Resolution No. 344 (Aug. 17-18, 1993), attached hereto as exhibit 39; *see also* correspondence from providers, attached hereto as exhibit 40.

6. CMRS Providers Must File Rate Tariffs

The LPSC requires CMRS providers to file rate tariffs in order to monitor their rates and for the LPSC's use in reviewing and solving customer complaints. These tariffs include the following information: (1) a statement of geographic territory in which services are provided; (2) a description of services provided; (3) terms and conditions of service, including deposits, grounds for disconnection, and payment requirements; and (4) rates, including call restrictions and the details of any special service plans. The tariffs provide the LPSC with the minimum information that it needs to monitor cellular service providers. They enable the LPSC to compare the providers' rates, and to determine whether they are providing the services set forth in the tariffs in the manner and at the rates specified in the tariffs.

7. The LPSC Has Sanctioned Providers And Prohibited Unlawful Practices Undertaken By CMRS Companies In Louisiana.

The LPSC has encountered several instances in which it has had to act to prohibit and/or sanction cellular providers for engaging in unlawful or anticompetitive conduct that was deemed to be detrimental to the interests of Louisiana consumers. In an extreme case, the LPSC issued an order prohibiting A+ Beeper, a paging service, from operating in Louisiana for one year as a result of unauthorized solicitations which had been made by the company. See LPSC Order Nos. U-16774, U-16846, U-16847, and U-16923 (Oct. 8, 1987), attached hereto as exhibit 41; LPSC Order Nos. 16774-A, U-16846-A, U-16847-A, and U-16923-A (Dec. 4, 1987), attached hereto as exhibit 42. In less severe cases, the LPSC has issued citations to companies for engaging in anticompetitive or unlawful practices. The LPSC's citations include one to Lafourche Telephone Company in 1988 for unauthorized revision of its Entry Tariff and