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March 6, 1995

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MAR 6 1995
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BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Correction to February 22 Notice of Ex Parte Communication in PR Docket Nos. 94-105 and 94-106

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On February 22, 1995, I filed the attached notice of ex parte communication in PR Docket Nos. 94-105 and 94-106. In that notice, I indicated that on February 21, on behalf of LDDS Communications, Inc., Richard Fruchterman III of LDDS, and Karis Hastings and I of Hogan & Hartson, met with Jill Luckett, Special Advisor to Commissioner Rachelle B. Chong, and Richard Welch, Legal Advisor to Commissioner Rachelle B. Chong. The subject of that meeting was PR Docket No. 94-106. The attached February 22 ex parte notice erroneously indicates that the meeting also covered PR Docket No. 94-105. This letter hereby corrects the record to accurately reflect the subject matter of our meeting, which was limited to PR Docket No. 94-106.

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List A B C D E

I have hereby submitted two copies of this letter and attachment for each of the referenced proceedings to the Secretary. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for
LDDS Communications, Inc.

Enclosures

cc: Jill Luckett
Richard Welch

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February 22, 1995

BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication in PR Docket Nos. 94-105 and 94-106

Dear Mr. Caton:

On February 21, 1995, on behalf of LDDS Metromedia, Richard Fruchterman III of LDDS Communications, Inc., and Karis A. Hastings and I of Hogan and Hartson, met with Jill Luckett, Special Advisor to Commissioner Rachelle B. Chong, and Richard Welch, Legal Advisor to Commissioner Rachelle B. Chong, to discuss the referenced proceeding. The attached handout was used in our discussion.

I have hereby submitted two copies of this notice and attachment for each of the referenced proceedings to the Secretary, as required by the Commission's rules. This filing is submitted today because of the late hour of yesterday's meeting. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L Oliver

Linda L. Oliver
Counsel for
LDDS Communications, Inc.

Enclosures

Ex Parte Presentation Of
LDDS Communications, Inc.
PR Docket Nos. 94-105 and 94-106
February 21, 1995

THE COMMISSION MUST NOT FORECLOSE THE ABILITY OF REGULATORS TO PROMOTE WIRELESS RESALE

1. **As a general matter, the Order should expressly recognize that resale will be fundamental to a diverse and fully competitive telecommunications market.**

2. **As a specific matter, the Order should avoid taking action that adversely affects resale. If it does not grant the state petitions, the Order should make it clear that the FCC stands ready to ensure that resale opportunities will be protected.**

I. RESALE OF TELECOMMUNICATIONS SERVICE HAS MANY PUBLIC INTEREST AND PRO-COMPETITIVE BENEFITS.

A. In the long distance market, resale has made it possible for new entrants to provide wide-area service while building out a facilities-based network, and thus to bring service to market much faster.

* Today's long distance services continue to be provided over a mix of resold, leased, and owned facilities.

B. Resale helps to drive rates to cost, by allowing resellers to offer discounts that exploit the underlying carrier's non-cost-based rates. Thus, resale is a market-based supplement to regulation.

C. Resale expands the number of potential service providers. Again, the long distance marketplace is an excellent example of how resale can produce a diversity of service providers.

D. Resale provides a low-cost, easy means for small businesses and new entrants to participate in telecommunications markets.

E. Resale allows numerous providers to compete in areas such as product design, customer support, billing detail, and pricing. This brings to the market a broader range of service offerings tailored to the needs of different users.

F. Resale of local service -- whether wireless or wireline -- will make it possible for a greater number of providers to compete in the provision of full-service packages.

* It is unrealistic to expect that many companies will have facilities-based networks across all market segments -- wireline local, wireline long distance, wireless, and video. Resale opens to all companies the potential for competing in provision of full-service packages.

* MCI and Time Warner, for example, have announced their intention to participate in the wireless market by reselling cellular services in combination with other services they already provide.

* Systems integrators also will have a role to play in fulfilling consumer needs for full-service packages.

G. LDDS, AT&T and MCI have all told the Department of Justice that a fundamental prerequisite to RBOC interLATA entry is the availability of a "carrier's carrier" local service product for resale.

* This permits reciprocal entry because the RBOCs will enter the interLATA market by reselling IXC "carrier's carrier" wholesale products.

* The RBOCs' competitors will need the ability to resell mobile as well as wireline local service.

II. RESALE OF WIRELESS SERVICES IS CRUCIAL TO ADVANCE COMPETITION IN THIS MARKET.

A. Wireless resale will allow non-licensees to include wireless services in their service offerings, just as licensees will be able to do.

* Ownership of a CMRS license should not be a prerequisite to being in the wireless business.

* The Commission does not require long distance companies to own facilities before entering the long distance business. There should be no such barrier to entry in the wireless business either.

B. Resale of wireless services will help licensees build out their systems more quickly because they will be able to provide revenue-generating service sooner. Some limitations on the right of licensees to resell their facilities-based competitor's service may be appropriate in order to encourage all licensees to construct their systems promptly.

III. UNRESTRICTED RESALE OF TELECOMMUNICATIONS SERVICES IS A FUNDAMENTAL PRINCIPLE OF COMMON CARRIER LAW.

A. The Commission has long recognized the public interest and pro-competitive benefits of resale.

B. The Commission itself consistently has required unrestricted resale of all telecommunications services, including wireless services.

* The Commission has long required resale of cellular service, and is currently considering whether resale obligations should be extended to other CMRS providers. 1/

* The Commission recently reaffirmed the importance of wireless resale in its CMRS attribution order. 2/

C. The sole exception the Commission ever has permitted to its resale requirement has been to allow cellular carriers to deny resale to the other cellular licensee after the five-year buildout period, as a means to ensure that initial cellular systems will be fully built.

1/ *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, 9 FCC Rcd 5408, 5466-67 (1994).

2/ *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252 at ¶ 10 (released Nov. 18, 1994) ("We believe that resale activities are in the public interest because they expand the availability of communications services, promote the efficient use of spectrum, and enhance competition.").

IV. MARKET FORCES DO NOT NECESSARILY ENSURE THAT RESALE WILL BE POSSIBLE AS A PRACTICAL MATTER.

A. Resale must be a practical, as well as a theoretical, option.

B. Facilities-based providers often have incentives to discourage resale of their services, even in markets that are competitive.

* For example, the Commission recently found that AT&T had unlawfully denied resale of its Tariff 12 services, and issued a notice of apparent liability against AT&T in the amount of $1 million. 3/

C. Resale restrictions have taken many forms in the past, including geographic restrictions and restrictions on the availability of volume discounted services for resale.

D. Resale of cellular service has not generally been easy or profitable.

3/ *Notice of Apparent Liability for Forfeiture and Order to Show Cause,* FCC 94-359 (released Jan. 4, 1995).

V. THE STRUCTURE AND PRICING OF SERVICES THAT ARE AVAILABLE TO RESELLERS CAN BE A PRACTICAL BARRIER TO RESALE.

A. Resellers should not be required to pay for costs that they do not cause.

B. A wholesale/retail rate structure can be an excellent mechanism for ensuring that resale is a viable option.

C. The Rochester Telephone Company, for example, has established a wholesale/retail rate structure for all of its local telecommunications services, including residential telephone services.

* The wholesale rate is five percent below the retail rate for every service, to reflect the marketing and customer support costs avoided by Rochester when it provides wholesale services.

* Rochester also had to provide access to its service ordering system.

* The New York Public Service Commission recently approved Rochester's plan.

* AT&T, Time-Warner, and others have already obtained authority to provide local exchange services via resale in Rochester.

VI. THE COMMISSION SHOULD NOT FORECLOSE THE ABILITY OF REGULATORS TO PROMOTE RESALE OF WIRELESS SERVICES.

A. The Commission could choose to permit the petitioning states to continue to regulate cellular rates, at least insofar as necessary to protect the availability of a realistic ability to resell cellular services.

B. If the Commission decides to deny the state petitions, it should assume the responsibility itself for protecting and preserving the right to resell CMRS services.

* The Commission should be prepared to use its tariffing authority and the complaint process to enforce this requirement, if necessary.