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

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In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

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REPLY COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

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Dated: July 14, 1995

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REPLY COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

Bell Atlantic NYNEX Mobile, Inc.,[1] by its attorneys, hereby submits its reply comments in response to the Second Notice of Proposed Rulemaking (Second NPRM) in this proceeding.

I. SUMMARY

In the Second NPRM and in other recent actions, the Commission has stated that its intervention into the CMRS marketplace is appropriate only where there is a clearly demonstrated need for governmental intrusion. Applying that policy, the Second NPRM tentatively decides not to impose specific interconnection, roaming and resale obligations, except to require unrestricted CAMS resale because that rule would serve specific pro-competitive goals and promote the objective of consistent, symmetrical CMRS regulation.

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[1]On July 1, 1995, Cellco Partnership acquired control of licenses in the Cellular Radiotelephone Service which were previously held by affiliates of Bell Atlantic Corporation and NYNEX Corporation. Bell Atlantic NYNEX Mobile, Inc. is the managing general partner of Cellco and is the name under which Cellco is providing cellular service.

The record in this proceeding confirms that the Commission's approach is correct. The consensus of the comments is that regulatory intervention should not occur without a compelling need. Given the vigorous and intensifying competition among a growing number of carriers and technologies providing mobile services to the public, the case for such intervention simply does not exist. The initial comments support the findings of the Second NPRM that new regulation is not necessary. Moreover, numerous commenters show why regulation would be harmful to the public interest by impeding new technologies and services, distorting market incentives, and imposing costs and other burdens on CMRS providers and subscribers.

The Commission should thus confirm its tentative findings. It should not adopt new regulations for interconnection, roaming and resale, other than to extend the rule requiring unrestricted resale of cellular service to other CMRS providers on a temporary basis. To give force to these findings and prevent a patchwork of state CMRS regulation which would impede market-driven competition, it should also preempt state-imposed CMRS interconnection obligations.

II. THE COMMENTS CONFIRM THAT THE COMMISSION SHOULD NOT ADOPT INTERCONNECTION AND ROAMING STANDARDS, AND SHOULD PREEMPT STATE STANDARDS.

The Second NPRM finds, based on the record developed in response to the Interconnection NOI,[2] that specific standards for interconnection and roaming should not be adopted. The comments received in response to the Second NPRM emphatically support these findings. Commenters demonstrate that such standards (1) would frustrate evolution of new services, (2) would deter innovative technologies, (3) would impose new costs on carriers that may increase prices of CMRS service to subscribers, and (4) would be administratively difficult to write and enforce, particularly given the rapid technological change which characterizes the CMRS industry today. CMRS providers in rural markets show why they in particular would be harmed by imposition of mandatory standards.[3]

At root, the fundamental reason that no standards should be adopted is that there is no demonstrated need for them. The Commission has determined that, absent a showing of such need, it will not impose regulation. It has correctly recognized that Congress, in enacting new Section 332 of the Communications Act, directed it not to impose "heavy handed regulation," except in the limited situations where the Commission "could demonstrate a clear-cut need" for

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[2]CC Docket No. 94-54, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd. 5408 (1994).

[3]E.g., Comments of Horizon Cellular Telephone Co. at 2-3; Comments of Rural Cellular Ass'n at 3-6.

governmental intervention.[4] Nowhere does the record here supply this requisite "clear-cut need." There is no market failure which necessitates intervention. Numerous commenters explain why interconnection will occur through competitive incentives.[5] Imposing interconnection and roaming standards would not only lack a rational basis, given the state of the record, but would also contradict and undermine the restrained approach to CMRS regulation that Congress enacted and that the Commission has followed in other proceedings.[6] The Commission was right to refrain from proposing such standards, and it should confirm that policy.

It is equally important that the Commission preempt the states from imposing their own standards on interconnection and roaming. The record shows unqualified support for preemption. Not a single commenter appears to have opposed it. In addition, commenters show why state rules would create a patchwork of regulatory burdens that would impede the development of CMRS service as part of the national information highway. Many CMRS providers

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[4]Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of the Wholesale Cellular Service Providers, Report and Order, PR Docket No. 94-106 (released May 19, 1995) at ¶¶ 10,13.

[5]E.g., Comments of AT&T Corp., Declaration of Bruce M. Owen, which provides an economic analysis as to why government intervention through interconnection requirements is unnecessary and would be counterproductive.

[6]E.g., Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd. 1411, 1418 (1994) ("We establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees"); Third Report and Order, 9 FCC Rcd. 7988, 8002 (1994) (Commission's objective is to establish a regulatory regime which "will ensure that the marketplace -- not the regulatory arena -- shapes the development and delivery of mobile services").

operate, or will operate, mobile systems in multi-state areas; virtually every broadband PCS license encompasses areas in more than one state. Permitting individual state requirements would force such providers to grapple with different and conflicting obligations for parts of their wireless systems.

The commenters also demonstrate that preemption is legally justified on two additional grounds.[7] First, to the extent that state interconnection regulation may seek to intervene into carriers' pricing decisions, it is already preempted by Section 332(c) of the Communications Act, and by the Commission's orders denying all state petitions which sought authority to retain rate regulation. Second, even were a state to adopt other types of interconnection obligations, that effort would require preemption because it would thwart federal authority over interstate communications. Because CMRS providers offer interstate as well as intrastate service, and CMRS systems themselves often cross state lines, state interconnection regulations affecting how those systems are configured and operated would by definition undermine the Commission's policy not to impair marketplace forces with regulatory constraints. It is in part for this reason

[7]Comments of AirTouch Communications, Inc. at 24-26; Comments of AT&T Corp. at 20-22; Comments of Cellular Telecommunications Industry Ass'n at 16-19; Comments of GTE at 11-12; Comments of New Par at 17-19; Comments of SNET Cellular at 11-13; Comments of Southwestern Bell Mobile Systems, Inc. at 11-13..

that the Commission previously preempted state regulation of LEC-CMRS interconnection. The same concerns warrant preemption here.[8]

One other interconnection issue warrants further comment. The Second NPRM (at ¶ 43) asked whether LEC-affiliated CMRS providers would have unique incentives that require closer scrutiny of their interconnection practices. Numerous commenters demonstrated why such scrutiny was neither logical nor justified.[9] There is thus no record basis for this concept, and the Commission should discard it.

III. THE RECORD DEMONSTRATES WHY THE SWITCH-BASED RESALE PROPOSALS SHOULD NOT BE ADOPTED.

Cellular resellers again agitate for a new set of rules that would deeply intrude into the CMRS marketplace, by requiring carriers to unbundle their services to permit "switched-based resale." The resellers' comments are a tired refrain on the same claim they have advanced in virtually every one of the Commission's CMRS rulemakings. Again in the comments on the Second NPRM, as in their comments on the Interconnection NOI, the resellers fail to grapple with the numerous flaws of their proposals. Those flaws are exposed in detail by the comments of numerous other parties. Indeed, it is significant that the resellers'

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[8]Cellular Interconnection Order, 2 FCC Rcd. 2910 (1987); See GN Docket No. 93-252, Second Report and Order, supra n.6, 9 FCC Rcd. at 1499.

[9]Comments of National Telephone Cooperative Ass'n at 2-5; Comments of Frontier Cellular Holding Inc. at 4; Comments of Bell Atlantic Mobile at 6; Comments of Ameritech at 4; Comments of Rural Cellular Ass'n at 6-7.

proposals, while aimed at cellular carriers, are opposed not only by those carriers, but also by virtually every segment of the wireless telecommunications industry, including interexchange carriers,[10] PCS providers,[11] and SMR providers.[12] These commenters provide an avalanche of reasons why the reseller switch proposals should be buried. They demonstrate, for example, that:

-- The reseller switch concept is a solution in search of a problem. There is no record evidence that there is any market failure which might warrant regulatory intervention. To the contrary, the record demonstrates that no CMRS carriers possess market power through the control of bottleneck facilities or the ability to preclude entry by new competitors.[13]

-- The proposals would unjustifiably reward a small group of providers who have chosen to make no investment in constructing a network, and would subsidize them at the expense of facilities-based carriers.[14]

-- Mandatory access to facilities-based carrier switches would create exceedingly complex technical problems and impose inefficiencies which the resellers do not even begin to address.[15]

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[10]E.g., Comments of AT&T Corp. at 28-32.

[11]E.g., Comments of American Personal Communications at 11-12.

[12]E.g., Comments of Nextel Communications, Inc. at 16.

[13]E.g., Comments of AirTouch at 4-6; Comments of AT&T Corp. at 5-6; Comments of Comcast Cellular Communications, Inc. at 5-8; Comments of CTIA at 27-30; Comments of Sprint Telecommunications Venture at 10-12.

[14]E.g., Comments of AirTouch at 20; Comments of Alltel Mobile Communications at 4-5; Comments of New Par at 25-26.

[15]E.g., Comments of AT&T Corp. at 29-30; Comments of PCS Primeco, L.P. at 12; Comments of SNET Cellular at 8-10.

-- Crafting the complex rules needed to implement the resellers' unbundling demands would embroil the Commission in cost-based pricing of CMRS service -- an area the Commission has never found warranted its intervention. Indeed, the Commission recently decided that the CMRS market was sufficiently competitive to permit it to forbear from all price and tariff regulation.[16]

-- Imposing the obligations demanded by the resellers would allow them to exploit sensitive information about a competing carrier's network.[17]

FCC-imposed switch-based resale and unbundling requirements cannot take the place of marketplace flexibility and will not be appropriate for all CMRS providers, including many prospective resellers. Nor do the resellers show how such requirements are needed in a market characterized by vigorous competition among existing and future providers offering a panoply of cellular, PCS, SMR, paging, air-to-ground, and satellite-delivered mobile services and technologies.

CMRS facilities-based carriers and resellers will enter into the very types of relationships the resellers seek when mutual incentives for doing so exist. As the volume of CMRS traffic expands, carriers may find it efficient to establish those relationships. But forcing them to do so at this point would distort the market by supplanting market incentives with governmental fiat.[18]

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[16]Second Report and Order, supra n. 6, 9 FCC Rcd. at 1475 et seq.

[17]Comments of AirTouch at 23.

[18]While Time Warner and other resellers make much of the alleged need to impose unbundling obligations on other carriers, it is notable that they do not offer to unbundle their own cable or other telecommunications networks.

IV. RESALE OBLIGATIONS MUST BE APPLIED CONSISTENTLY TO ALL CMRS SERVICES.

The Second NPRM asked whether the Commission's current cellular rule requiring unrestricted resale should be extended to other CMRS carriers. Bell Atlantic Mobile, NYNEX Mobile and numerous other commenters demonstrated why the cardinal goal of achieving regulatory symmetry in the CMRS market mandated a consistent, CMRS-wide resale rule. The Commission has already determined that there is in fact a single CMRS market.[19] There is thus no logical basis to impose a rule on only some but not all carriers competing in that market. Such unequal regulation would perpetuate the skewed incentives and market distortions that Congress in Section 332, and the Commission in its CMRS rulemakings, have sought to eradicate.[20] While some commenters argue that a resale rule should not apply to their particular business, none grapples with the critical fact that exempting them will result in sharply unequal regulatory burdens on competitors, and none attempts to justify that result. The only lawful course, if the Commission believes that the resale rule is warranted, is to extend that rule to all CMRS providers.[21]

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[19]GN Docket No. 93-252, Third Report and Order, supra n. 6, 9 FCC Rcd. at 8009 et seq.

[20]Id., 9 FCC Rcd. at 8002 ("Our first goal is to create a symmetrical regulatory framework for commercial mobile radio services in order to foster economic growth and expanded service to consumers through competition.").

[21]Should the Commission determine that the technical characteristics of certain types of mobile services warrant excepting them from the rule, it must also allow cellular carriers offering those services to qualify for the same exception. Any

In its discussion on resale, the Second NPRM (at ¶ 94) sought comment on one final issue, whether number "transferability" rules should be adopted in this proceeding. Most of the comments responding to this question urge the Commission to defer addressing transferability.[22] Bell Atlantic NYNEX Mobile agrees. The issues raised by transferability are exceedingly complicated and not related to the issues in this rulemaking, and no need for intervention here has been shown. Moreover, the Commission has announced it will soon consider landline number portability in a new proceeding. Based on the result of that proceeding, the Commission can then, if appropriate, take up the issue of whether to regulate wireless number portability.

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resale rule should be linked to the type of service offered, not the identity of the provider or the type of Commission authorization it holds.

[22]E.g., Comments of Nextel at 14; Comments of New Par at 23-24; Comments of Rural Cellular Coalition at 8; Comments of SNET Cellular at 18; Comments of Southwestern Bell Mobile Systems at 20-22; Comments of Cellular Telecommunications Industry Association at 25-26. The few parties that support mandatory transferability rules fail to demonstrate a clear-cut need for them, one noting that they "would place resellers in a far-stronger bargaining position." Comments of Cellnet Communications, Inc. at 2. This private interest, of course, is not a basis for regulatory intervention.

V. CONCLUSION

For the reasons which are fully documented in the record of this proceeding, the Commission should decline to impose interconnection, roaming and resale obligations on CMRS carriers, except to adopt a CMRS-wide rule for unrestricted resale on a temporary basis, and should preempt state interconnection requirements.

Respectfully submitted,

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Dated: July 14, 1995