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August 8, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Contact in Docket No. 94-54

Dear Mr. Caton:

A copy of the attached summary was sent today to Barbara Esbin at her request.

Sincerely,

Jeffrey S. Linder

Enclosure

cc: Barbara Esbin (w/o)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

SUMMARY OF

OPENING COMMENTS IN

CC DOCKET NO. 94-54

COMMERCIAL MOBILE RADIO SERVICES,

INTERCONNECTION, ROAMING, AND RESALE POLICIES

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

June 27, 1995

FORWARD

On June 14, 1995, approximately 49 comments were filed in response to the FCC's Notice of Proposed Rulemaking in CC Docket No. 94-54 concerning commercial mobile radio services, interconnection, roaming, and resale policies. The comments are arranged alphabetically by company or organization name.

We have done our best to represent each commenter's positions accurately on a range of issues within three pages and in a consistent format. Due to the complexity of the issues and space and time constraints, however, many supporting arguments have been truncated and rephrased to conserve space. Accordingly, in all cases, it is highly advisable to review the actual commenter's text. All summaries have page references to the actual commenter's text.

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AIRTOUCH COMMUNICATIONS, INC.

Interest:

CMRS-to-CMRS Interconnection:

- **Need for regulatory mandate**
  - Mandate would impede efficient interconnectivity of CMRS networks. Market forces and negotiation will result in more efficient, beneficial, and innovative agreements. (2-3)
  - There are alternate interconnection paths, including PSTN. Requirement that LECs provide cost-based interconnection upon demand ensures availability of interconnection. (3, 9)
  - CMRS providers do not have market power over interconnection. Competitor can interconnect through LEC. (4-5)
  - Relevant market is all two-way switched voice wireline local exchange and CMRS providers. CMRS-to-CMRS and CMRS-to-LEC-to-CMRS interconnection are directly comparable alternatives. (4)
  - Currently, direct connection is not worth the cost because CMRS-to-CMRS traffic is too low. As traffic grows, direct agreements will happen naturally. (5-6, 9)
  - Relevant geographic market is serving area of licensee. Since providers who directly interconnect from different geographic markets do not compete, they have no incentive to act anticompetitively. (6)
  - There is no risk of anti-competitive behavior without CMRS market power. A provider trying to raise a rival's interconnection cost by denying direct interconnection would raise its own costs. LEC interconnection costs are decreasing due to new technology and competitors and mutual compensation agreements between cellular carriers and LECs. (7-8)
- **Preemption of state requirements**
  - State requirements should be preempted, especially reseller switch requirements, which are a form of rate regulation that has been preempted by the OBRA. Interstate and intrastate aspects are inseverable and such requirements are inconsistent with Commission policies against regulating efficient market negotiations. (24-26)

Roaming:

- Opposes regulation. Market forces and negotiation will result in more efficient and beneficial agreements, as in cellular. (10-11)

- As long as PCS subscribers have dual-mode handsets, PCS roaming will be widely available on cellular networks due to competitive market and cellular licensees' desire for more revenue. (11-12)

- PCS licensees will develop arrangements if cost-effective and convenient. (12)

- Roaming between incompatible CMRS networks, possibly using dual-mode handsets or network-based conversions, is still technically uncertain. Technology should be allowed to develop without restrictive rules. (12-13)

- Carriers must be able to adjust or suspend their roaming agreements to combat fraud. (13-14)

CMRS Resale:

- **Applicability of requirement; excluded services**

  - Competitive market and regulatory parity require comparable resale obligations to all broadband CMRS providers. (15)

  - Traditional cellular obligations are unnecessary. Competition and desire for more revenue will create incentive for CMRS providers to allow resale. (16)

  - Requirement would result in administrative complexities of determining when obligations are triggered. (16)

  - Mandatory resale should not be imposed on paging and narrowband PCS licensees because market is highly competitive with few barriers to entry, licensees already resell if efficient at just, reasonable, and nondiscriminatory rates. (17-19)

- **Resale by facilities-based competitors**

  - Opposes resale requirement. (15)

- Resale should be permitted only for so long as necessary to promote competition and investment in infrastructure. If required, resale of cellular services to PCS licensees in same market should not extend beyond initial build-out period. (16-17)

- **Switch interconnection by resellers**

  - Reseller switch proposal will inhibit real, innovative facilities-based investment and competition. Resellers would provide no additional services or innovations and would benefit at cost of carriers, resulting in higher prices and fewer services. (19-20, 22)

  - Economic viability of reseller switches requires unbundled, cost-based rates. Fully distributed cost-based pricing for competitive industries is inefficient and prevents carriers from responding to market through price changes. Economies of scale and scope would be limited, and overall service costs would increase. (20-21)

  - Reseller switches would need special, costly technical support. (21)

  - Establishing interconnection obligation only for benefit of switch-based resellers would be anomalous because would reward only those who did not invest and take risks in PCS auctions or other CMRS networks. As with general CMRS-to-CMRS interconnection, market is insufficiently developed to make general rules. (21-22)

  - Resellers could gain and later exploit sensitive information about a carrier's network in building and marketing its own services. (22-23)

- **Number transferability/portability**

  - Issue is complex and should be avoided. (16)

ALLTEL MOBILE COMMUNICATIONS, INC.

Interest: Provider of cellular radio telephone service

CMRS-to-CMRS Interconnection:

- **Need for Regulatory Mandate**
  - The CMRS market is still in a developmental stage. It is too early in the service's life to mandate interconnection. (1-2)
  - No evidence demonstrates abusive denials of interconnections among facilities-based providers. Nor is there sufficient data available to determine whether CMRS traffic volumes would justify interconnectior obligations. (2)
  - When the CMRS market is sufficiently developed, interconnection will be demanded by the licensees themselves. For the time being, the public switched network provides adequate interconnection. (2)
  - In the limited instances when the market fails and an unreasonable denial of interconnection occurs, aggrieved parties can avail themselves of the complaints process in § 208 of the Communications Act. This case-by-case approach is far superior to a blanket rule. (2-3)

Roaming:

- The requirements to provide service under § 22.901 of the rules are broad enough to foster the provision of roaming services without imposing specific mandates. (3)
- Roaming requirements would substantially hamper a carrier's ability to negotiate market-based roaming rates with other carriers and to refrain from dealing with carriers charging unfavorable roaming rates. (3)

CMRS Resale:

- **Resale by Facilities-Based Competitors**
  - Non facilities-based carriers should be required to permit resale unless technically or economically infeasible for a specific class of CMRS providers. (3)

- During the build-out period, resale obligations should exist until the passing of a sunset period or until the carrier is "fully operational." (3-4)

- Some limitation on resale obligations for facilities-based carriers is necessitated by the new auction regime. The economic determination by a market entrant whether to resell or to invest in facilities is made when it bids at the auction. (4)

- CMRS switched resale should not be mandated by the Commission. The CMRS market is sufficiently competitive to check anticompetitive or inefficient behavior. (4)

- Forcing facilities-based carriers to unbundle their networks and shoulder greater administrative costs would create unfair advantages for resellers. Switched resellers have made minimal investments and are already positioned to compete with carriers for the most profitable segments of wireless services. (4-5)

- Resale does not enhance the market's overall competitiveness. Only competition among facilities-based carriers will promote efficiency in CMRS services. (5)

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION

Interest: a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry, whose members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") Service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. (2).

CMRS-to-CMRS Interconnection:

Need for Regulatory Mandate:

- The FCC should not impose or even propose regulations requiring direct interconnection arrangements among CMRS providers at this early time, due to uncertainty about likely product and service offerings. (1), (3).
- Interconnection arrangements will arise spontaneously if the market demands them. (2), (4).
- All CMRS users already can communicate with all other network users through interconnection via the Public Switched Telephone Network (PSTN). (3-4).
- Robust competition in the CMRS market will alleviate any concern that providers will deny interconnection as an anticompetitive measure. (3-4).
- There is no record on which to base a finding that mandatory interconnection obligations are needed, since the services are new and not yet widely available. (4).
- The FCC should police interconnection through its continuing enforcement of Sections 201 and 202 of the Communications Act, via the complaint process outlined in Section 208 of the Act. (4).

Preemption of State Requirements:

- The FCC should preempt state-imposed interconnection obligations even if the relevant CMRS marketplace is local, rather than national, in scope. (5).
- Since CMRS is by definition "mobile," communications often cross state lines, especially those made by subscribers to wide-area networks. (5).

- The FCC must preempt state regulation of interconnection in order to ensure the successful development of wide-area systems with:

  -- base stations in more than one state; or
  -- interstate roaming; or
  -- interstate satellite transmission services; or
  -- any combination thereof. (5).

Roaming:

- The availability of roaming services should develop through marketplace forces rather than regulation. (6).

- In certain CMRS industry segments, roaming is already a common business practice, and roaming is already available to millions of cellular customers. (6).

- In areas where roaming is less common, services face complex technical problems in introducing roaming due to incompatibility of equipment. (6).

- Customer demand will fuel both technological development and voluntary agreements between PCS carriers, each of which will lead the industry toward intra- and cross-service roaming capability better than an FCC mandate would. (6).

- For more mature services such as SMR, roaming would pose technological difficulties, and compliance with a roaming obligation could be prohibitively expensive. (6).

- Existing SMR operators unable to comply with an FCC roaming obligation would abandon interconnected service, thus diminishing competition in the CMRS marketplace. (7).

CMRS Resale:

Applicability of requirement:

- Resale requirements are not needed in the highly competitive CMRS marketplace. (7-8).

- As the number of CMRS systems capable of providing substantially similar services continues to grow, the marketplace will do a better job than regulation at insuring that consumer needs are met. (9).

- Rather than grafting the remnant of a monopoly/duopoly bottleneck market structure on the CMRS industry, the Commission should look to the natural development of the paging business as the more appropriate model for its CMRS resale policies. (9).

Excluded services:

- The SMR industry should be exempt from any CMRS resale requirement. (9-10).

- The FCC originally allocated spectrum to SMR providers incrementally, based on a demonstration of intensive customer utilization of already authorized channels. Thus, SMR providers have achieved an unprecedented level of utilized system capacity. (10) & (13).

- Unlike cellular or public switched network services, SMR operators use a variety of incompatible system formats. (10-11).

- CMRS requirements would make it easier to defraud SMR operations than other operations. (11).

- Because SMR operators have only been allocated additional spectrum after showing that their current spectrum was being used to capacity, all SMR operators are already operating at capacity and have no unused spectrum available for resale. (13-14).

AMERICAN PERSONAL COMMUNICATIONS

Interest: PCS provider

CMRS-to-CMRS Interconnection:

- **Need for regulatory mandate**

  - Interconnection obligations are fundamental to promoting a national network. (2)

  - Interconnection requirements are necessary because CMRS providers have the potential of raising their rivals' costs by denying direct interconnection, or increasing the price of direct interconnection. (2-3)

  - As the PCS industry takes off, considerable differences will exist in market shares among CMRS firms. (3)

  - Leaving CMRS-to-CMRS connections to the marketplace presents a potential problem of LECs entering negotiations primarily with a cellular affiliate with a large, entrenched customer base so that the flow of traffic will be in the LECs favor for the first few years. (4)

  - To ensure that the LEC does not use its market power position in private negotiations, Commission should at least require that C-LEC-A interconnection is not burdened by carrier common line charges and local switching charges. Instead, the "C" carrier should pay transport charges only. (4)

  - All interconnection agreements should include a term and condition providing for mutual and reciprocal compensation between interconnecting carriers. This would advance the public interest by promoting sound interconnection agreements, and a network of networks, but would not involve the Commission in imposing detailed and specific interconnection obligations. Also, it would act as a safeguard to ensure that the agreements were balanced and fair. (5-6)

Roaming:

  - PCS providers must have the ability to offer access to roaming capabilities in order to compete with the already established cellular providers. (7)

- Roaming is a common carrier service and thus is subject to nondiscrimination requirements. (8)
- Roaming is a commercial mobile service. Therefore, when a CMRS provider makes roaming available to any person, that provider must make roaming available to all persons, on reasonable terms, conditi and price. (8)

- Commission should establish rules that promote roaming by use of mode, dual frequency PCS/Cellular handsets so as to make roaming effective for all CMRS providers. (8)

CMRS Resale:

- **Applicability of requirement**

  - If Commission imposes resale requirements, they should not take ef immediately because PCS providers need to control use of their networks in the crucial first year to make certain that the technolog operates according to plan. Commission should allow a start-up peri of at least 12 months. (9-10)

- **Switch interconnection by resellers**

  - If Commission requires PCS providers to provide complete unbundl access to their networks, it would interfere with the efficient handlin of a CMRS communication. Many PCS providers, like APC, could support this type of disruption into their networks. Such a requireme would delay APC from turning on its system. (11-12)

AMERICANTEL GROUP

Interest: CMRS reseller

CMRS Resale:

- **Number transferability**
  - Number transferability will increase competitiveness in the resale industry and place resellers in a stronger position vis-a-vis carriers, enabling resellers to reduce costs. (1)

AMERITECH

Interest: RBOC with CMRS interests

CMRS-to-CMRS Interconnection:

- **Need for regulatory mandate**
  - Mandate is premature. Competitive market will ensure that carrie develop acceptable interconnection arrangements, rates, and terms conditions of service. Guidelines could chill providers' abilities tc negotiate most economically and technically feasible arrangements 3)
  - Problems should be dealt with through § 208 complaint process.
  - If Commission does adopt guidelines and apply market power anal then LEC investment and affiliation should not affect determinatio whether denial of interconnection had anticompetitive intent. Guidelines should focus on available market alternatives and regul parity. (4-5)
- **Preemption of state requirements**
  - State obligations should be preempted. (2)

Roaming:

- Opposes mandating roaming. Industry should resolve issues, like cellula industry developed IS-41 standards. (5)
- RBOCs should not be required to offer PCS only through a separate subs when PCS subscribers roam in cellular service areas. Because dual mod handsets and cellular resale will likely be means of entry into PCS, this disadvantage LEC-affiliated PCS provider, who could not operate until it PCS network was complete. (5-6)

CMRS Resale:

- **Applicability of requirement; excluded services**
  - Regulatory parity calls for applying requirement to all CMRS providers that are potential competitors, without exceptions for air-to-ground, SMR, paging, etc. (6)
- **Resale by facilities-based competitors**
  - Should be limited to five years after issuance of competitor's license so that providers will have incentive to build own facilities. (7)

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AT&T CORP.

Interest: AT&T currently provides cellular and messaging service and intends to offer narrowband and broadband PCS in the near future.

CMRS-to-CMRS Interconnection:

- **Need for regulatory mandate**
  - The Commission has appropriately concluded that, under current and foreseeable market conditions, mandated requirements are unnecessary to foster competition. (3, 5)
  - It is unnecessary to engage in a detailed analysis of the relevant produ and geographic markets at this time since no CMRS provider has sufficient market power to warrant imposition of interconnection obligations. (7, 8ff)
    - AT&T relies on the declaration of Bruce M. Owen of Economists Incorporated for much of its economic/antitrust analysis. (8-12)
  - Because a rational CMRS market participant will find it unprofitable to attempt to raise rivals' costs, the Commission's concern is unfounded. (11)
  - CMRS providers will interconnect with each other if there is sufficient mobile-to-mobile traffic to justify it. (4, 6, 13)
    - AT&T usually interconnects solely through the LEC switch. Only where there is sufficient traffic between its network and another provider's, and it is more economical to route those calls through a direct connection, does AT&T attempt to negotiate such an arrangement. (13-14)
  - Mandating CMRS-to-CMRS interconnection will not introduce competition into the marketplace. Moreover, providers will remain subject to continuing oversight by the Commission in any event. (14-15)

- Substantial costs would be imposed on wireless carriers and customers were CMRS providers required to enter into inefficient inter-connection arrangements. (4, 16ff)

- Mandating interconnection would impede technological development; indeed, it could freeze technology at the level of the lowest common denominator. (16, 17)

  - For instance, AT&T has aggressively pursued SS7 on its own, but mandating terms, etc., would create a time lag in its introduction while the technology was studied by regulators and subjected to public comment. (16-17)

- CMRS providers should have maximum flexibility to determine which interconnection arrangements are appropriate. If carriers are burdened with an unnecessary interconnection obligation, the incentives to deploy new facilities will be reduced since third parties will be given an entitlement to cherry-pick the most desirable of those facilities. (4, 18-19)

- **Preemption of state requirements**

  - Because the interstate and intrastate aspects of interconnection cannot be separated and a single, uniform regulatory scheme is essential, the Commission should preempt state authority in this area. (4, 20ff)

  - State regulation of CMRS interconnection is fundamentally inconsistent with the goal of a seamless national wireless infrastructure. (21)

    - State regulation would force the construction of state-specific CMRS facilities, but AT&T's own cellular networks, for instance, have evolved to a point where "local" systems are now served by centralized signalling hubs that support multi-state regions. (22)

Roaming:

- The Commission has correctly concluded that roaming should be left to negotiation between providers, not subject to government mandate. (4, 23)

- CMRS providers have every incentive to develop national sean wireless infrastructures, as the industry's development of the I standard illustrates will occur without government mandate. (

- If some level of roaming should be mandated, the Commission limit it to "manual" roaming. Any more complicated mandate arrangement would undermine a CMRS provider's ability to in a nationwide seamless roaming plan. (4, 24)

CMRS Resale:

- **Applicability of requirement; excluded services**

  - The resale requirement should be applied equally to all CMRS providers, except where technically unfeasible. (4, 26-27)

- **Resale by facilities-based competitors**

  - Since the Commission should require resale only where it woul competition, a CMRS provider should only have to resell to fa based competitors for a period of 18 months. (5, 28)

  - Continuing the five-year window for resale to facilities-based c would disserve the public interest in promoting competition sin facilities-based competitors eligible to resell the incumbent's ca could and would delay construction of their own networks. Th especially true for PCS licensees whose build-out obligation is population rather than geographical coverage. (27-28)

- **Switch interconnection by resellers**

  - Given the competitiveness of the CMRS marketplace, there is n to requiring facilities-based licensees to "unbundle" their netwo 28)

  - Switch interconnection suffers from a variety of difficulties, esp technical ones. It would impose significant costs on subscribers carriers as well as create price distortions that would subsidize resellers. (5, 28-30)

BELL ATLANTIC MOBILE SYSTEMS, INC.

Interest: RBOC; operator of cellular telephone systems

CMRS-to-CMRS Interconnection:

- **Need for Regulatory Mandate**

  - CMRS-to-CMRS interconnection rules should not be adopted. Imposing interconnection standards would contradict the Cong command to limit regulation of the CMRS industry and would superfluous in the competitive CMRS market. (3, 4-5)

  - The Commission itself has recognized that the language and h the Omnibus Budget Reconciliation Act of 1993 mandates that forces, rather than regulation, should be relied upon to promo competition. Regulation may be justified only by a "clear-cut (3-4)

  - That the Commission has implemented interconnection rules f landline industry does not justify CMRS interconnection rules. rationale for imposing such rules in the landline market does n in the multi-competitor wireless market. (5)

  - The CMRS market is changing too rapidly for the FCC to for appropriate interconnection standards. Government regulation quickly become outdated and may retard the evolution of more arrangements. (5-6)

  - The Commission will not be hamstrung by a decision not to in interconnection obligations. First, the Commission is free to future rulemaking or take enforcement actions when appropriat Second, the Commission's complaint process is available to di CMRS providers who refuse reasonable requests to interconne

- **Preemption of State Requirements**

  - State-imposed interconnection and roaming obligations should preempted. State regulations will hamper the development of CMRS market, impede the development of a national wireless and frustrate industry-wide standard setting. (6-7, 9)