

interstate authority.<sup>148</sup> In this case, according to Willkie Farr, the federal objective to be furthered is the assurance of an efficient, competitive buildout of nationwide wireless communications infrastructure, which is supported by the Commission's adoption of PCS service areas based on MTAs and BTAs -- geographic areas which follow patterns of trade and do not respect state lines.<sup>149</sup> Willkie Farr claims that this federal goal would be impossible to achieve if systems' architecture and interconnection nodes have to be designed to accommodate varying state requirements with respect to interconnection compensation.<sup>150</sup>

105. In contrast, the New York Commission staff argues that there is no reason that state and federal policies regarding LEC-CMRS interconnection cannot co-exist. It notes that the Commission has in the past recognized that cellular service is primarily used to provide "local, intrastate exchange telephone service," and therefore urges the Commission not to alter its current model, whereby interconnection arrangements "are properly the subject of negotiations between the carriers as well as State regulatory jurisdictions."<sup>151</sup> Pacific also argues that the Commission previously found that LEC rates for interconnection are severable into interstate and intrastate rates because the costs are severable, and thus the Communications Act denies the Commission jurisdiction over intrastate interconnection rates. It maintains that "the extent to which a state regulatory commission desires to regulate mutual compensation for intrastate interconnection has been and must remain in its sole discretion."<sup>152</sup> NARUC contends that the Budget Act clearly indicates that "other terms and conditions" concerning CMRS regulation should be left to the states. In addition, NARUC argues that if the Commission chooses not to impose rules concerning CMRS providers' rights to provide physical aspects of interconnection, it may not preempt related state regulatory initiatives, nor should it, since states are in the best position to monitor interconnection arrangements, and to impose additional obligations when local conditions warrant.<sup>153</sup>

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<sup>148</sup> Willkie Farr Memorandum at 10, citing *e.g.*, *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375 n.4 (1986); *California v. FCC*, 798 F.2d 1515 (D.C. Cir. 1986); *Nat'l Assn of Regulatory Util. Commissioners v. FCC*, 880 F.2d 422 (D.C. Cir. 1989)). These cases all allowed federal preemption based on the physical impossibility of separating interstate and intrastate components, although Willkie Farr argues that some of these cases did actually involve economic indivisibility as well. See, *e.g.*, *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104 (D.C. Cir. 1989)

<sup>149</sup> Willkie Farr Memorandum at 12-13.

<sup>150</sup> *Id.*

<sup>151</sup> NY DPS Comments at 4-5, citing *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd at 5453 para. 108.

<sup>152</sup> Pacific Reply Comments at 8-9.

<sup>153</sup> NARUC Comments at 3.

106. BellSouth argues that there is no justification for Commission intervention in the interconnection arrangements between LECs and CMRS providers at this time. BellSouth states that the current interconnection arrangements between BellSouth and CMRS providers are based on negotiations between the carriers with state commission oversight and have resulted in reductions in CMRS interconnection rates of 30% since 1992.<sup>154</sup> With respect to the Commission's authority to regulate the rates charged by LECs to CMRS providers to terminate mobile originated traffic, BellSouth states that this would require that the statutory language be rewritten to read, "no State . . . shall have the authority to regulate . . . the rates charged *to* (instead of *by*) any commercial mobile service . . .," which only Congress could do. BellSouth also argues that the Commission interpreted Section 332(c)(3) correctly in a recent decision: "[W]e note that Louisiana's regulation of the interconnection rates [charged] by landline companies to CMRS providers appears to involve rate regulation only of the landline companies, not the CMRS providers, and thus does not appear to be circumscribed in any way by Section 332(c)(3)."<sup>155</sup> Even assuming, *arguendo*, that the Commission has jurisdiction to adopt a national interconnection policy that would encompass wireless interconnection, BellSouth argues that it should do so in its comprehensive access reform and interconnection proceeding envisioned for 1996.

### c. Discussion

107. We seek comment on three alternative approaches to implementing the interconnection policies discussed above. We recognize that states share our goals of stimulating economic growth by promoting the development of CMRS, which would upgrade the nation's telecommunications infrastructure and would help make available broader access to communications networks. We also recognize that, as detailed above, some state public utility commissions have begun to develop their own policies governing interconnection arrangements. We intend to continue to work cooperatively with state regulators to formulate interconnection policies that advance our common public interest goals.

108. One approach to implementing these goals would be to adopt a federal interconnection policy framework that would directly govern LEC-CMRS two-carrier interconnection with respect to interstate services and that would serve as a model for state commissions considering these issues with respect to intrastate services. Essentially, we would recommend that states voluntarily follow our guidelines, rather than making them mandatory requirements. Under this informal model, we would give guidance to the states while not directing state regulators in interconnection matters. For example, if we were to affirm our tentative conclusions discussed above regarding bill and keep compensation, we

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<sup>154</sup> *Ex Parte* Letter from Ben G. Almond, Executive Director-Federal Regulatory, Bell South, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, December 7, 1995.

<sup>155</sup> *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*, 10 FCC Rcd 7898, 7908 (1995).

could require LECs and CMRS providers to use that approach with respect to terminating interstate traffic originating on the other's network, and encourage states to adopt the same approach with respect to intrastate traffic. On the other hand, there would be no guarantee that states would adopt our proposed model. We seek comment on this option and whether there might be some way to supplement it to better achieve the goals discussed above. For example, would it be beneficial to have an industry group develop specific standards to govern the terms and conditions for interconnection arrangements, based on our informal model? If so, should we set a date certain by which such an industry group should develop these standards?

109. A second approach would be to adopt a mandatory federal policy framework or set of general parameters to govern interconnection arrangements between LECs and CMRS providers with respect to interstate and intrastate services, but allow state commissions a wide range of choices with respect to implementing specific elements of these arrangements. Thus, although compliance with these policy parameters would be mandatory, state commissions would have substantial latitude in developing specific arrangements that would comply with these parameters. One example of a general policy parameter is our existing mutual compensation requirement -- which generally requires that there be mutual compensation between LECs and CMRS providers for the reasonable costs of terminating each other's traffic -- without precluding the states from setting the actual interconnection rates that LECs and CMRS providers charge. We could also adopt more specific policy parameters, while still preserving a degree of discretion for state commissions. For example, we could require the use of bill and keep compensation, as discussed above, for all off-peak traffic, but allow states to decide whether to use bill and keep or some alternative option with respect to compensation for intrastate traffic during peak periods. The possible benefit of this approach is that it would provide some greater national uniformity, while still preserving the state commissions' flexibility to develop specific arrangements that meet their needs. We seek comment on this option and on whether it would most effectively achieve our goals. If parties do support the use of mandatory federal policy parameters, we ask that they comment on what level of detail we should adopt in such parameters -- that is, whether we should adopt broad, general parameters on what the appropriate interconnection rates should be or whether we should adopt a more detailed set of parameters.

110. As a third alternative, we seek comment on our promulgating specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements. This approach would place more specific parameters on state action regarding interconnection rates. For example, if we were to affirm our tentative conclusions discussed above regarding bill and keep compensation, we could require LECs and CMRS providers to adopt such an approach with respect to all traffic.

111. We tentatively conclude that the Commission has sufficient authority to implement these options, including our proposal that interconnection compensation on a bill and keep basis be adopted on an interim basis. As a preliminary matter, Section 332 explicitly preempts state regulation in this area to the extent that such regulation precludes

(or effectively precludes) entry of CMRS providers.<sup>156</sup> In addition, to the extent state regulation in this area precludes reasonable interconnection, it would be inconsistent with the federal right to interconnection established by Section 332 and our prior decision to preempt state regulation that prevents the physical interconnection of LEC and CMRS networks.<sup>157</sup> We also believe, contrary to our conclusion in earlier orders,<sup>158</sup> that preemption under *Louisiana PSC* may well be warranted here on the basis of inseverability, particularly in light of the strong federal policy underlying Section 332 favoring a nationwide wireless network.<sup>159</sup> Indeed, in this regard, we note that several entities have argued that Section 332 itself gives the Commission exclusive jurisdiction in this area.<sup>160</sup>

112. We seek comment on this analysis and also ask parties to submit relevant factual information on this issue. We seek comment, first, on the inseverability of interconnection rate regulation. We note that much of the LEC-CMRS traffic that may appear to be intrastate may actually be interstate, because CMRS service areas often cross state lines, and CMRS customers are mobile. For example, if a cellular customer from Richmond travels to Baltimore and then places a call to Alexandria, the call might appear to be an intrastate call, placed from a Virginia telephone number to another Virginia number, but would in fact be interstate because the call originates in Maryland and terminates in Virginia. Service areas defined as "local" in wireless providers' rate structure do not coincide with LEC "exchanges" defined by Section 221(b) as subject to state authority, and often cross state lines.<sup>161</sup> This is true of many existing cellular providers, and is even more likely to be true with respect to PCS licensees in major trading areas (MTAs). We request that commenting parties submit empirical data and analysis on the extent to which existing LEC-CMRS interconnection arrangements involve both interstate and intrastate traffic, the extent to which significant levels of interstate wireless traffic are being carried under such arrangements, and, most importantly, the extent to which interstate and intrastate traffic can

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<sup>156</sup> 47 U.S.C. § 332(c)(3).

<sup>157</sup> See *CMRS Second Report*, 9 FCC Rcd at 1498.

<sup>158</sup> See, e.g., *Id.*, para. 231.

<sup>159</sup> *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375 n.4 (1986) (*Louisiana PSC*) (preemption may be warranted when interstate and intrastate services are inseparable and state regulations make it impracticable for the Commission to exercise its statutory powers).

<sup>160</sup> See, e.g., Cox Memorandum at 4-5; Comcast Memorandum at 7-8; Willkie Farr Memorandum at 4-7.

<sup>161</sup> For example, in the Washington-Baltimore metropolitan area, both cellular carriers and the pioneers' preference broadband PCS licensee have established local calling areas encompassing areas stretching from north of Baltimore in Maryland to significantly south of Washington, D.C., in Virginia. CMRS-originated calls from anywhere in this area to anywhere in this area are considered local calls.

be severed for regulatory pricing purposes. We seek comment on whether either the CMRS or the LEC networks have the technical capability to distinguish whether a wireless call interconnecting with its network is an interstate or intrastate call. We also seek comment on whether we should reconsider our recent conclusion, cited by BellSouth, that Section 332 does not circumscribe state regulation of the interconnection rates that LECs charge CMRS providers.<sup>162</sup>

113. We also ask parties to identify what types of state rate regulation, if any, preclude (or effectively preclude) entry of CMRS providers. We seek specific information on the types of regulations that are either in effect or have been proposed by state regulators in the area of LEC-CMRS interconnection, and seek comment on what impact such state action has had on interconnection arrangements and on the ability of CMRS providers to compete in the market. We also request comment on the meaning and relevance of Section 332(c)(1)(B) to our jurisdictional analysis.<sup>163</sup>

114. In determining what the Commission's role should be with respect to implementation of LEC-CMRS interconnection policies, we again emphasize our recognition of the states' legitimate interest in interconnection issues and our intention to work in coordination with state regulators in this regard. In addition, although we have identified three possible options to implement our interconnection compensation proposals, and we seek comment on these options, we also encourage parties to suggest other options, or variations of our options, regarding implementation. Our goal is to achieve implementation of our interconnection proposals in the most efficient and effective manner to the collective benefit of all the parties involved.

#### IV. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC

115. We held in 1984 that radio common carriers and cellular carriers are not IXC's and therefore are not required to pay LECs interstate access charges.<sup>164</sup> We have never addressed, however, whether LECs or IXC's should remit any interstate access charges to CMRS providers when the LEC and the CMRS provider jointly provide access service.<sup>165</sup>

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<sup>162</sup> *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*, 10 FCC Rcd 7898, 7908, para. 47 (1995).

<sup>163</sup> 47 U.S.C. § 332(c)(1)(B).

<sup>164</sup> *MTS and WATS Market Structure*, Third Report and Order, 97 FCC 2d 834, 881-83 (1984); *FCC Policy Statement on Interconnection of Cellular Systems*, 59 RR 2d at 1284-85, notes 1 & 3.

<sup>165</sup> *But see CMRS Second Report*, 9 FCC Rcd at 1478-81 (1994)(forbearing from requiring or permitting CMRS providers to file tariffs for interstate access service).

For example, when a cellular customer places a long-distance call, the cellular carrier typically transmits the call to the LEC, which connects the call to the IXC. Similarly, when long-distance calls are placed to cellular customers, the IXC handling the call typically transmits the call to a LEC, which, in turn, hands it to the cellular carrier for termination to the called party.<sup>166</sup> We have not previously established specific rules or guidelines applicable to the joint provision of interstate access service by a LEC and a CMRS provider. Until CMRS providers generate sufficient traffic to warrant direct connections to IXC points of presence, we believe that most CMRS providers are likely to depend on LECs for interconnection of interexchange traffic to IXCs. Thus, we tentatively conclude that it will be necessary to apply certain protections to such interconnection arrangements, at least in the foreseeable future. We seek comment on this analysis and on our tentative conclusion. We also invite CMRS providers and LECs to describe existing arrangements under which CMRS providers are compensated for originating and terminating interstate interexchange traffic that transits a LEC's network.

116. In the context of the existing access charge regime, we tentatively conclude that CMRS providers should be entitled to recover access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks. We propose to require that CMRS providers be treated no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from IXCs and LECs for interstate interexchange traffic. We tentatively conclude that any less favorable treatment of CMRS providers would be unreasonably discriminatory, and would interfere with our statutory objective and ongoing commitment to foster the development of new wireless services such as CMRS.<sup>167</sup> We seek comment on how to implement this non-discrimination requirement. For example, should we require that contracts between neighboring LECs establishing joint arrangements for providing interstate access, as well as comparable contracts between LECs and CMRS providers, be publicly filed pursuant to § 211 of the Act in order to protect against such discrimination? Should such arrangements be included in LEC interstate access tariffs?

117. We also seek comment on the basis for CMRS providers' access charges, which under our proposal would be collected directly or indirectly from IXCs. Should CMRS providers impose interstate access charges that mirror those of the LECs with which they connect? Or should they impose their own access charges, as do many independent LECs? If the latter, should we retain our existing policy of forbearing from regulating CMRS

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<sup>166</sup> These circumstances commonly prevail whether or not the cellular provider offers its customers equal access. "Equal access" refers to allowing end user customers to presubscribe to the IXC of their choice for all interLATA calling. This Notice does not solicit comment on whether CMRS providers should be required to offer their customers equal access; this issue is already under consideration based on an earlier Notice. See *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd 5408.

<sup>167</sup> See *CMRS Second Report*, 9 FCC Rcd at 1419-22.

providers' interstate access charges?<sup>168</sup> In the alternative, should we find that, even though CMRS providers may lack market power with respect to end users, they may have some market power over IXC's that need to terminate calls to a particular CMRS provider's customer, or to originate calls (in an equal access context) from such a customer? If we were to adopt such a conclusion, should we adopt guidelines or some other form of pricing regulation to govern CMRS providers' interstate access charges? Should we address the billing arrangements that would apply in this context? Parties are invited to comment on the issues and proposals discussed herein, and to address the costs and benefits of these and possible alternative approaches.

## V. APPLICATION OF THESE PROPOSALS

118. We invite comment on whether the proposals and options considered in this Notice of Proposed Rulemaking should apply to interconnection arrangements between LECs and: (1) broadband PCS providers only; (2) broadband PCS, cellular telephone, SMR, satellite telephony, and other CMRS providers that offer two-way, point-to-point voice communications, which could compete with LEC landline telecommunications services; or (3) all CMRS providers. We solicit comments and analysis on the relative costs and benefits of broader and narrower approaches, and on any technical or economic similarities or differences among CMRS services that would warrant similar or different treatment. (We note that, as a matter of convenience, we refer elsewhere in this notice generically to "CMRS providers;" this usage is not intended to exclude the possibility of applying our policies more narrowly.)<sup>169</sup>

119. There may be benefits to focusing primarily on broadband PCS or some other limited group of CMRS services. First, it might be desirable to limit our focus to broadband PCS because it is a new service. We have assigned the initial broadband PCS licenses relatively recently and will soon assign more. Fewer issues arise in applying policy changes to a new service, such as broadband PCS, than to existing services: for example, it is less likely that we would need to consider problems of displacement, interference with existing contracts, or transitions from existing interconnection arrangements to new arrangements.

120. Second, we could consider addressing interconnection between LECs and all types of commercial mobile radio services that support voice telecommunications and could compete with the local telephone services provided by the LECs. The interconnection arrangements between this group of CMRS providers and LECs could have a critical effect on whether these carriers can develop into effective competitors for providing the local links required for interstate communications. Focusing narrowly either on broadband PCS alone

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<sup>168</sup> *Id.*, 9 FCC Rcd at 1478-81.

<sup>169</sup> We note that the comments received in this proceeding focused on CMRS providers in general, because that was the focus of the questions asked in the original Notice. See *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd 5408 (1994).

or on this subset of CMRS would allow us to tailor our policies more carefully to the particular subset of carriers or services involved.

121. Third, there are arguments for applying our proposals more broadly to interconnection between LECs and all CMRS providers because this would enable us to make improvements in as large a part of the local telephone and CMRS markets as possible. Moreover, pursuant to Congressional intent, we have taken a number of actions to apply similar regulatory treatment to different types of CMRS providers.<sup>170</sup> Differential treatment among CMRS providers in the critical area of interconnection could be interpreted as inconsistent with our overall policies with respect to CMRS. On the other hand, some of the proposals in this Notice might not be in the public interest if applied to CMRS providers that do not compete with LEC services.

## VI. PROCEDURAL ISSUES

### A. *Ex Parte* Presentations

122. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

### B. Initial Regulatory Flexibility Analysis

123. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's Initial Regulatory Flexibility Analysis with respect to the *Notice of Proposed Rulemaking* is as follows:

124. *Reason for Action:* The Commission is issuing this *Notice of Proposed Rulemaking* seeking comment on possible changes in the regulatory treatment of interconnection compensation arrangements between LECs and CMRS providers and related issues.

125. *Objectives:* The objective of the *Notice of Proposed Rulemaking* is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

126. *Legal basis:* The *Notice of Proposed Rulemaking* is adopted pursuant to Sections 1, 2, 4, 201-205, 215, 218, 220, 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201-205, 215, 218, 220, 303(r) and 332;

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<sup>170</sup> *See, e.g., CMRS Second Report*, 9 FCC Rcd 1411 (1994).

127. *Description, potential impact, and number of small entities affected:* Any rule changes that might occur as a result of this proceeding could impact entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rulemaking* to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601, *et seq.* (1981).

128. *Reporting, recordkeeping and other compliance requirement:* None.

129. *Federal rules which overlap, duplicate or conflict with the Commission's proposal:* None.

130. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives:* The *Notice of Proposed Rulemaking* solicits comments on a variety of alternatives.

131. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this *Notice of Proposed Rulemaking* but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*

### **C. Comment Filing Procedures**

132. Comments and reply comments should be captioned in CC Docket No. 95-185 only. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before February 26, 1996, and reply comments on or before March 12, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

133. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we request that such comments be organized in a uniform format. Specifically, we ask the parties to organize their comments and reply comments in the outline provided in the footnote.<sup>171</sup> Each new section should begin on a new page, and should be labeled with the name of the filing party, identification of whether the document is an initial comment or a reply comment, the docket number, filing date, and number and name of the outline section addressed (although formal legal headers are unnecessary for section headings). No pages need be submitted for issues that a party chooses not to address. Arguments that conceptualize issues in a manner that does not fit into the segments listed above may be included in the "Other" section.

#### **D. Ordering Clauses**

134. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1, 4, 201-205, 215, 218, 220, 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218, 220, 303(r) and 332, a **NOTICE OF PROPOSED RULEMAKING** is hereby **ADOPTED**.

135. **IT IS FURTHER ORDERED** that, the Secretary shall send a copy of this **NOTICE OF PROPOSED RULEMAKING**, including the regulatory flexibility certification,

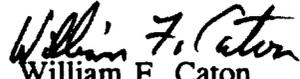
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<sup>171</sup> Our preferred outline for comments and reply comments is as follows:

- I. General Comments
- II. Compensation for Interconnected Traffic between LECs and CMRS Providers' Networks
  - A. Compensation Arrangements
    - 1. Existing Compensation Arrangements
    - 2. General Pricing Principles
    - 3. Pricing Proposals (Interim, Long Term, Symmetrical)
  - B. Implementation of Compensation Arrangements
    - 1. Negotiations and Tariffing
    - 2. Jurisdictional Issues
- III. Interconnection for the Origination and Termination of Interstate Interexchange Traffic
- IV. Application of These Proposals
- V. Responses to Initial Regulatory Flexibility Analysis
- VI. Other

to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

**APPENDIX A:**  
**Comments filed on the First Notice of Proposed Rulemaking in CC Docket No. 94-54**

**COMMENTS**

1. AirTouch Communications (AirTouch)
2. Allnet Communication Services, Inc. (Allnet)
3. ALLTEL Mobile Communications, Inc. (ALLTEL)
4. American Mobile Telecommunications Association, Inc. (AMTA)
5. American Personal Communications (APC)
6. Americell PA-3 Limited Partnership (Americell)
7. Ameritech
8. AMSC Subsidiary Corp. (AMSC)
9. AT & T Corporation (AT & T)
10. Michael B. Azeez d/b/a Deadwood Cellular Telephone Company, Durango Cellular Telephone Company, Ohio State Cellular Phone Company, Inc., and Trillium Cellular Corporation (Azeez)
11. Bell Atlantic Companies (Bell Atlantic)
12. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp. (BellSouth)
13. People of the State of California and the Public Utilities of the State of California (California PUC)
14. Cellular Service, Inc. and ComTech, Inc. (CSI/ComTech)
15. Cellular Telecommunications Industry Association (CTIA)
16. Century Cellunet, Inc. (Century Cellunet)
17. Cincinnati Bell Telephone (Cincinnati Bell)
18. Claircom Communications Group, L.P. (Claircom)
19. Columbia PCS, Inc. (Columbia PCS)
20. Comcast Corporation (Comcast)
21. Cox Enterprises, Inc. (Cox)
22. DCR Communications, Inc. (DCR)
23. Dakota Cellular, Inc. (Dakota)
24. Dial Page, Inc. (Dial Page)
25. E.F. Johnson Company (E.F. Johnson)
26. First Cellular of Maryland, Inc. (First Cellular)
27. Florida Cellular RSA Limited Partnership (Florida Cellular)
28. General Services Administration (GSA)
29. Geotek Communications, Inc. (Geotek)
30. Grand Broadcasting Corporation (Grand)
31. GTE Service Corporation (GTE)
32. Highland Cellular, Inc. (Highland)
33. Horizon Cellular Telephone Company (Horizon)
34. Lake Huron Cellular Corporation (Lake Huron)

35. LDDS Communications, Inc. d/b/a LDDS Metromedia (LDDS)
36. Maritel
37. McCaw Cellular Communications (McCaw)
38. MCI Telecommunications Corporation (MCI)
39. Miscelco Communications, Inc. (Miscelco)
40. National Association of Business and Educational Radio, Inc. (NABER)
41. National Association of Regulatory Utility Commissioners (NARUC)
42. National Cellular Resellers Association (NCRA)
43. National Telephone Cooperative Association (NTCA)
44. New Par
45. New York State Department of Public Service (New York DPS)
46. New York Telephone Company, New England Telephone & Telegraph Company, and NYNEX Mobile Communications Company (NYNEX)
47. Nextel Communications, Inc. (Nextel)
48. OneComm Corporation (OneComm)
49. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
50. Pacific Bell and Pacific Bell Mobile Services (Pacific Bell)
51. Pacific Telecom Cellular, Inc. (PacTel)
52. Paging Network, Inc. (PageNet)
53. Palmer Communications Incorporated (Palmer)
54. Personal Communications Industry Association (PCIA)
55. Point Communications Company (Point)
56. Puerto Rico Telephone Company (PRTC)
57. RAM Mobile Data USA Limited Partnership (RAM Mobile)
58. Rand McNally & Company (Rand McNally)
59. Rochester Telephone Corporation (Rochester)
60. Rural Cellular Association (Rural Cellular)
61. Saco River Cellular Telephone Company (Saco River)
62. Sagir, Inc. (Sagir)
63. Small Market Cellular Operators (SMCO)
64. SNET Mobility, Inc. (SNET)
65. The Southern Company (Southern Company)
66. Southwestern Bell Corporation (SW Bell)
67. Telephone and Data Systems, Inc. and United States Cellular Corporation (TDS)
68. Triad Cellular
69. TRW, Inc. (TRW)
70. Union Telephone Company (Union)
71. Vanguard Cellular Systems, Inc. (Vanguard)
72. Waterway Communications System, Inc. (Waterway)
73. Western Wireless Corporation (Western Wireless)
74. WilTel, Inc. (WilTel)

## REPLY COMMENTS

1. AirTouch Communications (AirTouch), Erratum
2. Allnet Communication Services, Inc. (Allnet)
3. Amarillo CellTelCo (Amarillo)
4. American Mobile Telecommunications Association, Inc. (AMTA)
5. American Personal Communications (APC)
6. Ameritech
7. AT&T Corporation (AT&T)
8. Bell Atlantic Companies (Bell Atlantic)
9. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp. (BellSouth)
10. Cellular Communications of Puerto Rico, Inc. (CCPR)
11. Cellular Service, Inc. and ComTech, Inc. (CSI/ComTech)
12. Cellular Telecommunications Industry Association (CTIA)
13. Century Cellunet, Inc. (Century)
14. Comcast Corporation
15. Competitive Telecommunications Association (CompTel)
16. General Communications, Inc. (Gencomm)
17. General Services Administration (GSA)
18. Geotek Communications, Inc. (Geotek)
19. GO Communications Corporation (GO)
20. GTE Service Corporation (GTE)
21. Horizon Cellular Telephone Company (Horizon)
22. Larsen Cellular Communications, Inc. (Larsen)
23. LDDS Communications, Inc. d/b/a LDDS Metromedia (LDDS). Erratum
24. MCI Telecommunications Corporation (MCI)
25. National Association of Business and Educational Radio, Inc. (NABER)
26. National Cellular Resellers Association (NCRA)
27. New Par
28. New York Telephone Company, New England Telephone & Telegraph Company, and NYNEX Mobile Communications Company (NYNEX)
29. Nextel Communications, Inc. (Nextel)
30. OCOM Corporation (OCOM)
31. OneComm Corporation (OneComm)
32. Pacific Bell, Nevada Bell and Pacific Bell Mobile Services (Pacific Bell)
33. Palmer Communications Incorporated (Palmer)
34. Personal Communications Industry Association (PCIA)
35. Puerto Rico Telephone Company (PRTC)
36. Rochester Telephone Corporation (Rochester)
37. Rural Cellular Association (RCA)
38. RVC Services, Inc. d/b/a Coastel Communications Company (RVC/Coastel)
39. Southwestern Bell Corporation and Southwestern Bell Mobile Systems, Inc. (SW Bell)

40. Telephone and Data Systems, Inc. and United States Cellular Corporation (TDS)
41. Time Warner Telecommunications, a division of Time Warner Entertainment, L.P. (Time Warner)
42. United States Telephone Association (USTA)
43. UTC, The Telecommunications Association (UTC)
44. Vanguard Cellular Systems, Inc. (Vanguard)

**SEPARATE STATEMENT**  
**of**  
**COMMISSIONER ANDREW C. BARRETT**

RE: *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185) and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers (CC Docket No. 94-54)*

Today, the Commission adopts a notice of proposed rulemaking that continues its consideration of whether existing policies regarding local exchange carrier (LEC) and commercial mobile radio service (CMRS) interconnection serve the public interest.<sup>1</sup> Presently, the Commission requires LECs to offer interconnection to CMRS providers on reasonable terms and conditions, and to do so under the principle of mutual compensation.<sup>2</sup> Concerns have emerged, however, that existing general interconnection policies may not do enough to foster the development of CMRS and to encourage efficient interconnection rates. Therefore, we issue this notice to consider our interconnection policies and, specifically, the compensation arrangements for LEC-CMRS interconnection. In the notice, we ask for comment on a tentative conclusion that, at least for an interim period, interconnection rates for terminating access between the end office (or equivalent CMRS facilities) and the end user-subscriber should be priced on a "bill and keep" basis (*i.e.*, both the LEC and the CMRS provider "charge" a rate of zero for the termination of traffic), and that rates for dedicated transmission facilities connecting LEC and CMRS networks should be set based on existing access charges for similar transmission facilities. In addition to this proposal, we seek comment on, and solicit other proposals for, alternative pricing options for LEC-CMRS interconnection arrangements. With respect to these issues and the tentative conclusions described in the notice, the Commission also tentatively concludes that it has the authority to adopt or modify policy in this area.

I fully support the Commission's action today, and I assert that, after careful consideration of a complete record, there are several critical reasons for the Commission to take clear, bold, and decisive action in this area.<sup>3</sup> As the notice discusses, today, telecommunications is increasingly provided by a system of independent, interconnected

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1 See *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408 (1994) (considering adoption of equal access requirements for CMRS providers and whether LEC and CMRS interconnection should be tariffed).

2 Implementation of Sections 3(n) and 332 of the Communications Act, *Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*); see 47 U.S.C. § 201(a).

3 See *Second Report and Order, Separate Statement of Commissioner Andrew C. Barrett*, 9 FCC Rcd at 1534 (explaining need to develop a record regarding interconnection issues).

networks. These networks may consist of wireline and wireless elements that, when functioning properly, should be transparent to the users. The ability of communication, be it voice, video, or data, to move seamlessly from one network to another is becoming increasingly vital. Simply put, uneconomic and unnecessary barriers to the flow of communications between the increasing number of diverse networks would seriously undermine the benefits of telecommunications and would impede the development of competition between network providers.

Without efficient interconnection, telecommunications competition will not develop and flourish. Interconnection enables new service providers to compete with incumbent LECs on the basis of the services they offer the public and the prices, quality, and features of those services. Interconnection also facilitates access – it allows subscribers of one network to obtain access to subscribers of all other interconnected networks. If we are serious about the notions of wireless services becoming a supplement, rather than a complement, to the wireline network and wireless service becoming a viable competitor to wireline service, we must pursue solutions that facilitate this competition, not hamstringing it. Moreover, we should consider the options in a careful and reasoned, but also expedited manner.<sup>4</sup>

I agree with the Commission's decision to propose, for an interim period, a "bill and keep" interconnection compensation arrangement for terminating access from LEC end offices to LEC end-user subscribers and for terminating access from equivalent CMRS facilities to CMRS subscribers. Without going into the details of such an arrangement, it appears to be a reasonable interim solution that we will be able to scrutinize after receiving parties' comments. I look forward to closely examining parties' submissions on this tentative conclusion.

I also anticipate that interested parties will, in their comments, devote time to the complex jurisdictional issues raised in the notice. While the Commission makes several tentative conclusions in this NPRM concerning its legal authority in this area, I emphasize that these findings are tentative, and that in this proceeding we will consider all relevant arguments and theories. In this vein, I believe that it is important to acknowledge the significant role our State colleagues have taken in connection with local competition and interconnection issues. To date, 33 States have removed legal barriers to competition for local services. Washington, Texas, Pennsylvania, Connecticut, and California, to name a few, have been at the forefront on these issues and have implemented "bill and keep" as an interim arrangement. I recognize that the States have legitimate interests in this area, and I will do my part as a member of this Commission to ensure that our continuing efforts will be fully coordinated with the State regulators.

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<sup>4</sup> I note that recently in the Washington, D.C. metropolitan area, one of the first personal communications services or PCS providers commenced service. The Commission's consideration of these issues, I contend, could not be more timely.

December 15, 1995

SEPARATE STATEMENT  
OF  
COMMISSIONER SUSAN NESS

Re: *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*

This Notice forcefully expresses our intention to promote maximum opportunities for Personal Communications Services ("PCS") to flourish -- as quickly, simply, and fairly as possible.

PCS has the potential to provide much-needed competition to both cellular and wireline local exchange services. Our PCS bandplan and our PCS auctions were important milestones, but they alone cannot bring us to the goal of strong PCS competition. Without effective interconnection arrangements, PCS may never reach its full potential.

PCS and other providers of Commercial Mobile Radio Services ("CMRS") unquestionably should enjoy fair and reasonably priced interconnection to the public switched telephone network. Today, there is a very real danger that wireline local exchange carriers ("LECs") will delay the resolution of interconnection issues or charge too much for interconnection services. Indeed, there are disturbing reports that LECs are not currently complying with our existing requirement for mutual compensation between wireline LECs and cellular carriers.

Fearful of the harm that could result if interconnection needs are not accommodated, CMRS providers have urged us to consider adopting an interim, rough-justice approach that would be available in a matter of months, even as longer-term approaches are further debated and studied. Our Notice tentatively endorses this proposal. This reflects our collective commitment to PCS and other CMRS services, and it should sharpen the focus of the comments we receive.

We tentatively propose adoption of a bill-and-keep regime. Some parties maintain that it is reflective of the underlying economics, excepting perhaps during peak traffic periods. They also assert that bill-and-keep is already a commonplace arrangement for LEC-LEC interconnection. It undoubtedly has the considerable virtue of administrative simplicity.

Even though arguments in favor of bill-and-keep have thus far been largely un rebutted, I remain willing to consider other approaches. After all, a strict regulatory prescription for an

interconnection rate of zero represents a stronger exercise of regulatory power than is customary, even for pricing of LEC services. The special circumstances of CMRS-LEC interconnection may well justify such an approach, but I trust that those who believe otherwise will recognize the necessity of tendering concrete alternatives that meet our public interest objectives.

Finally, although we wish to move swiftly, we must not throw caution to the winds. We must proceed in a manner that is consistent with the law and that will be perceived as fair. We must not abridge the LECs' legal or equitable rights, distort marketplace incentives for CMRS providers, or cause prices for other LEC customers to increase. And we must seek to maintain the federal-state cooperation that we have worked so hard to develop in a number of proceedings over the past year. As a practical matter, it may be impossible to distinguish intrastate and interstate traffic in the CMRS-LEC interconnection context, but I still intend to explore ways in which state and federal authorities can work together on these issues.

Overall, I believe this Notice is very much on the right track, and I am pleased to support it.

December 15, 1995

SEPARATE STATEMENT OF  
COMMISSIONER RACHELLE B. CHONG

*Re: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185), and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Service Providers (CC Docket No. 94-54) -- Notice of Proposed Rulemaking*

Interconnection is critical to the development of new communications services and the evolution of competitive markets. As existing wireless and wired networks continue to expand and new ones are built, there are important public policy reasons to ensure that they are able to interconnect with each other at reasonable rates and on reasonable terms and conditions. Without question, it is in the public interest for communications traffic to pass between networks freely and transparently. This will help our nation achieve the full benefits of a seamless "network of networks" and bring promising new services to consumers.

In my view, timely and reasonably-priced interconnection is the lifeblood of competition among alternative service providers. The development of new wireless services offers the prospect of vigorous competition among commercial mobile radio service (CMRS) providers, and between CMRS providers and existing providers of local exchange service. To the extent these new wireless competitors are able to terminate traffic on other networks at reasonable rates, they will be better able to compete with incumbents on retail prices to end user customers. Conversely, prohibitive rates for this essential wholesale input will inflate the new entrants' costs and impede their ability to compete at the retail level. Thus, interconnection offered at rates substantially above the costs of providing the service may be tantamount to no interconnection at all.

In addition, delay caused by contentious and time-consuming administrative proceedings, or technical requirements that are disadvantageous to a connecting network, may further impair the development of competition. Interconnection delayed may be interconnection denied.

For these reasons, I believe it is essential that the Commission move quickly to establish a sensible, efficient, and fair interconnection policy between wireless and wireline networks. Because of the importance of this issue, I support the tentative conclusion in this notice to adopt an interim approach to interconnection. The status quo is problematic; our current policy may not be providing wireless competitors reasonably-priced, timely interconnection to wireline networks. Therefore, it does not appear that we can afford to leave the current policy intact while we try to find the optimal long range approach to interconnection. A workable interim solution should suffice while we consider various options for the longer term.

In developing interconnection rules, both for an interim period and for the longer term, we should strive to build in flexibility and minimize administrative cost and delay. If possible, I would like to avoid a structure that requires carriers to file tariffs with voluminous cost support data. This can be costly and burdensome to the parties and embroil the Commission in time-consuming proceedings to resolve complex issues raised by cost studies. I am concerned that an approach requiring detailed cost justification may not strike an appropriate balance of fairness, efficiency, and expedition. It may be that a less regulatory option, such as employing a reasonable proxy for cost-based pricing, would better serve the public interest.

As for flexibility, we may want to consider a transitional approach to interconnection. In the early stages of competition, a proxy-type approach may be necessary to ensure timely and efficient interconnection. As competition increases, reduced government involvement may be appropriate. Informational filings of individually negotiated agreements may be adequate to achieve our policy goals at that point. And when full blown competition arrives, we should employ a light regulatory touch.

In the meantime, we must move quickly to adjust our interconnection policy to better serve the public interest. I urge interested parties, both wireless and wireline, to participate in this rulemaking proceeding and provide the Commission with the information necessary to develop sensible, efficient, and fair interconnection rules.