

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Amendment of the Commission's )  
Rules To Permit Flexible Service )  
Offerings in the Commercial )  
Mobile Radio Services )

WT Docket No. 96-6

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Commission's Notice of Proposed Rulemaking, FCC 96-17, released on January 25, 1996, in the proceeding captioned above ("NPRM"). By this proceeding, the Commission is proposing that broadband Commercial Mobile Radio (CMRS) Service providers be authorized to offer fixed wireless local loop service using their existing spectrum allocations. The NPRM proposes to treat fixed wireless loop services like other CMRS services subject to 47 U.S.C. § 332. It seeks comments on this proposal and on the extent to which universal service programs should be modified to encompass, or impose obligations on CMRS providers that offer the equivalent of local exchange service.

NTCA is a national association of approximately 500 local exchange carriers ("LECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural and small-town America.

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NTCA's members which are the leading suppliers of basic telecommunications services in the most rural areas of our country favor making available other radio application options for the provision of basic service. These other options may very well turn out to be less costly than current options. A small, but increasing, number of exceedingly rural NTCA members have deployed Basic Exchange Telephone Radio Service ("BETRS") to provide basic service to subscribers in situations where radio is more economical than wired plant provision of service.<sup>1</sup> These applications are often very expensive. Therefore, to the extent that the CMRS spectrum will be available to providers committed to quality service to rural areas, as NTCA members are, the authorization and clarification that CMRS spectrum may be used for fixed local loop is in the public interest and should ultimately be granted.

However, the Commission must consider new principles announced in the Telecommunication Act of 1996 before adopting its proposal. The Commission states that it does not want to discourage the development of integrated fixed and mobile applications and it is therefore proposing to regulate fixed wireless local loop services as CMRS services.<sup>2</sup> The Commission also refers to the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") and the fact that it reflected Congress intent to

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<sup>1</sup> See NPRM at para. 5 and n.11.

<sup>2</sup> NPRM at para. 20.

establish regulatory symmetry among mobile services and ensure that market forces instead of "disparate regulatory requirements shape the development of the CMRS marketplace."<sup>3</sup> While it is true that Congress was concerned with disparate regulatory treatment among mobile services in 1993, recent enactment of the Telecommunications Act of 1996 ("1996 Act") requires the Commission to consider additional factors and principles in deciding on a regulatory scheme for fixed wireless local loop services.

The 1996 Act reshapes the regulatory landscape. Under the Act, CMRS providers that are providers of telecommunications services are "telecommunications carriers" eligible to enjoy the advantages of the "pro-competitive" and "de-regulatory" national policy framework set out in the Act and subject to the obligations of telecommunications carriers."<sup>4</sup> The Act's "pro-competitive" policy does not allow the Commission to favor one group of "telecommunications carriers" or any one technology over another. The concern for regulatory parity among mobile services has expanded to a concern for and the necessity of parity among telecommunications providers following passage of the 1996 Act.

The 1996 Act retains the jurisdictional provision that in 47 U.S.C. § 332(c)(3) gives the Commission authority over the

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<sup>3</sup> NPRM at para. 19.

<sup>4</sup> 47 U.S.C. § 153(49) defines the term "telecommunications carrier" to mean "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services. . . ."

rates and entry of CMRS providers. In 1994, the Commission established a regulatory scheme under Section 332 for CMRS providers.<sup>5</sup> That scheme includes forbearance from rate and entry regulations.<sup>6</sup> While entry barriers are prohibited, wireline carriers providing local loops will be subject to rate regulation in most instances under the 1996 Act unless the Commission exercises the new forbearance authority contained in the Act or decides to preempt state rate regulations that disadvantage wireline carriers.<sup>7</sup> The Commission must now consider how it will exercise its forbearance and preemption authority to establish parity and ensure even handed regulation of wireline carriers and CMRS providers of fixed local loop services.

NTCA agrees that the Commission should decide issues that relate to universal service support for CMRS local loop providers in the new docket that will involve universal support. Nonetheless, the Commission should factor into its regulatory treatment decision, the 1996 Act treatment of rural areas. The

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<sup>5</sup> (In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act), GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994).

<sup>6</sup> 47 U.S.C. § 253(e).

<sup>7</sup> 47 U.S.C. § 159 requires the Commission to forbear from applying any provision of the Communications Act or from applying any of its regulations to a telecommunications carrier or carriers if it determines that the enforcement is not necessary to ensure that charges, practices, classifications or regulations are just and reasonable, and not unjustly or unreasonably discriminatory; protect consumers; and protect the public interest. 47 U.S.C. § 253 requires the Commission to preempt the enforcement of any state of local statutes, regulations or legal requirements that violate or are inconsistent with the bar prohibiting state barriers to entry.

Commission should not assume that the existing regulatory scheme for CMRS providers can be applied to their provision of fixed wireless local loop in a manner consistent with the policy goals of the 1996 Act and the concern that rural areas retain the advances of prior universal service commitments. The Act acknowledges the unique circumstances in these areas by requiring, among other things, that states make public interest findings before designating any telecommunications carrier as eligible to receive universal service support in rural areas.<sup>8</sup>

These designated carriers will be required to assume obligations of service throughout state designated service areas and of providing the services supported by federal universal service mechanisms. Furthermore, eligible carriers, including CMRS providers will not be able to "use services that are not competitive to subsidize services that are subject to competition" and presumably should be subject to new provisions that require the states and the commission to establish cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.<sup>9</sup> It is not altogether clear how a CMRS provider that is an eligible carrier will comply with this provision under a scheme of forbearance.

Current provision of quality telecommunications service in very rural areas while maintaining reasonable rates for these

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<sup>8</sup> 47 U.S.C. § 214(e)(2).

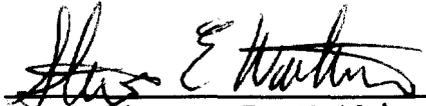
subscribers to participate in the Information Age opportunities is a fragile situation. Unbridled provision of basic service by CMRS providers in these sensitive cost and price areas could present harm to an otherwise integrated and successful result. As such, to the extent that CMRS providers will be designated "eligible telecommunications carriers" entitled to participate in any universal service support mechanisms designed to promote and maintain universal service goals, then these providers should be required to comply with an equal level of regulatory intervention as wireline carriers that are designated "eligible telecommunications carriers." Without a coordinated approach to the regulatory treatment of fixed, basic service by CMRS providers, the delicate balance of quality service at reasonable rates may be thrown into disarray.

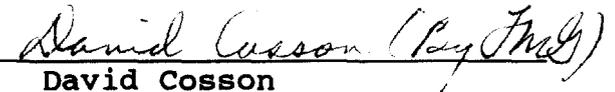
NTCA recommends an approach to the regulatory treatment of fixed service CMRS providers that would recognize the bifurcated marketplace, between rural areas and non-rural areas, as outlined in the Telecommunications Act of 1996. In view of the Act, a higher level of regulatory oversight is in order for fixed service CMRS providers in rural areas than may be appropriate elsewhere. For rural areas, the public interest in coordinated and least costly provision of service in the most rural areas would be served by making CMRS services available, either directly or as resold options, to the existing LECs serving highly challenging, high cost areas. However, regulation of those services should be competitively neutral, not favoring one technology over another.

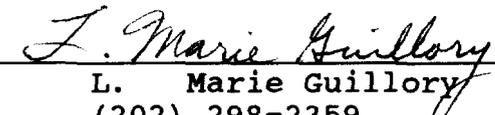
Further, overall Universal Service goals should be furthered by the regulatory scheme for CMRS provision of fixed wireless loop services.

Respectfully submitted,

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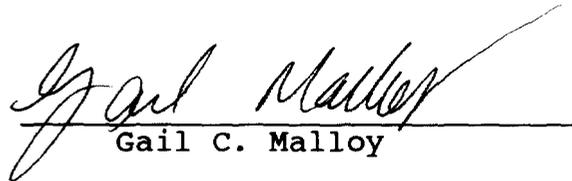
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March 1, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket 96-6 was served on this 1st day of March 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
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