

EXHIBIT A

STATEMENT OF GERALD W. BROCK

CMRS Interconnection Proceeding, CC Docket No. 95-185

March 25, 1996

I. Introduction

In previous papers submitted in this proceeding, I have argued in favor of Bill and Keep as an interim payment method for interconnection between CMRS providers and incumbent LECs. The essential points of that argument were as follows:

- (1) Because interconnection of two carriers provides benefits to the customers of both carriers and therefore enhances the value of both networks, interconnection payments should be mutual and symmetric. That is, payments per unit of traffic from network A to network B as compensation to B for terminating traffic originated by A should be the same as payments per unit of traffic from network B to network A as compensation to A for terminating traffic originated by B.
- (2) Ignoring transactions costs, the economic efficiency of interconnected networks is maximized when the payments for terminating traffic are set equal to the forward looking incremental cost of terminating that traffic.
- (3) Because the cost of telecommunication networks is primarily determined by the maximum capacity of the network, the appropriate unit for computing the incremental cost of terminating traffic is peak capacity, not minutes. Off-peak minutes impose no additional cost on the terminating carrier.

- (4) A careful study of the incremental cost of local service with digital technology showed an annual cost of approximately \$5.00 to add a minute of peak capacity to the local exchange network. Using typical California traffic patterns, that results in an average incremental cost of approximately \$.002 per minute total traffic including both peak and off peak minutes.
- (5) If traffic is balanced, symmetrical mutual compensation payments for interconnection result in zero net payments between interconnected carriers regardless of the level of charges for terminating traffic.
- (6) Even if traffic is not balanced, Bill and Keep is an efficient mechanism if the transactions costs of measuring traffic and collecting payments for the excess inbound traffic are greater than the efficiency losses created by setting terminating traffic compensation levels at zero rather than at forward looking incremental cost.
- (7) In the competitive unregulated Internet, major service providers interconnect with each other and terminate traffic originated by other providers on a Bill and Keep basis as a private business choice.

While numerous parties supported the Commission's tentative conclusion to adopt an interim Bill and Keep (BAK) proposal for CMRS interconnection, the LECs generally opposed the proposals and challenged each of the points that led to the BAK proposal. In addition, they argued that the passage of the Telecommunications Act of 1996 (TCA) after the NPRM was issued made the Commission's analysis obsolete and argued that CMRS interconnection issues should be decided in the context of the TCA implementation rulemakings. In this statement, I show that the Commission's NPRM is consistent with the TCA and respond to selected criticisms of my earlier arguments.

II. The Telecommunications Act of 1996

Numerous commenters have urged the Commission to settle the CMRS interconnection issues in the context of implementing the TCA rather than through this proceeding. Those parties urge that this proceeding be terminated and appear to assume that the provisions developed to implement the TCA will be substantially different from the provisions proposed in the CMRS NPRM. However, it is possible to adopt rules in this proceeding that advance the Commission's policy objectives with regard to CMRS carriers and that also advance the Commission's efforts to implement the TCA.

The interconnection requirements specified in the TCA include the following elements:

- (1) Negotiated interconnection arrangements among carriers;
- (2) Binding arbitration in case of failure to agree;
- (3) Payment for transport and termination based on "mutual and reciprocal recovery" of costs incurred;
- (4) Cost determined by "a reasonable approximation of the additional costs of terminating such calls."
- (5) Authorization for "the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."

In order to implement the interconnection provisions of the TCA, the Commission needs to:

- (1) Clarify the meaning of "mutual and reciprocal recovery" when carriers have disparate costs;

- (2) Clarify the standards for computing “a reasonable approximation of the additional costs of terminating such calls;”
- (3) Provide a negotiating framework that provides incentives for the parties to reach agreement.

Several parties in the CMRS proceeding have challenged the use of Bill and Keep even when traffic is balanced because the cost of terminating traffic may be different among the interconnecting carriers. When costs are equal and traffic is balanced, each party recovers its costs through BAK because the cost-based payments exactly offset each other. If costs are unequal, then BAK does not precisely allow recovery of costs by both parties. For example, assume that carrier A incurs a cost of \$5.00 per year to provide one hundred call seconds (one CCS) of peak capacity while carrier B incurs a cost of \$10.00 per year to provide one CCS of peak capacity. If each party terminates 1000 CCS for the other at the peak period, A incurs a cost of \$5,000 to provide terminating services for B while B incurs a cost of \$10,000 to provide terminating services for A. BAK (or any other system with equal payments for traffic in either direction) cannot precisely compensate both parties for the costs they incur.

Precise matching of prices to termination cost requires different prices in each direction when the termination cost differs among carriers. However, abandoning the reciprocity principle greatly complicates either a bargaining process or a regulatory process for determining interconnection compensation. If reciprocity is not required, then both parties have an incentive to argue that their costs are highest. The contracts become complex and difficult to negotiate because there is no clear focal point. It is desirable to reduce the complexity of the contracts and to simplify the bargaining process. Reciprocal

compensation provides a useful limit on the bargaining freedom that helps parties reach an agreement. The FCC should specify that “mutual and reciprocal recovery” of costs means equal payment in each direction per unit of maximum capacity required to terminate traffic.

A second point of clarification needed is the meaning of “additional cost”. That term should be clarified to mean the forward looking long run cost of providing the additional capacity needed for terminating interconnected traffic. The Commission should expedite the bargaining process by making the definitions precise, so that the parties (and the arbitrators) know what particular standard or range of standards they should be using. Interstate access charges (based on a FDC methodology with various mark-ups and subsidy loadings, rather than on incremental cost) cannot be a basis for interconnection under the TCA, and if CMRS is to be consistent with TCA standards, then CMRS rates cannot be based on access charges.

The forward looking costs should be used because they are the true incremental costs of adding capacity. Regardless of what was paid for current plant, the cost of adding capacity for providing terminating service is the cost of adding new plant, i.e. the forward looking cost. In general, that may be either above or below the embedded cost of plant. The capacity cost should be used as the basic standard because that is the way the costs are incurred. Assuming coincident peaks, the capacity cost approach solves the peak load pricing problem because an interconnecting carrier is effectively reserving and paying for a slice of capacity on a full time basis. So long as it is necessary for the terminating carrier to make the capacity available, it incurs the costs for termination based on expected traffic for which it prepares, not based on actual traffic. The capacity cost approach also

insulates the terminating carrier from the problem of investing in excess capacity that then is not utilized by the sending carrier.

As a bargaining framework, the Commission should specify that Bill and Keep (BAK) is the default solution until the parties reach a negotiated agreement. If traffic is balanced, reciprocal compensation will cause payments in each direction to be equal with no net payment to either party, and therefore BAK will provide the same result as any other payment level. If traffic is unbalanced, the carrier with excess inbound traffic at the peak traffic flows between the carriers should have the right to recover its incremental cost of providing terminating capacity. If the terminating costs per unit of capacity for the two carriers are not equal, the relevant costs are the costs of the carrier with excess inbound traffic. So long as the incremental capacity cost of the carrier with excess inbound traffic is used as the basis for determining net payments between the carriers, no carrier will be required to terminate traffic without compensation for its cost of carrying that traffic. Carriers will not receive their expected or desired monopoly rents, but they will receive compensation for the cost they incur in order to terminate traffic.

This approach simplifies the negotiating and data collection efforts. It is unnecessary for both carriers to submit data on incremental cost. Only the carrier that seeks net payments need submit data on incremental cost. The carrier that seeks net payments should have an obligation to present data on its own incremental capacity cost to the carrier from which it seeks net payments because of excess inbound traffic at the peak flow rate between the two carriers. That data becomes the basis for the net payments if both carriers agree, and becomes the basis for evaluation by the arbitrator or regulator if the parties fail to agree and seek outside resolution. This approach eliminates

the need to establish a general standard for incremental cost. Incremental cost is determined on a case by case basis by the parties involved or the arbitrator based on data related specifically to that case.

The approach outlined here is consistent with both the CMRS NPRM and with the TCA, and it answers many of the criticisms raised in LEC comments regarding the NPRM proposals. Consistent with the NPRM, this approach uses BAK as an interim measure. However, contrary to LEC fears that the interim measure will become permanent and prevent any incentive for favored companies to bargain, the procedures proposed in the TCA allow bargaining away from the initial point. Using BAK as the default arrangement until agreement is reached is more incentive compatible than using the current arrangements as the default until agreement is reached because it provides incentives for the LECs to develop their incremental cost data and other information needed to support a negotiated interconnection agreement. Generally, the incumbent LECs are opposed to BAK and the potential entrants (both wireless and wireline) are satisfied with BAK. The success of negotiations depends on good faith efforts on both sides to clarify the relevant costs and traffic patterns. The LECs are generally the ones claiming the right to net payments to them from the parties that interconnect with them. If the interim solution is more favorable to the LECs than the expected negotiated solution, then they will have an incentive to delay the development of data supporting their incremental cost claims. However, if the interim solution is less favorable to the LECs than the expected negotiated solution, they will have an incentive to speed the negotiation process. Therefore, the specification of BAK as an initial solution pending completion of negotiations provides the incentives for the party with possession of the cost data to produce it quickly and bring the

negotiations to a conclusion. If the traffic flow between the parties approaches balance, that negotiated solution may be a continuation of the interim BAK solution because net payments between the parties will disappear when the traffic is balanced.

III. Economic Efficiency of Current Arrangements Versus BAK

Several parties have asserted that the Commission's BAK proposals would be economically inefficient because they do not require an exact match of prices with cost. They then conclude that the current system is working adequately and should not be changed. They are correct that the theoretically correct pricing structure is for prices to equal long run incremental cost. However, many of the same parties that challenge BAK because it does not equal incremental cost also support the continuation of current arrangements which are much further from incremental cost. They seem unconcerned about the efficiency losses from pricing interconnection far above incremental cost but very concerned about the efficiency losses from pricing interconnection slightly below incremental cost.

The existing arrangements for LEC to CMRS interconnection provide for one-way payments far in excess of incremental cost. Such payments create inefficiency in the overall market as Jerry Hausman has explained:

To promote economic efficiency, network interconnection rates should be set at long-run incremental (marginal) costs, because interconnection is an intermediate good....

Currently, Cellular One pays NYNEX an interconnection charge when sending traffic to NYNEX. However, NYNEX does not pay a similar interconnection charge to Cellular One when NYNEX delivers a call to the Cellular One system. This lack of reciprocal pricing leads to economic inefficiency and reduced competition....

The Department should indicate its support for the principles of reciprocal compensation and interconnection based on incremental costs. It should

encourage carriers to negotiate mutually agreeable arrangements for network interconnection and compensation. Negotiated agreements are likely to encourage an economically efficient and technically flexible solution, which will benefit the customers of each carrier. If the companies involved are unable to come to an agreement, the Department should arbitrate the differences that may exist and determine reasonable terms and compensation for interconnection. (Testimony of Jerry Hausman in Massachusetts DPU case 94-185, pp. 5-7, attached to the comments of SBC Communications in this proceeding.)

Although Hausman contradicts his Massachusetts testimony with his statement on behalf of Pacific Bell in this proceeding (“it would be inappropriate regulatory policy and incorrect economics to apply interconnection set at long run incremental cost” Hausman statement attached to Pactel comments, p. 5), his Massachusetts testimony provides an explanation of the inefficiency of current arrangements and a good outline of an economically efficient long run solution to CMRS interconnection:

- (1) Reciprocal compensation;
- (2) Interconnection rates at long-run incremental cost;
- (3) Details of interconnection agreements set by negotiation among carriers with provision for binding arbitration.

I largely agree with the Hausman Massachusetts principles as a long run solution, but think that he underestimates the problems of negotiating incentives and of transactions costs. The missing critical element is an appropriate short run solution that is a reasonable approximation to the long run solution and provides good bargaining incentives. If the short run solution is the status quo, then the LECs have an incentive to delay the bargaining as long as possible, continuing the current inefficient regime that provides benefits to them. A short run prescription of Bill and Keep, on the other hand, will be closer to the economically efficient solution than the status quo, and will provide

incentives for the LECs to produce evidence for the incremental costs they incur in providing capacity to terminate CMRS traffic in order to justify moving away from BAK. Furthermore, Hausman's analysis largely ignores the transactions costs involved in measuring and billing for terminating traffic. Even without exactly balanced traffic, carriers who are required to pay reciprocal compensation may decide that it is in their best interests to adopt bill and keep voluntarily rather than incurring the transactions costs of measuring and billing for a small net payment. However, I believe that long run interconnection on a BAK basis should be a voluntary decision of the carriers involved rather than a regulatory requirement.

IV. The Internet Precedent

In previous papers submitted to the Commission, I noted that Internet Service Providers who are members of the Commercial Internet Exchange (CIX) exchange traffic on a bill and keep basis without settlements payments. Because the Internet is the only large scale public unregulated network of networks, I consider the arrangements negotiated by Internet providers to be significant evidence regarding the kinds of interconnection arrangements that would be reached by network providers without regulation or dominant firms. Several parties have challenged the factual accuracy or the policy relevance of the Internet precedent for interconnection on a BAK basis. U S West provided an extensive history and commentary on Internet interconnection issues as a response to my comments on Internet interconnection (U S West, Attachment B).

The U S West paper makes three primary points:

- (1) Not all Internet providers receive settlement-free interconnection;
- (2) The current settlement-free interconnection policies on the Internet may not survive in the future;
- (3) The Internet is different from the telephone network and interconnection procedures developed for Internet may not be applicable to the telephone network.

Neither U S West nor any other commenter in the proceeding has challenged the basic factual point in the Internet example: a large number of unregulated competitive network providers voluntarily exchange traffic without payments among the parties for terminating traffic. In the proposed BAK interconnection arrangements for CMRS carriers, it is necessary to make a clear distinction between customers and carriers. Carriers are entitled to favorable interconnection with each other because interconnection benefits all carriers and their customers. Customers pay their carrier for services provided. Under the TCA, a clear distinction between customers and carriers will be necessary to clarify which parties are entitled to the privileges of telecommunication carrier status and which parties are required to bear the burdens of telecommunication carrier status (such as potential assessment for universal service support). The Internet does not have a legal distinction between customers and carriers. However, it has that functional distinction in the varying interconnection arrangements voluntarily reached by the parties involved. Providers that resemble a telecommunication carrier are more likely to achieve interconnection arrangements on a BAK basis than providers that resemble a telecommunication customer.

Many of the objections to the Internet example consist of assertions that the current system of settlement free interconnection either cannot or should not survive.

They include predictions that the current system will collapse as the Internet expands and becomes more congested. They also include conclusions that the current settlement free interconnection arrangements should not survive because it is inefficient. The current system may not survive, but it has shown great resiliency during a time of extraordinary growth and change in the Internet. If the BAK system were as unstable as its critics suggest, it should have collapsed already because of the rapid increases in number of providers and total traffic carried over the Internet. The assertion that the current system should not survive because it is inefficient contradicts the normal presumption that competitive voluntary arrangements reach maximum efficiency. A number of sophisticated mathematical models of optimal pricing for the Internet have been developed with proposals for complex pricing plans and settlements arrangements.¹ However, those models fail to take account of the extensive transactions costs that would be required to implement complex plans. Because the current arrangements are the result of competitive processes, it is likely that they are efficient when all relevant costs are taken into account.

The third point made by the critics is that even if current Internet providers interconnect on a BAK basis, and even if the current arrangements survive, that the Internet example is irrelevant to CMRS-LEC interconnection because the Internet is very different from telephone interconnection. They note that the Internet uses packet switching while the telephone network uses circuit switching and that the Internet is unregulated while the telephone network is regulated. The distinctions drawn between the

¹ See, for example, Q. Wang, M. Sirbu, and J. Peha, "Pricing of ATM Network Services," W. Lehr and M. Weiss, "The Political Economy of Congestion Charges and Settlements in Packet Networks," and S. Shenker, D. Clark, D. Estrin, and S. Herzog, "Pricing in Computer Networks: Reshaping the Research Agenda," all in Gerald Brock and Greg Rosston, eds. The Internet and Telecommunications

Internet and the telephone network do not reduce the significance of the example. The point is to figure out what would happen in a competitive unregulated network of networks. We already know what happens in a regulated network dominated by firms with monopoly power. If the Internet were precisely identical to the current regulated telephone industry, it would provide no new information about the likely shape of a future telephone network with greatly increased competition and little or no regulation. It is precisely the differences between the Internet and the current regulated telephone network that make the example relevant.

V. The Potential for IXC Arbitrage

One objection raised to the Commission's proposal for CMRS interconnection is that it would create opportunities for arbitrage against high interstate access charges. If CMRS providers interconnect on a favorable BAK basis and IXCs are required to pay interstate access charges, there is an incentive for the IXC's to "launder" their terminating traffic through a CMRS provider. That is, IXC traffic designated for a LEC destination could be first routed through a CMRS provider and then from the CMRS provider to the LEC. In that scenario, the function played by the CMRS provider is to disguise the identity of the IXC minute (subject to access charges) and make it appear to be a minute originated by a CMRS carrier (entitled to BAK or incremental cost interconnection).

The arbitrage problem is neither new nor unique to CMRS interconnection. Potential arbitrage between high interstate access rates and low rates for equivalent service not classified as interstate access has been dealt with by the Commission many

times in the two decades since the issue was first raised by MCI's Execunet service.

There are presently a wide variety of rates for interconnection: interstate access, intrastate access, LEC-LEC interconnection, CAP-LEC interconnection, and CMRS-LEC interconnection. The different rates for physically similar services create opportunities for arbitrage. The Commission has limited arbitrage opportunities with a series of imperfect expedients such as the "Percentage of Interstate Use" (PIU) factor used to distinguish traffic charged at interstate access rates from traffic charged at intrastate access rates.

The long run solution is to move toward a more unified approach and that should be done in the context of TCA implementation and access charge reform. However, there is no possibility of eliminating the opportunities for arbitrage simply by setting a CMRS rate at any particular level. If the rate is set at the level of interstate access charges, for example, opportunities for arbitrage with interstate access traffic are eliminated, but opportunities are created for arbitrage with any other service charged at a different interconnection rate.

A simple short run solution to the potential arbitrage between CMRS-LEC interconnection rates and IXC-LEC interconnection (access) rates is to impose access rates on any traffic delivered to a LEC for termination after being received from an IXC. That is, pure transit traffic across a CMRS network (neither originated nor terminated by the CMRS carrier) would not be entitled to the Bill and Keep interconnection if it would have been subject to interstate access charges without the CMRS intermediary. The CMRS carriers could be required to report such traffic and pay access charges.

VI. Conclusion

The current system of one way payments far above incremental cost from CMRS carriers to LECs is inefficient and will become an increasing problem as the PCS systems are developed. As PCS systems are implemented, CMRS prices are likely to decline and therefore high non-symmetric interconnection charges will be a greater detriment to the efficient operation of CMRS providers in the future than at present. It is hard to see how CMRS providers could ever provide effective competition to LECs if the current level of interconnection charges is continued because the interconnection charges alone could be more than the LEC would charge for landline service.

While there are many variations in the details of proposals presented by various parties, there are only two fundamental models of interconnection at issue in this proceeding:

- (1) The Commission's NPRM, and most parties other than the LECs, support a model in which all carriers are treated symmetrically as co-carriers. Interconnection is a benefit to both parties. Payments for interconnection (if any) are symmetrical. There is a clear distinction between carriers entitled to symmetrical payments for traffic interchanged for mutual benefit and customers who pay for service received. At maximum, interconnection payments are determined by the incremental cost of providing the interconnection service. Common costs and social obligation costs are built into the prices charged final customers, not into interconnection rates. Within the supporters of this model, there are differences of opinion as to whether actual payments based on the incremental costs of interconnection should be made or whether the net payments would be so small in relationship to transactions costs that

bill and keep would be more efficient than attempting to measure and charge for net traffic flows among carriers.

- (2) The LECs generally support an interconnection model in which interconnecting carriers (including CMRS carriers) are treated as customers of the LEC. Those desiring interconnection with the LEC should pay for the privilege just as any other customer that desires service should do. There is no reason for the LEC to pay the interconnecting carrier for traffic delivered to it because that is simply customer inbound traffic. Consequently, interconnection payments would be non-symmetric and there would be a net payment from the connecting carrier to the LEC even if traffic were exactly balanced or if the connecting carrier had excess inbound traffic from the LEC. Interconnection charges are analogous to the charges for any other customer and should include the incremental cost as a minimum, but should also include mark-ups for common costs and social obligations. The degree of mark-up over interconnection charges would be determined by the elasticity of demand and other market forces computed in the same way as any other price to a final user would be computed.

The co-carrier model is the most efficient one for developing the future competitive unregulated network of networks. The co-carrier model is also the only one consistent with the Commission's NPRM in this proceeding and with the Telecommunications Act of 1996.

This proceeding can and should be completed expeditiously in a way that promotes efficiency and advances the Commission's efforts to implement the provisions of the TCA. The Commission ought to adopt bill and keep as the interim interconnection arrangement

between CMRS providers and LECs, with the interim period to end when agreements are reached through negotiation and, if necessary, arbitration. The Commission should adopt the following principles to guide the negotiations for interconnection arrangements:

- (1) Mutual and symmetric payments for traffic based on peak traffic capacity required to terminate traffic from the parties;
- (2) Net payments for interconnection determined by the long run forward looking incremental capacity cost of the carrier with excess inbound traffic;
- (3) Interconnection terms and conditions determined by negotiation among carriers, subject to the principles specified by the Commission, with opportunity for binding arbitration in case of failure to reach agreement.

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C. 20554

_____))
In the Matter of))
))
Interconnection Between Local Exchange))
Carriers and Commercial Mobile Radio Service))
Providers))
)) CC Docket No. 95-185
Equal Access and Interconnection)) CC Docket No. 95-54
Obligations Pertaining to))
Commercial Mobile Radio Service))
Providers))
_____)

AFFIDAVIT OF RAY DOMBROSKI

1. My name is Ray Dombroski, I am employed as a corporate engineer at Comcast Cellular Communications, Inc., ("Comcast Cellular") and have personal knowledge of the matters stated herein. I submit this affidavit pursuant to Section 1.16 of the Commission's rules, 47 C.F.R. § 1.16 and in support of Comcast Corporation's Reply Comments submitted to the Federal Communications Commission in Docket # 95-185.

2. I have been employed at Comcast for four years and have worked as an engineer for AWACS Inc., ("Metrophone") a subsidiary of Comcast Cellular, for ten years. In my capacity as corporate engineer I am responsible for various aspects of system design, construction, technical operations and technology planning of Comcast Cellular's operations.

3. I have participated in or have personal knowledge of several interconnection negotiations between Bell Atlantic and Metrophone during the period 1987 - 1991. In these negotiations the terms and conditions of the interconnection agreements between Metrophone and Bell Atlantic never varied.

4. All interconnection contracts referenced Bell Atlantic's Access tariffs and incorporated their terms into the interconnection agreements. Bell Atlantic has shown no willingness to vary or add additional terms or conditions to the interconnection agreements. Metrophone has been forced into contracting for Type 2A, Feature Group D interconnection for which Bell Atlantic charges Metrophone approximately \$.025 per minute for call termination.^{1/} On several occasions, Metrophone attempted to vary the terms of its interconnection arrangement with Bell Atlantic. These attempts met with little success. Metrophone requested interconnection at Bell Atlantic's Fort Washington, Pennsylvania tandem switch but was granted only limited access to this facility. Bell Atlantic limited the number of NXX codes that could be routed through the switch even though interconnection agreements generally allow all NXX codes to be routed through a tandem on a LATA wide basis. In addition, Bell Atlantic restricted Metrophone to the same terms and conditions of interconnection no matter where Metrophone requested interconnection to Bell Atlantic's network.

5. Bell Atlantic's take it or leave it negotiating position resulted in Metrophone agreeing to terms and conditions of interconnection that do not match its interconnection needs.

6. In response to Metrophone's offers to negotiate the terms of these contracts during '87-'91, Bell Atlantic engaged in dilatory tactics which delayed successful negotiations for

^{1/} The terms of this type of interconnection generally follow from Bell Atlantic's access tariff. Bell Atlantic Telephone Companies, Tariff, F.C.C. No. 1, Transmittal Nos. 777 and 837.

some 48 months. These negotiations did not vary the terms of the interconnection agreement from those found in the access tariff — Bell Atlantic's starting position.

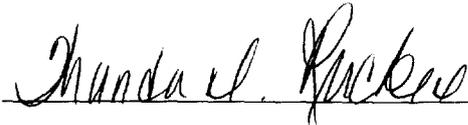
I certify under penalty of perjury that the foregoing is true and correct.



Ray Dombroski

Comcast Cellular Communications Inc.

SWORN and SUBSCRIBED TO before
me this 22ND day of March, 1996



Notary Public

My Commission expires: February 28, 1999

EXHIBIT C

THE CHANGING ROLE OF FCC JURISDICTION OVER MOBILE AND WIRELINE SERVICES

Comcast Corporation ("Comcast") submits this chart to demonstrate how the legislative developments in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act of 1993") and the Telecommunications Act of 1996 ("TCA of 1996") have changed the Communications Act of 1934 (the "Act") to vest the Commission with exclusive jurisdiction over all rates regarding LEC-to-CMRS interconnection.

<u>Statute/Case Law</u>	<u>Interstate</u>	<u>Intrastate</u>
<p>In 1914, the Supreme Court held in <i>Shreveport Rate Cases</i>^{1/} that the Interstate Commerce Commission ("ICC") had the power under the governing federal statute to order an increase in specific intrastate railroad rates charged to customers in order to avoid discrimination against interstate commerce.</p>	<p>The authority delegated by Congress to the ICC "extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance."^{2/}</p>	<p>States have no jurisdiction. The ICC has jurisdiction over intrastate railroad rates. "The powers conferred by the act are not thereby limited where interstate commerce itself is involved. This is plainly the case when the Commission finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates as maintained by a carrier subject to the act."^{3/}</p>

<p>The Communications Act of 1934 (the "Act") establishes dual regulatory framework.</p>	<p>Section 2(a) reserves to the FCC exclusive jurisdiction over interstate communications.</p>	<p>Section 2(b) reserves to the states jurisdiction over intrastate communications. When Congress was drafting the Communications Act, Section 2(b) was proposed and supported by state commissions "in reaction to what they perceived to be the evil of excessive federal regulation of intrastate service such as was sanctioned by the <i>Shreveport Rate Cases</i>["^{4/}</p>
<p>In 1964, the U.S. Court of Appeals for the D.C. Circuit ("Court of Appeals") held that a space research laboratory's local microwave communications facilities, although physically located entirely within one state, are jurisdictionally interstate when used to terminate spacecraft data communications primarily in interstate or foreign commerce.^{5/}</p>	<p>The FCC has exclusive jurisdiction over physically intrastate facilities used to terminate communications in interstate or foreign commerce.</p>	<p>States do not have jurisdiction over physically intrastate facilities used to terminate communications in interstate or foreign commerce.</p>
<p>In 1980, the Second Circuit held that the charges for intrastate, distribution of interstate foreign exchange ("FX") and common control switching arrangement ("CCSA") services are jurisdictionally interstate.^{6/}</p>	<p>The FCC has jurisdiction over all jurisdictionally interstate services: "The key to jurisdiction is the nature of the communication itself rather than the physical location of the technology."^{7/}</p>	<p>The states lack jurisdiction over physically intrastate, but jurisdictionally interstate facilities and services.</p>