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May 2, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185) and Commission Initiates Proceeding to Implement Interconnection Provisions of Telecommunications Act of 1996 (CC Docket No. 96-98).

Dear Mr. Caton:

On Wednesday, May 1, 1996, Thomas Krattenmaker, David Gross, and I, on behalf of AirTouch Communications, Inc. met with Richard Welsh, Melissa Newman, David Ellen and Stuart Kapinsky of the Common Carrier Bureau to discuss the above proceeding. Please associate the attached material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Abernathy

Kathleen Q. Abernathy

Attachments

cc: Richard Welsh
Melissa Newman
David Ellen
Stuart Kapinsky

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AirTouch Communications

LEC/CMRS Interconnection Issues

CC Docket No. 95-185
&
CC Docket No. 96-98

May 1, 1996

Important Federal Interests Require the FCC to Assert its Jurisdiction

- The Budget Act demonstrates Congressional intent to shift responsibility to the FCC for the development of a seamless, national CMRS network and this remains unchanged by the 1996 Act.

- Interconnection is a critical component of the development of this CMRS network and LECs have every incentive to charge interconnection rates that will have entry-inhibiting effects.

  - All of the evidence developed so far in CC Docket 95-185 demonstrates that CMRS providers are paying excessive rates, sometimes as high as a thousand percent above LEC incremental costs.

  - Legislative history underlying adoption of Section 332(c)(1)(B) supports conclusion that the FCC -- not the states -- was assigned authority to oversee matters related to LEC-CMRS interconnection.

  - According to H.R. Rep. No. 103-111, Section 332(c)(1)(B) was added because "interconnection serves to enhance competition and advance a seamless <u>national</u> network." (emphasis added)

CMRS Technology Requires FCC Preemption

- Preemption of state regulatory authority is warranted where interstate and intrastate components are inseverable (Louisiana Public Serv. Comm'n v. FCC).

- Record reflects there are a number of instances where CMRS and LEC networks do not have the technical capability to distinguish between interstate and intrastate calls.

  - Significant problem in multi-state markets served by a single MTSO -- can not ascertain whether calls are interstate or intrastate.

  - The number of multi-state CMRS systems served by a single MTSO will soon increase with the deployment of PCS systems designed to accommodate multi-state MTSOs.

- The inseverability doctrine applies where it would be impractical, and grossly inefficient, to construct redundant MTSOs in each state simply as means to distinguish between interstate and intrastate calls.

Budget Act of 1993

- Congress took action to place primary regulatory authority over CMRS interconnection in the hands of the FCC with specific preemption provisions set forth in section 332(c)(1)(B) and the amendment to Section 2(b).

  - Section 332(c)(1)(B) provides the FCC with authority to order interconnection requested by any CMRS provider and empowers the Commission to rely on Section 201.

  - Section 201, in turn, requires carriers such as LECs to furnish interconnection to other carriers upon reasonable request and at just and reasonable rates.

  - The second sentence of Section 332(c)(1)(B) confirms that the Commission's authority under Section 201 is unchanged by the Budget Act **except where the Commission is responding to interconnection requests by CMRS providers**; the expanded jurisdiction relates only to CMRS interconnection issues and does not affect non-CMRS telecommunications services.

Budget Act of 1993 (Cont'd)

- Budget Act revision to Section 2(b) covers <u>all</u> aspects of Section 332, not just Section 332(c)(3).
  - "Notwithstanding Sections 2(b) and 221(b)" language in Section 332(c)(3) must mean that Section 2(b)'s exclusion for all of Section 332 covers more than 332(c)(3), including LEC-CMRS interconnection.
- Section 332(c)(3)(A) preempts state rate and entry authority and is relevant because it provides for FCC preemption since high LEC-CMRS interconnection rates serve to inhibit entry.

The Telecommunications Act of 1996

A. 1993 Budget Act Authority is Undisturbed

- Question before FCC is whether the passage of the 1996 Act limits the FCC's jurisdictional authority to adopt remedial interim policies for LEC-CMRS interconnection.
- Congress legislated with respect to states' options but not with respect to jurisdiction.
- Left undisturbed the Commission's exclusive authority over matters related to interstate and intrastate LEC-CMRS interconnection.
- If Congress had wanted to rescind the Budget Act provisions dealing with CMRS interconnection it would have explicitly done so in the 1996 Act.

The Telecommunications Act of 1996 (Cont'd)

B. Complimentary Authority Granted by 1996 Act

- NPRM in CC Docket 96-98 demonstrates FCC has authority to adopt interim relief under Sections 251 and 252.
    - FCC has tentatively concluded that Section 251(d) establishes authority to adopt pricing rules to ensure that interconnection rates are just, reasonable and nondiscriminatory. (See, e.g., paras. 36, 117, 119, 134)
    - Commission also noted that rate ceilings may be appropriate approach to prevent LECs from extracting monopoly rents, and encourage entry and to promote competition. (See, e.g., para. 119)
- FCC is not questioning its authority to adopt nationwide pricing rules; instead asking whether it is appropriate to do so.

The Telecommunications Act of 1996 (Cont'd)

- FCC also tentatively concluded that some form of LRIC-based methodology should be adopted for interconnection rates but believes rate ceilings may be simpler and speedier to implement. (See, e.g., paras. 123-125, 132)

- Since FCC is empowered to adopt pricing rules under Sections 251 and 252, it could impose bill and keep on an interim basis, or some other rate ceiling based on the record already developed.

  - Some kind of "true-up" mechanism could also be incorporated to prevent any unjust enrichment.

  - This creates environment that provides incentive for LECs to cooperate with CMRS providers as the FCC works to reach a final decision in Docket 96-98.

Title I - General Provisions

Section 2 [47 USC Section 152]. Application of Act

(b) Except as provided in Sections 223 through 227, inclusive, and Section 332 and subject to the provisions of Section 301 and Title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), or another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that Sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3) and (4).

Section 3 [47 USC Section 153]. Definitions

(26) ***Local exchange carrier***.--The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under Section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.

(27) ***Mobile service***.--The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

Title II - Common Carriers

Part I - Common Carrier Regulation

Section 201 [47 USC Section 201]. Service and Charges

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful: Provided, that communications by wire or radio subject to this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: Provided further, that nothing in this Act or in any other provision of law shall be construed to prevent a common carrier subject to this Act from entering into or operating under any contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: Provided further, that nothing in this Act or in any other provision of law shall prevent a common carrier subject to this Act from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.

Part II - Development of Competitive Markets

Section 251 [47 USC Section 251]. Interconnection

(a) General Duty of Telecommunications Carriers.--Each telecommunications carrier has the duty--

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256.

(b) Obligations of All Local Exchange Carriers.--Each local exchange carrier has the following duties:

(1) Resale.--The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability.--The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity.--The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way.--The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224.

(5) Reciprocal compensation.--The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional Obligations of Incumbent Local Exchange Carriers.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate.--The duty to negotiate in good faith in accordance with Section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs *(1) through (5) of subsection (b) and this subsection. The requesting* telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) *Interconnection.--The duty to provide, for the facilities and equipment of any* requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and Section 252.

(3) Unbundled access.--The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance *with the terms and conditions of the agreement and the requirements* of this section and Section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale.--The duty--

(A) to offer for resale at wholesale rates any telecommunicatio that the carrier provides at retail to subscribers who are not telecommunications carrie

(B) not to prohibit, and not to impose unreasonable or discrim conditions or limitations on, the resale of such telecommunications service, except th commission may, consistent with regulations prescribed by the Commission under th *prohibit a reseller that obtains at wholesale rates a telecommunications service that is* retail only to a category of subscribers from offering such service to a different categ subscribers.

(5) *Notice of changes.--The duty to provide reasonable public notice* in the information necessary for the transmission and routing of services using that lc exchange carrier's facilities or networks, as well as of any other changes that would a interoperability of those facilities and networks.

(6) Collocation.--The duty to provide, on rates, terms, and conditions reasonable, and nondiscriminatory, for physical collocation of equipment necessary f interconnection or access to unbundled network elements at the premises of the local *carrier, except that the carrier may provide for virtual collocation if the local exchan* demonstrates to the State commission that physical collocation is not practical for t reasons or because of space limitations.

(d) Implementation.--

(1) In general.--Within 6 months after the date of enactment of the *Telecommunications Act of 1996, the Commission shall complete all actions necess* establish regulations to implement the requirements of this section.

(2) *Access standards.--In determining what network elements should* available for purposes of subsection (c)(3), the Commission shall consider, at a mini whether--

(A) access to such network elements as are proprietary in nat necessary; and

(B) the failure to provide access to such network elements w the ability of the telecommunications carrier seeking access to provide the services to offer.

(3) Preservation of state access regulations.--In prescribing and enfc regulations to implement the requirements of this section, the Commission shall no enforcement of any regulation, order, or policy of a State commission that--

(A) establishes access and interconnection obligations of loc carriers;

(B) is consistent with the *requirements* of this section; and

(C) does not substantially prevent implementation of the rec *this section and the purposes of this part.*

(e) Numbering Administration.--***

(f) Exemptions, Suspensions, and Modifications.-- ***

(g) Conunued Enforcement of Exchange Access and Interconnection Requ and after the date of enactment of the Telecommunications Act of 1996, each loca carrier, to the extent that it provides wireline services, shall provide exchange acce access, and exchange services for such access to interexchange carriers and inform providers in accordance with the same equal access and nondiscriminatory interco restrictions and obligations (including receipt of compensation) that apply to such date immediately preceding the date of enactment of the Telecommunications Act any court order, consent decree, or regulation, order, or policy of the Commission restrictions and obligations are explicitly superseded by regulations prescribed by Commission after such date of enactment. During the period beginning on such d enacment and until such restrictions and obligations are so superseded, such resti obligations shall be enforceable in the same manner as regulations of the Commis

(h) Definition of Incumbent Local Exchange Carrier.-- ***

(i) Savings Provision.--Nothing in this section shal to limit or otherwise affect the Commission's authority under Section 201.

Section 252 [47 USC Section 252]. Procedures For Negotiation, Arbitration, and Approval of Agreements

(a) Agreements Arrived at Through Negotiation.--

(1) Voluntary negotiations.--Upon receiving a request for interconnection, services, or network elements pursuant to Section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of Section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation.--Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements Arrived at Through Compulsory Arbitration.--

(1) arbitration.--During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner.--

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning--

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond.--A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by state commission.--

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate.--The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for Arbitration.--In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing Standards.--

(1) Interconnection and network element charges.--Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of Section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--

(A) shall be--

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic.--

(A) In general.--For the purposes of compliance by an incumbent local exchange carrier with Section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction.--This paragraph shall not be construed--

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services.--For the purp Section 251(c)(4), a State commission shall determine wholesale rates on the basis c charged to subscribers for the telecommunications service requested, excluding the p thereof attributable to any marketing, billing, collection, and other costs that will be the local exchange carrier.

(e) Approval by State Commission.--

(1) Approval required.--Any interconnection agreement adopted by n arbitration shall be submitted for approval to the State commission. A State commis which an agreement is submitted shall approve or reject the agreement, with written to any deficiencies.

(2) Grounds for rejection.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiat subsection (a) if it finds that--

(i) the agreement (or portion thereof) discriminates ag telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitratic subsection (b) if it finds that the agreement does not meet the requirements of Section including the regulations prescribed by the Commission pursuant to Section 251, or tl set forth in subsection (d) of this section.

(3) Preservation of authority.--Notwithstanding paragraph (2), but sub Section 253, nothing in this section shall prohibit a State commission from establishir enforcing other requirements of State law in its review of an agreement, including req compliance with intrastate telecommunications service quality standards or requireme

(4) Schedule for decision.--If the State commission does not act to app reject the agreement within 90 days after submission by the parties of an agreement ac negotiation under subsection (a), or within 30 days after submission by the parties of a agreement adopted by arbitration under subsection (b), the agreement shall be deemec No State court shall have jurisdiction to review the action of a State commission in ap rejecting an agreement under this section.

(5) Commission to act if state will not act.--If a State commission fails carry out its responsibility under this section in any proceeding or other matter under t then the Commission shall issue an order preempting the State commission's jurisdict proceeding or matter within 90 days after being notified (or taking notice) of such fail shall assume the responsibility of the State commission under this section with respec proceeding or matter and act for the State commission.

(6) Review of state commission actions.--In a case in which a State fai described in paragraph (5), the proceeding by the Commission under such paragraph a judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determi under this section, any party aggrieved by such determination may bring an action in a appropriate Federal district court to determine whether the agreement or statement me requirements of Section 251 and this section.

(f) Statements of Generally Available Terms.--

(1) In general.--A Bell operating company may prepare and file with a commission a statement of the terms and conditions that such company generally offe that State to comply with the requirements of Section 251 and the regulations thereunc standards applicable under this section.

(2) State commission review.--A State commission may not approve s statement unless such statement complies with subsection (d) of this section and Secti the regulations thereunder. Except as provided in Section 253, nothing in this section prohibit a State commission from establishing or enforcing other requirements of Stat review of such statement, including requiring compliance with intrastate telecommuni service quality standards or requirements.

(3) Schedule for review.--The State commission to which a statement i submitted shall, not later than 60 days after the date of such submission--

(A) complete the review of such statement under paragraph (2) any reconsideration thereof), unless the submitting carrier agrees to an extension of the such review; or

(B) permit such statement to take effect.

(4) Authority to continue review.--Paragraph (3) shall not preclude the commission from continuing to review a statement that has been permitted to take effe subparagraph (B) of such paragraph or from approving or disapproving such statement paragraph (2).

(5) Duty to negotiate not affected.--The submission or approval of a sta under this subsection shall not relieve a Bell operating company of its duty to negotiate and conditions of an agreement under Section 251.

(g) Consolidation of State Proceedings.--Where not inconsistent with the requi this Act, a State commission may, to the extent practical, consolidate proceedings unde 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commissior carrying out its responsibilities under this Act.

(h) Filing Required.--A State commission shall make a copy of each agreement under subsection (e) and each statement approved under subsection (f) available for pul inspection and copying within 10 days after the agreement or statement is approved. Tl commission may charge a reasonable and nondiscriminatory fee to the parties to the agr to the party filing the statement to cover the costs of approving and filing such agreeme statement.

(i) Availability to Other Telecommunications Carriers.--A local exchange carri make available any interconnection, service, or network element provided under an agr approved under this section to which it is a party to any other requesting telecommunica carrier upon the same terms and conditions as those provided in the agreement.

(j) Definition of Incumbent Local Exchange Carrier.--For purposes of this secti term "incumbent local exchange carrier" has the meaning provided in Section 251(h).

Title III - Provisions Relating to Radio

Part I - General Provisions

Section 332 [47 USC Section 332]. Mobile Services

(c) Regulatory Treatment of Mobile Services.

(1) Common Carrier Treatment of Commercial Mobile Services.

(A) A person engaged in the provision of service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of Title II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of Section 201, 202, or 208, and may specify any other provision only if the Commission determines that--

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

(3) State Preemption. -- (A) Notwithstanding Sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within twelve months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.