BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

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REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

The Commission should regulate all aspects of LEC-CMRS interconnection compensation under Sections 332 and 2(b) of the Communications Act, not Sections 251 and 252. Moreover, contrary to commenter assertions otherwise, the Commission should refrain from classifying CMRS carriers as LECs or ILECs for any purposes under Sections 251 and 252.

- **LEC-CMRS INTERCONNECTION SHOULD BE CONSIDERED SEPARATELY**: As CTIA stated in its Comments, legal, factual and practical considerations counsel separate treatment of LEC-CMRS interconnection compensation arrangements. Namely, Section 332, not Sections 251 and 252 should govern the LEC-CMRS interconnection compensation relationship. In addition, because LEC-CMRS interconnection is different from LEC-CLEC interconnection with regard to traffic flows and termination costs, separate Commission treatment is warranted. Finally, as a practical matter, the Commission will not enhance, and may actually impair, CMRS development if it subsumes LEC-CMRS interconnection issues into the larger Sections 251 and 252 proceeding, with its morass of as yet unresolved issues.

- **CMRS CARRIERS SHOULD NOT BE CLASSIFIED AS LECS OR ILECS FOR ANY PURPOSES UNDER SECTIONS 251 AND 252**: Contrary to the assertions of some commenters, the Commission should refrain from classifying CMRS carriers as LECs or ILECs for purposes of establishing unbundling, direct access or other requirements. The 1996 Act is clear that CMRS carriers should not be classified as LECs unless the Commission determines otherwise. There are no current market conditions which would warrant CMRS carrier classification as a LEC. Because CMRS carriers lack substantial, persistent market power, classification as an ILEC is simply unwarranted.

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REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA"), hereby submits its Reply Comments in the above-captioned proceeding.[1]

INTRODUCTION

In 1993, Congress radically transformed the regulatory environment governing CMRS carriers: Congress, among other things, (1) granted the Commission the ability to forbear from unnecessary, burdensome Title II obligations regarding CMRS carriers, (2) preempted state regulation of CMRS rates and entry, and (3) established the regulatory parameters to govern the competitive entry of CMRS into local exchange services.[2]

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[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 96-182 (released April 19, 1996) ("Notice").

[2] 47 U.S.C. § 332

In 1996, Congress has provided similar reform for the remaining telecommunications markets. That is, Congress enacted provisions regarding forbearance, state preemption, and telecommunications carrier entry into the local exchange. Integral to the ultimate success or failure of Congress' reformation efforts are Sections 251 and 252,[3] provisions which delineate the respective obligations and entitlements of telecommunications providers, local exchange carriers, ("LECs"),[4] and incumbent LECs ("ILECs") with regard to interconnection.

As CTIA explained in its comments, Sections 251 and 252 are superfluous to the debate surrounding LEC-CMRS interconnection arrangements, as Section 332 already provides the relevant regulatory parameters. Moreover, considering the factual[5] and practical[6] distinctions between LEC-CMRS and LEC-CLEC arrangements, separate treatment is fully warranted.

On reply, CTIA addresses those commenters who advocate imposing the LEC and ILEC obligations found in Sections 251 and

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[3] 47 U.S.C. §§ 251, 252.

[4] The term LEC, as used in Section 251(b), refers to competitive LECs ("CLECs").

[5] LEC-CMRS interconnection involves different traffic flows and different traffic termination costs, while LEC-CLEC termination is much more likely to involve balanced traffic flows and similar termination costs. These distinctions require independent consideration.

[6] As a practical matter, if the Commission regulates LEC-CMRS interconnection arrangements under Sections 251 and 252, instead of Section 332, CMRS development and entry into the market as a competitor to the local landline telephone provider may be hindered.

252 upon CMRS carriers.[7] Such action is entirely unwarranted. Congress specifically exempted CMRS carriers from classification as a LEC. It refrained from attaching ILEC obligations to CMRS carriers. Congress did so for a very good reason.

In enacting legislation designed to reform the CMRS market in 1993, and more recently with the passage of the 1996 Act, Congress recognized that the presence of competition, and the corresponding absence of substantial, persistent market power, is the determining factor in the level of regulatory oversight necessary. In essence, disparate regulatory treatment applied to monopolist firms vis-à-vis competitive firms is fully justified, as necessary to protect the public interest. No commenter can credibly assert that Congress failed to recognize this market power distinction. It is precisely this distinction which makes all the difference in assessing the statutory obligations which should apply to CMRS

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[7] See, e.g., COMAT, Corp. Comments (CMRS carriers effectively act like LECs; CMRS subsidiaries of ILECs act as ILECs; "ILEC" CMRS carriers should be required to unbundle; CMRS carriers should provide direct interconnection to their facilities); National Wireless Resellers Association Comments (all facilities-based CMRS carriers should be treated as LECs under Section 251(b), and some should be considered ILECs; all facilities-based CMRS carriers must interconnect with the facilities of a reseller); see also The Public Utilities Commission of Ohio Staff Comments (certain CMRS providers should be classified as LECS under Section 251(b) based upon market share, diversity of network and name recognition); Louisiana Public Service Commission Comments (some CMRS carriers should be considered LECs under Section 251(b))

I. Section 332, As Revised in 1993, Reflects Congress' Directive to Remove and to Refrain From Imposing Unnecessary, Burdensome Regulation Upon Competitive Firms.

In amending Section 332 in 1993, Congress established "uniform rules" to govern all commercial mobile service offerings "to ensure that all carriers providing such services are treated as common carriers under the Communications Act of 1934."[8] It specifically determined, however, that it was only necessary to preserve the "key principles" of common carriage such as "nondiscrimination," and to permit "minimal state regulation."[9] It permitted the Commission "authority to specify by rule which provisions of title II may not apply,"[10] and it preempted state rate and entry regulation of CMRS to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[11]

In essence, by its revision, Congress explicitly recognized that the Commission's prior regulatory efforts (in the absence of statutory reform) to address the increasing competitive nature of

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8 See House Report at 259. See also H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993) (the intent of Section 332(c)(1)(A) "is to establish a Federal regulatory framework to govern the offering of all commercial mobile services"). ("Conference Report").

9 See 139 Cong. Rec. H3287 (daily ed. May 27, 1993) (statement of Rep. Markey)

10 House Report at 260.

11 Id.

mobile services by labeling emerging mobile services carriers as "private" was creating harmful disparity.[12]

In direct response to this inherent and unintended disparity, Congress revised Section 332 to permit federal forbearance and to require state preemption so that "the disparities in the current regulatory scheme [do not] impede the continued growth and development of commercial mobile services and deny consumers the protections they need."[13]

Of course, the very disparities referred to by Congress were ones in which providers of substantially similar services, who were also similarly situated (i.e., lacking substantial market power) were subject to differing regulatory regimes. In specific recognition and affirmation of the Commission's previous (and necessarily piecemeal) efforts to remove these burdens, Congress introduced regulatory reform into the CMRS market to make explicit the Commission's implicit intentions.

In fact, and directly contrary to some commenters' assertions in this proceeding, Congress specifically authorized and required disparate federal and state regulatory treatment of

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12 In fact, under the law existing at that time, Congress found that private carriers were "permitted to offer what are essentially common carrier services . . . while retaining private carrier status. Functionally, these 'private' carriers [became] indistinguishable from common carriers but private land mobile carriers and common carriers [were] subject to inconsistent regulatory schemes [i.e., common carriers were subject to Title II plus state regulation and private carriers were subject to essentially no regulation]." House Report at 259-260 (citation omitted).

13 Id. at 260.

wireless vis-à-vis wireline local exchange service. This is the very reason why it permitted the Commission to forbear from all but Sections 201, 202 and 208 of Title II for CMRS, and the very reason why it preempted state rate and entry regulation, even in those cases where the CMRS carrier was providing functionally equivalent local exchange services in competition with the wireline incumbent.[14]

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[14] Specifically, in commenting upon the states' residual authority to regulate CMRS providers for universal service concerns, Congress noted that:

> 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. 47 U.S.C. § 332(c)(3)(A).

As the Conference Report clarifies:

> the Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service **if subscribers have no alternative means of obtaining basic telephone service.** If, however, several companies offer radio service **as a means of providing basic telephone service** in competition with each other, such that consumers can choose among alternative providers of this service, **it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means**. Conference Report at 493 (emphasis added).

These passages demonstrate that (1) Congress specifically recognized and approved wireless carriers providing "basic telephone service" in competition with wireline carriers; (2) Congress deliberately and severely limited the application of state authority in regulating CMRS provision of basic telephone service to situations in which the wireless carrier was the sole local exchange services provider in the relevant geographic market; (3) Congress specifically limited the scope of state rate regulation under these circumstances to universal service concerns, and

II. The 1996 Act, As Well, Reflects Congress' Directive to Remove and to Refrain From Imposing Unnecessary, Burdensome Regulation Upon Competitive Firms

The most cursory examination of the 1996 Act reveals Congress' intent to maintain the policies reflected in Section 332. Specifically, the interconnection and unbundling provisions of Section 251[15] recognize three distinct levels of obligations or duties to be imposed upon various telecommunications providers, entirely dependent upon their level of market power.

The general duties to interconnect (either directly or indirectly) with other telecommunications carriers and to maintain a minimum level of network compatibility[16] applies to almost all providers of telecommunications services, including LECs, incumbent LECs and CMRS providers.[17] In turn, local exchange carriers, a category from which CMRS providers are specifically excluded, have the additional obligations to provide resale, number portability, dialing parity, access to rights-of-

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nothing more; and (4) the fact that wireless carriers used a different technology, i.e. radio, to provide essentially the same basic telephone service as their wireline counterparts, did not implicate the retention of state jurisdiction. In fact, as far as Congress was concerned, this was the proper and intended outcome of its regulatory reform efforts. That is because Congress held key the relevant underlying market power of the respective parties, and not the underlying technologies they employed to provide such services in competition with each other.

15 47 U.S.C. § 251

16 Id. at § 251(a)

17 47 U.S.C. § 153(49) (expansive definition of telecommunications carrier).

way and reciprocal termination.[18] Finally, incumbent local exchange carriers have additional obligations to provide, among other things, direct interconnection, unbundled access, resale at wholesale rates, and physical collocation.[19]

It is no accident that the duties and obligations imposed upon all carriers in the interconnection provision correspondingly increase with their level of market power.

Congress specifically passed the 1996 Act as a means to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[20] It recognized that some markets, and some carriers in those markets, would need closer regulatory supervision as the transition to workable competition was made Therefore, it intentionally created a system of differential regulation based upon the ability to exercise market power.

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18 47 U.S.C. § 251(b)(1)-(5). The 1996 Act defines a local exchange carrier as "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." 47 U.S.C. § 153(44).

19 47 U.S.C. § 25 (c)(1)-(6).

20 S. Conf. Rep. No. 230, 104th Cong., 2d Sess, at 1 (1996).

Because CMRS carriers are demonstrated to lack the requisite market power,[21] there is no need to impose LEC or ILEC requirements upon them. Nor has any commenter sufficiently demonstrated such need. Without such a basis, Commission action at this time to impose LEC or ILEC obligations on CMRS carriers is simply unwarranted.

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[21] As CTIA has long advocated, only carriers with substantial, persistent market power should be subject to direct interconnection under Section 201, 47 U.S.C. § 201. See, e.g., CTIA Comments in GN Docket 93-252, at 41-42 (November 8, 1993); CTIA Reply Comments in GN Docket 93-252, at 21-22 (November 23, 1993); CTIA Comments in CC Docket 94-54, at 25-34 (September 12, 1994); CTIA Reply Comments in CC Docket 94-54, at 12-15 (October 13, 1994); CTIA Comments in CC Docket 94-54, at 3-15 (June 14, 1995); CTIA Reply Comments in CC Docket 94-54, at 3-7 (July 14, 1995). Because of the competitive nature of CMRS, the market is fully capable of determining when direct interconnection is efficient, and therefore desirable. This interpretation is also entirely consistent with the 1996 Act. See 47 U.S.C. § 251(a), (c) (telecommunications providers have a duty to interconnect with each other but they can do so indirectly via the LEC; only incumbent LECs must provide direct interconnection to their network).

CONCLUSION

For these reasons, CTIA respectfully requests that the Commission (1) regulate LEC-CMRS interconnection arrangements under Sections 332 and 2(b) of the Act and (2) refrain from classifying CMRS carriers as LECs or ILECs for any purposes under Sections 251 and 252

Respectfully Submitted,

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