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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Written Ex Parte Communication in CC Docket Nos. 95-185 and 96-98

Dear Mr. Caton:

The attached position paper was sent today to the Commission staff members listed below. Please call me if you have any questions.

Respectfully submitted,

Robert R. Cohen/KH

Robert R. Cohen

RRC/rg
cc:

Rosalind K. Allen
Rudolfo M. Baca
Karen Brinkman
James Casserly
Jackie Chorney
James R. Coltharp
Barbara Esbin
Daniel Gonzales
Daniel F. Grosh
Michelle Farquhar
Joseph Farrell
David Furth
Regina Keeney
William E. Kennard
John Nakahata
Zenji Nakazawa
Kathleen O'Brien-Ham
David R. Siddall
Peter A. Tenhula
Suzanne Toller
Suzanne Tetreault
Michael Wack
Jennifer Warren

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• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• Tel: 703-739-0300 • Fax: 703-836-1608 • Web Address: http://www.pcia.com •

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THE COMMISSION SHOULD ADOPT NATIONWIDE STANDARDS FOR CMRS-LEC INTERCONNECTION
CC DOCKET NOS. 95-185 & 96-98
JUNE 1996

The Commission should not lose sight of the fact that Sections 251 and 252 are primarily intended to open the landline local exchange market to competition through interconnection, resale, and the cost-based provision of unbundled network elements by incumbent landline local exchange carriers. On the other hand, most aspects of CMRS regulation -- including interconnection -- continue to be governed by the provisions of Section 332(c), Section 201, and Commission rulings interpreting those sections. In fact, Section 253 expressly leaves the preemption provisions of Section 332 (c)(3) intact.

- **CMRS LICENSEE INTERCONNECTION RIGHTS ARE GOVERNED BY SECTIONS 332(C) AND 201 OF THE COMMUNICATIONS ACT, AND THESE RIGHTS ARE NOT ALTERED BY NEW SECTION 251**

  - The CMRS-LEC interconnection standards are defined by Sections 332(c) and 201 of the Communications Act. Under these sections, the FCC has enunciated the following requirements:

    - The principle of mutual compensation applies.

    - LECs must establish reasonable charges for interstate interconnection provided to CMRS licensees.

    - A LEC generally may not deny a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or customer.

  - Section 251 does not alter reliance on Section 201 as the basis for LEC-CMRS interconnection.

    - Under Section 251(i), the provisions of Section 251 do not replace, limit, or supersede the mandates of Section 201.

    - Both the plain language and legislative history of Section 251 make it clear that this section was intended to provide the baseline policies to govern the transition to full competition in the wireline local exchange marketplace, *not* the CMRS marketplace.

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• **Tel:** 703-739-0300 • **Fax:** 703-836-1608 • **Web Address:** http://www.pcia.com •

- **BECAUSE PRICING OF LEC-CMRS INTERCONNECTION ARRANGEMENTS CONTINUES TO BE GOVERNED BY SECTION 201 AND NOT SECTION 251, THE FCC SHOULD PROMPTLY COMPLETE ITS CC DOCKET 95-185 PROCEEDING**

  - Under Section 332(c), Section 201, and the inseverability doctrine, the Commission has jurisdiction over both inter- and intrastate LEC-CMRS interconnection rates.

  - For broadband CMRS:

    - On an interim basis, the Commission should mandate bill and keep for all network elements from the tandem switch to the end user.

  - For messaging services:

    - The LEC should pay the full cost of the facilities connecting its switch to the CMRS provider's network.

    - Messaging operators should be entitled to recover the reasonable costs of the network facilities used in terminating calls.

- **CMRS PROVIDERS ARE NOT LOCAL EXCHANGE CARRIERS REGULATED BY SECTION 251**

  - Under Section 3(44), Congress explicitly decided *not* to classify CMRS providers as local exchange carriers unless the Commission put forth sound policy reasons for doing so.

  - CMRS carriers are regulated under Section 332(c), which is a federal regulatory plan that takes into account the unique factors relevant to CMRS.

  - There are numerous factual distinctions between CMRS and local exchange service, including:

    - CMRS at present does not serve as a substitute for landline local exchange service.

    - CMRS carriers cannot exert market power.

- CMRS uses a rapidly evolving family of technologies.

- **CMRS PROVIDERS ARE NOT INCUMBENT LOCAL EXCHANGE CARRIERS REGULATED BY SECTION 251**

  - Under Section 251(h)(1), "incumbent local exchange carriers" must have provided "telephone exchange service" in a given area, and must have been a member of the "exchange carrier association pursuant to section 69.601(b) of the Commission's rules" on the date of the Act's enactment.

    - *No* CMRS carrier met these qualifications on the date of the Act's enactment.