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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Building The Wireless Future™

CTIA

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July 5, 1996

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

Ex Parte Contact: **CC Docket No. 95-185** (Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers) and **CC Docket No. 96-98** (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Mr. Caton:

On Friday, July 5, 1996, Mr. Robert F. Roche, Director for Research, CTIA, sent the attached documents to Edward Krachmer, Common Carrier Bureau, Competitive Pricing Division, regarding the above-referenced dockets.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter are being filed with your office.

If there are any questions in this regard, please contact the undersigned.

Sincerely,

Robert F. Roche

Attachments

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

July 2, 1996

Ms. Michele Farquhar
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Re: **CC Docket No. 95-185** (Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers) and **CC Docket No. 96-98** (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Michele:

Per your request, I have attached two CTIA documents which summarize recently concluded interconnection agreements and the current or proposed state policies with respect to such agreements. With one exception, the agreement between Ameritech and Southwestern Bell Mobile Systems, the summarized interconnection agreements are between local exchange carriers (LECs) and competitive LECs (or CLECs).[1] The one-page document lists the states and their current or proposed approach to interconnection. The three-page document provides another perspective on the same information, summarizing the terms of specific LEC interconnection agreements. The attached information shows that:

1. Some states have sanctioned "bill and keep;"
2. Other states have proposed "bill and keep;"
3. Some states have approved or proposed "reciprocal compensation;"
4. Some states have not reviewed interconnection agreements; and
5. The listed interconnection rates are all substantially lower than previous rates.

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[1] The one LEC-CMRS agreement (between Ameritech and Southwestern Bell Mobile Systems) that has been reviewed by state authorities was discussed in the June 7, 1996 letter of Thomas E. Wheeler, CTIA, to Chairman Hundt, FCC.

Significant variation exists among the states which have addressed interconnection, and so far only one state has addressed interconnection between a LEC and a wireless carrier. In fact, Connecticut and New York have advised CMRS carriers that they must submit themselves to state authority over CMRS pricing and entry as a *quid pro quo* for receiving interconnection rates equal to those granted to CLECs.

Because of the multistate character of wireless service areas, by design in the case of PCS and in response to consumer needs in the case of cellular, a uniform, national policy with respect to LEC-CMRS interconnection is needed. To surrender this important matter to state authority will only invite state interest in regulating CMRS rates and entry and result in conflicting state policies which will impede the ability of wireless carriers to compete with the local telephone monopoly.

Please contact me if you have any questions regarding the attached information.

Sincerely,

Randall S. Coleman

Attachments

STATES CURRENTLY SANCTIONING "BILL AND KEEP"
OREGON
CALIFORNIA
MICHIGAN
STATES PROPOSING "BILL AND KEEP"
WYOMING
ARIZONA
COLORADO
OHIO
OREGON
VIRGINIA
TEXAS
WASHINGTON
STATES CURRENTLY SANCTIONING RECIPROCAL COMPENSATION
MARYLAND
CALIFORNIA
OHIO
VIRGINIA
KENTUCKY
TENNESSEE
MISSISSIPPI
LOUISIANA
ALABAMA
GEORGIA
NORTH CAROLINA
SOUTH CAROLINA
FLORIDA
ILLINOIS
STATES PROPOSING RECIPROCAL COMPENSATION
OKLAHOMA

Interconnection Agreements

Local Exchange Carrier(LEC)	Commercial Mobile Radio Service(CMRS) Provider	Terms	States Covered	Rate (per minute)
Ameritech	Southwestern Bell Mobile Systems dba Cellular One	• Reciprocal Compensation	• Illinois	0.5¢ after a 3 year transition, but rate is available immediately for CLEC's.

Local Exchange Carrier(LEC)	Competetive Local Exchange Carrier(CLEC)	Terms	States Covered	Rate (per minute)
U S WEST	Electric Lightwave Inc. (ELI)	• "Bill and Keep" for 24 months per Oregon PUC decision	• Oregon (Portland)	"Bill and Keep"
Pacific Bell	ICG Access Services, Inc.	• "Bill and Keep" per California PUC decision	• California	"Bill and Keep"
GTE	Teleport Communications Group, Inc. (TCG)	• "Bill and Keep" per California PUC decision	• California	"Bill and Keep"
Ameritech	City Signal, Inc.	• "Bill and Keep" unless there is a traffic imbalance greater than 5% per Michigan PSC decision	• Michigan	"Bill and Keep"

Local Exchange Carrier(LEC)	Competetive Local Exchange Carrier(CLEC)	Terms	States Covered	Rate (per minute)
Bell Atlantic - MD	Metropolitan Fiber Systems (MFS), Inc. - MD	• Reciprocal Compensation	• Maryland	BA-MD pays: • 0.3¢ MFSI-MD pays: • 0.3¢ at BA-MD's end offices • 0.5¢ at BA-MD's tandems
Pacific Bell	MFS Intelenet	• Reciprocal Compensaton • Unbundled access to Bell loops • Interim numbering portability	• California	0.75¢
Ameritech	ICG Telecom Group (subsidiary of IntelCom Group)	• Reciprocal Compensation • ICG allowed to buy unbundled local loop services from Ameritech • ICG access to Ameritech's poles and opreator services	• Ohio	0.9¢
Bell Atlantic	Jones Intercable, Inc.	• Calls exchanged directly between networks • Higher charge if either company must transport the call • Number portability for $3 per month	• Virginia	• 0.7¢ for calls directly exchanged • 0.9¢ if either company must transport call

Local Exchange Carrier(LEC)	Competetive Local Exchange Carrier(CLEC)	Terms	States Covered	Rate (per minute)
Ameritech	MFS Communications	• Reciprocal Local Call Termination • Physical interconnection at any "techinally feasible point" • MFS access to Ameritech poles, ducts, and rights-of-way • MFS customers access to "911", and operator services (including Ameritech white pages listing)	• Illinois • Michigan • Wisconsin • Indiana • Ohio	0.9¢
BellSouth	Time Warner Communications	• Reciprocal Compensation • Deal caps compensation at 5% of the traffic differential to prevent either company from severe financial exposure • Non-descriminatory rates, terms and conditions for local interconnection • Interim number portability • Access to unbundled network elements	• Kentucky • Tennessee • Mississippi • Louisiana • Alabama • Georgia • North Carolina • South Carolina • Florida	1¢
BellSouth	MCImetro	• Terminating Compensation • Interim number portability • "911" Access • Directory listings • Exchange of "800" traffic	• Georgia • Alabama • Florida • North Carolina • Tennessee	GA: 1¢ AL: 1 ¢ FL: 1.1 ¢ NC: 1.3¢ TN: 1.9¢

Local Exchange Carrier(LEC)	Competetive Local Exchange Carrier(CLEC)	Terms	States Covered	Rate (per minute)
BellSouth	• Sprint Metro • Continental • Intermedia • Teleport	• Reciprocal Compensaton • Deal caps compensation at 5% of the traffic differential to prevent either company from severe financial exposure • Interim Number Portability	• Florida	1.052 ¢
GTE	Intermedia	• Reciprocal Compensation • Interim Number Portability	• Florida	1.11136¢

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Randall S. Coleman
Vice President for
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June 28, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: **CC Docket No. 95-185** (Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers) and **CC Docket No. 96-98** (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Mr. Chairman:

The attached CTIA White Paper, "Telecommunications Competition: In the Midst of Plenty, It's Under Attack", highlights the harm to consumers and competition resulting from the current state of compensation arrangements for LEC-CMRS interconnection, and the hazards of FCC surrender of jurisdiction over these compensation arrangements to state regulatory authorities. Wireless services, by their nature, do not recognize political boundaries, and their service areas are multistate by FCC-design. It is imperative that regulatory authority over interconnection, the key component to the ability of wireless services to compete with local telephone monopolies, remain squarely within the federal sphere.

CTIA urges you to consider the attached information as you approach the important legal and policy decisions in the referenced proceedings.

Sincerely,

Randall S. Coleman

Attachment

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LEC-CMRS Interconnection WHITE PAPER No. 1
First Series

TELECOMMUNICATIONS COMPETITION: IN THE MIDST OF PLENTY, IT'S UNDER ATTACK

June 28, 1996

TELECOMMUNICATIONS COMPETITION: IN THE MIDST OF PLENTY, IT'S UNDER ATTACK

Everyone recognizes the value of competition. Congress, consumers, business users, investors, and wireless service providers recognize that competition generates affordable and innovative products and services to meet consumer needs. The ability of wireless telecommunications carriers to offer such competition is being systematically undermined by those with whom wireless carriers would compete as well as the same public service commissions which should be encouraging such competition.

A HISTORY OF IGNORING PRO-COMPETITIVE POLICIES

For 12 years, the local exchange carriers (LECs) have ignored the FCC's co-carrier policy for wireless providers -- refusing to compensate cellular companies for terminating calls originating on the landline networks. At the same time, these same LECs have insisted upon collecting precisely such charges for terminating calls originating on wireless networks. In some instances, the LECs have extracted from wireless carriers and customers surcharges ranging as high as 16 cents a minute. Even **the average per minute LEC termination charge --3 cents a minute -- is <u>fifteen times</u> the actual cost of terminating this traffic.**[1]

The FCC has repeatedly ruled that wireless-LEC interconnection relationships are carrier-to-carrier relationships, and has emphasized that "we will judge the appropriateness of the given arrangement using as a guide the existing compensation agreements of connecting BOCs and [independent LECs]."[2] Those agreements generally create a <u>mutual obligation</u> to terminate the other's traffic <u>at no charge</u> (called "bill and keep"). During the ten years prior to passage of the Telecommunications Act of 1996, the LECs never lived up to this co-carrier treatment of wireless providers, the states never held them to that standard, and the FCC did not enforce its policy position.

THE STATES RULE ON CLECS BUT IGNORE WIRELESS

The state PUCs and the District of Columbia have not helped address the anti-competitive interconnection arrangements imposed on wireless carriers by wireline carriers. Even the states that are adopting pro-competitive telecommunications policies are limiting their reach to new <u>wired</u> (or fiber-based) companies. These "competitive LECs" or "alternative LECs" (CLECs or ALECs) are benefiting from the recognition that interconnection produces benefits for both new entrants and incumbent LECs (ILECs).

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[1]Reply Comments of TRACER, CC Docket No. 95-185, filed March 22, 1996, at p.11

[2]*Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* No. CL-379, 63 RR 2d (P&F) 7, 22 at para 49 (1987), aff'd and clarified on recon., 4 FCC Rcd. 2369 (1989). *See also Report and Order, Cellular Communications Systems,* CC Docket No. 79-318, 86 FCC 2d 469, 496 (1981), *recon.*, 89 FCC 2d 56 (1982); *FCC Policy Statement on Interconnection of Cellular Systems,* 59 RR (P&F) 2d 1276 (1986).

As a result, these policymakers are conducting proceedings that establish or encourage reciprocal compensation by CLECs and ILECs for the termination of traffic originating on each others' networks, and at much lower interconnection rates -- either bill and keep, or a fraction of current interconnection charges applied to Commercial Mobile Radio Service (CMRS) providers.

States Adopting Bill and Keep	States Proposing Bill and Keep
California	Arizona
Connecticut	Colorado
Michigan	
Ohio	
Oregon	
Texas	
Virginia	
Washington	

Notably, in 17 states these proceedings have produced or approved rates for CLEC and ILEC interconnection that average less than one-third of the average rates LECs charge CMRS providers, and are reciprocal. And in eight states, with over 90 million inhabitants, the state PUCs or legislatures have implemented policies of "mutual traffic exchange," or reciprocal termination, in which the effective rate paid by both CLECs and ILECs for terminating local traffic is zero.

YET EVEN THESE PRO-COMPETITIVE STATES HAVE IGNORED LEC-CMRS INTERCONNECTION -- SOMETIMES TELLING WIRELESS CARRIERS THEY HAVE NO JURISDICTION

By limiting themselves to adopting rules for LECs that only address CLECs (and lower their interconnection costs), these PUCs are putting wireless competitors at a marked disadvantage. Wireless pays an average of 3 cents per minute to interconnect with a LEC, while in every state which has recently acted, CLECs pay less, or pay nothing.

In Connecticut, for instance, the state DPUC argues that it cannot regulate LEC-CMRS interconnection because the 1993 amendments to the Communications Act made regulation of wireless entirely an FCC responsibility, and removed state authority.[3] The wireless industry does not fault such an interpretation -- but it means that the FCC MUST fill this regulatory void.

MOVEMENT BY THE STATES TO RE-REGULATE WIRELESS

In its decision not to regulate LEC-CMRS interconnection, the Connecticut DPUC telegraphed its real intentions. In its order providing for initial bill and keep, and possible later mutual cash compensation, for CLECs and ILECs, the DPUC refused to

[3] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002(b) (OBRA).

extend similar treatment to wireless carriers -- unless they filed for state certification as CLECs -- and agreed to submit to the entire range of state regulations (rate tariffing, entry certification, annual filing requirements, etc.) that Congress and the FCC preempted (and the courts agreed) as unnecessary and burdensome.[4] The DPUC declared that:

> In the absence of authority to impose local service obligations and responsibilities on wireless carriers, the Department will not authorize mutual compensation between SNET and such carriers. Unless and until a wireless carrier seeks certification in Connecticut as a CLEC, such wireless carrier is limited to the mutual compensation provided for by federal law and the rules and regulations of the FCC, i.e., compensation for interstate traffic.[5]

Even when wireless providers and LECs are able to reach agreements on compensation arrangements, and recognize that the proper jurisdiction for these agreements is federal, the states have stepped in to assert control. Ameritech and Southwestern Bell Mobile Systems reached a mutual compensation agreement in March 1996, which they recognized as "not entered into pursuant to a request for interconnection under Section 251(c)(2) of the Telecommunications Act of 1996 . . . and [which] does not require approval by a state commission under Section 252(3) of the Act."[6] But, under pressure from the Illinois Commerce Commission, the two parties to the agreement deleted their stipulation as to federal jurisdiction, and were forced to submit the revised agreement to the state commission for approval.[7]

If the FCC does not exert its federal authority it puts the CMRS carriers in a Catch-22 situation. They can accept the unacceptable status quo, or they can "voluntarily" submit themselves to re-regulation by the states.

STATE INACTION CAUSES LOSS OF IMMEDIATE CONSUMER BENEFITS

There's a bitter irony in this -- the state agencies that are supposed to advance competition are adopting policies with the opposite result. The District of Columbia and states like Connecticut have used their authority to establish regulations that discriminate against carriers, disregarding the consumer interest in innovative and affordable wireless services.

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[4]*See e.g., Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order,* 10 FCC Rcd. 7025, at 7055-7057 (1995), *aff'd sub nom.* CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL v. F.C.C., Docket No. 95-4108, (2d Cir. March 22, 1996).

[5]*Decision*, DPUC Investigation into Wireless Mutual Compensation Plans, Docket No. 95-04-04, September 22, 1995, at p.16 (Connecticut Decision).

[6]Agreement Between Ameritech and SOUTHWESTERN BELL MOBILE SYSTEMS for Mutual Compensation for Local Calling in Illinois, March 22, 1996, at Section 7.1

[7]*See* Letter from Thomas E. Wheeler, CTIA, to the Honorable Reed E. Hundt, FCC, June 7, 1996, at p.3.

While alternative wireline competition will develop over time -- wireless is here now. In most states, CLECs still have to build out their systems and begin to develop a broad customer base. In contrast, wireless carriers already have substantial systems in place and rapidly expanding numbers of subscribers. Indeed, over 13% of the American public now uses wireless service.[8]

The Consumer Federation of America has noted that the institution of bill and keep nationally would produce an annual savings to wireless customers in the range of $1 billion. And it would speed the day when wireless can compete head-to-head with local wireline telephone service.

The need for federal wireless policy was reinforced on June 25 when the mayor of the District of Columbia vetoed a measure that would have opened the city's $350 million local telephone market to competition. Amazingly, the mayor's rationale for the veto was his desire to give the local Public Service Commission more power to regulate the business activities of its new competitors. The misguided actions of the Mayor and the actions of some state PUCs send a clear signal that when left alone, the District of Columbia and some states will thwart the intent of Congress to create competitive telecommunication markets.

WIRELESS SERVICES ARE FUNDAMENTALLY INTERSTATE SERVICES -- WHICH STATE REGULATION THREATENS TO UNDERMINE

By their very nature, wireless telecommunications are interstate. Radio waves do not recognize political boundaries, wireless carriers operate across state boundaries, and wireless markets are interstate in nature -- both by design (with respect to PCS) and by evolution in response to consumer needs (with respect to cellular). Over 90% of the American public lives in PCS MTA license areas which are multistate. The re-insertion of state regulation into wireless-LEC relationships risks destroying the vision of a nationwide telecommunications policy dedicated to promoting consumers' interests through competition -- a vision that was at the heart of the 1993 Communications Act Amendments and that was not changed by the Telecommunications Act of 1996.

The new PCS competitors have announced their intention to offer seamless service over multistate regions. They have been particularly critical of the impact differing state PUC interconnection rules and pricing would have on their businesses, particularly their marketing, on top of the long delays they would face if forced into the state interconnection process: private negotiations with LECs, appeal to state PUCs, and final appeal to US courts.[9]

Congress specifically preempted state regulation of wireless in 1993, which it perceived as threatening to undermine competition. Between 1994 and 1995, the FCC

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[8] See U.S. Wireless Industry Survey Results: More Than 9.6 Million Customers Added in 1995, CTIA Release, March 25, 1996.

[9] Public Statement of Daniel Riker, CEO, Pocket Communications, June 25, 1996.

conducted seven proceedings examining evidence submitted to it by the states and by wireless service providers, and concluded that the states had not demonstrated that their regulation of wireless were necessary to protect the consumer interest.[10] But the regulatory impulse -- or the regulators' desire for a place in the sun -- is hard to restrain. Connecticut's retaliation against wireless providers is an example of this.

In implementing Congress' mandate, the FCC concluded that: "Success in the marketplace . . . should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumers' needs -- and not by strategies in the regulatory arena."[11] But the FCC and the states may force wireless carriers to return to the regulatory arena, where the regulators -- and not consumers -- will make the decision of who can compete in the marketplace or will perish in the hearing room.

THE FCC HAS JURISDICTION OVER WIRELESS SERVICES -- IT MUST NOT DROP THE BALL

Congress has established a solid and separate basis for FCC jurisdiction over wireless carriers and wireless services, predicated upon the differences between those services and traditional landline telephone services and their fundamental technologies.

Based on its plenary jurisdiction under Section 332, which was not repealed or amended by the Telecommunications Act of 1996, the FCC made a strong proposal on CMRS-LEC interconnection in December of 1995. Faced with a firestorm of LEC lobbying, the state PUCs have switched gears and claimed that they should and do have jurisdiction over wireless-LEC interconnection. And the FCC is reportedly rethinking its position as well.

It is understandable that one group of regulators will be sensitive to the interests of another group of regulators. But "turf" is not a sound basis for public policy, and an unwise and unnecessary surrender of FCC jurisdiction over wireless telecommunications to the states would be disastrous, not only for the wireless industry, but for all telecommunications consumers.

The state commissions have already demonstrated their unwillingness to implement national policy, even with guidance from the FCC. The FCC's interconnection policies already state that wireless carriers are entitled to mutual compensation with LECs. It made these rulings in 1981, 1986, 1989 and 1994.[12] But it has never effectively enforced

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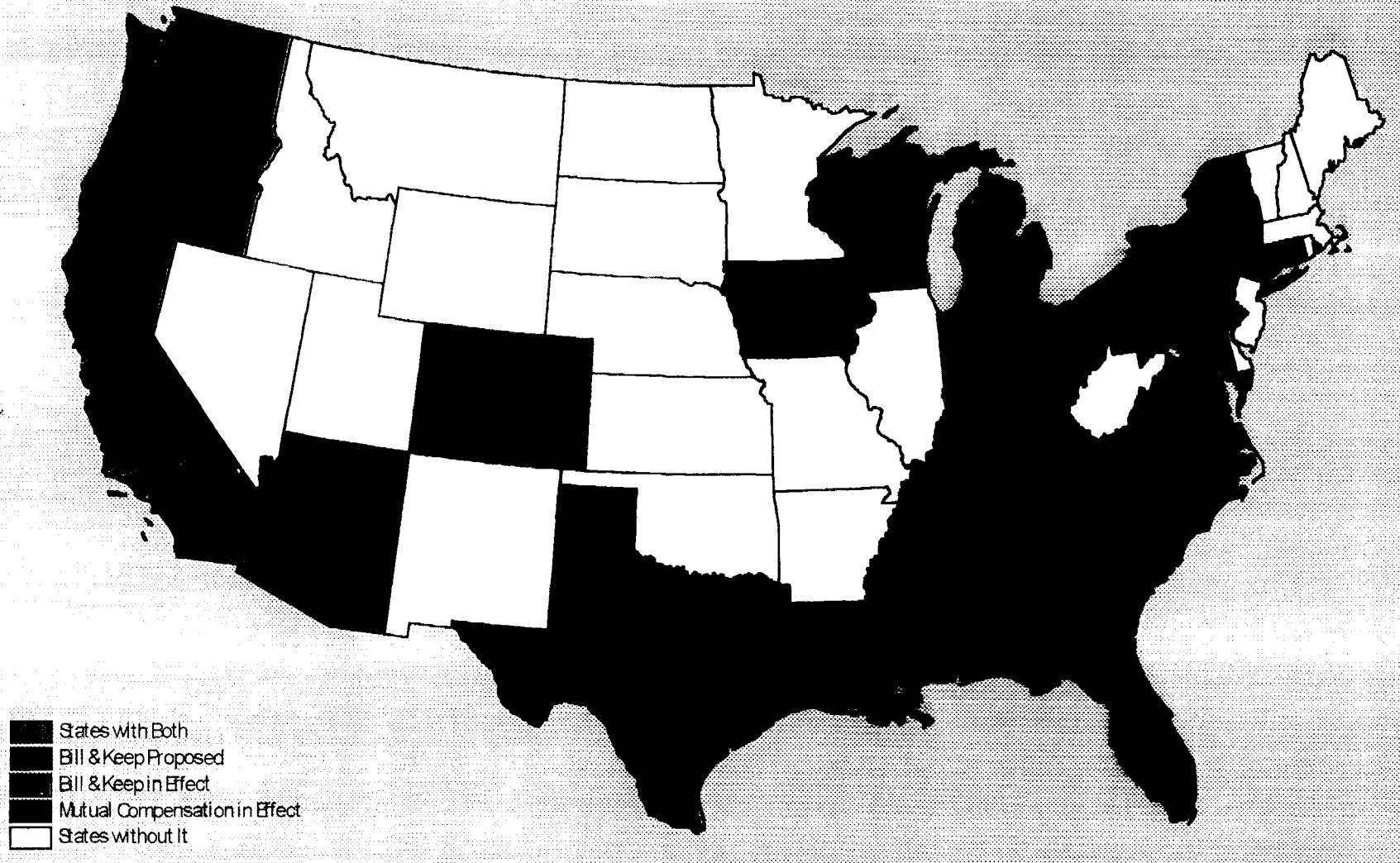
[10] *See e.g., Report and Order,* 10 FCC Rcd. 7025, at 7055-7057 (1995).

[11] 9 FCC Rcd. 1411, at 1420 (1994).

[12] *See Report and Order, Cellular Communications Systems,* CC Docket No. 79-318, 86 FCC 2d 469, 496 (1981), *recon.*, 89 FCC 2d 56 (1982); *FCC Policy Statement on Interconnection of Cellular Systems,* 59 RR (P&F) 2d 1276 (1986);.*Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* No. CL-379, 63 RR 2d (P&F) 7, 22 at para 49 (1987), *aff'd and clarified on recon.*, 4 FCC Rcd. 2369 (1989); *CMRS Second Report and Order, In the Matter of*

this policy, and the states have never complied with it. A toothless restatement of that policy -- or a outright surrender of jurisdiction to the states -- is fruitless. It is essential that the FCC assert federal jurisdiction, recognizing the interstate nature of wireless services.

At their best, state policies are all over the map. In fact, the attached map shows that state regulators have made the map of the US a patchwork of inconsistent regulations. How will consumers -- and how will providers -- be able to reconcile the impact of dissimilar rate regulations across their multistate wireless service areas? The FCC alone can establish a uniform national policy for the wireless industry and wireless consumers. That policy may ultimately mirror (or be mirrored by) the rules and timetables governing wireline services, but it is and must be based on the entirely separate legal authority the FCC has under Section 332 of the Communications Act and it must establish federal authority as the final arbiter.

Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd. 1411, 1499 para. 232 (1994).

Where CLECs Enjoy Reciprocal Treatment Via Mutual Compensation or Mutual Traffic Exchange