

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL



Cathleen A. Massey
Vice President - External Affairs

AT&T Wireless Services, Inc.
Fourth Floor
1150 Connecticut Ave. NW
Washington, DC 20036
202 223-9222
FAX 202 223-9095
PORTABLE 202 957-7451

July 2, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Mail Stop Code 1170
Washington, D.C. 20544

RECEIVED

JUL 2 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Ex Parte Presentation
CC Docket No. 95-185; GN Docket No. 93-252

Dear Mr. Caton:

Pursuant to the requirements of Sections 1.1200 et seq. of the Commission's Rules, this is to notify you that the attached memorandum was delivered today to Michele Farquhar, Karen Brinkmann, Jay Markley and Dan Grosh of the Wireless Telecommunications Bureau urging the Commission to act on the Petition for Clarification of AT&T Wireless (formerly named McCaw Cellular Communications, Inc.) in Docket No. 93-252, filed May 19, 1994, and restate its long-standing policies applying the principles of mutual compensation and non-discriminatory charges to intrastate LEC-to-CMRS interconnection.

Should there be any questions regarding this matter, please contact the undersigned.

Sincerely,


Cathleen A. Massey

cc: Meeting Participants

AT&T WIRELESS SERVICES, INC.

THE FCC SHOULD CONFIRM IMMEDIATELY THAT LECs ARE OBLIGATED TO PROVIDE MUTUAL COMPENSATION AND NONDISCRIMINATORY CHARGES FOR BOTH INTRASTATE AND INTERSTATE WIRELESS INTERCONNECTION

Ten years ago the Commission ordered local exchange carriers ("LECs") to interconnect with CMRS providers through negotiated arrangements.^{1/} In 1987, one year later, the Commission explicitly clarified that mutual compensation is imperative to its reasonable interconnection standard.^{2/} The Commission determined that reciprocal payments were necessary because both LECs and cellular systems must be able to recover their costs of termination.^{3/} In addition, the Commission stated that if LEC charges for interconnection services "effectively preclude interconnection," the Commission would assert its jurisdiction over state rate matters.^{4/}

With the enactment of Section 332(c) in 1993, Congress confirmed the FCC's plenary jurisdiction over interconnection between providers of commercial mobile radio services ("CMRS") and LECs. In deliberately choosing a federal regulatory framework for CMRS, Congress exempted wireless services from the dual federal and state regime originally established to govern the provision of telecommunications services.^{5/} Given this congressional grant of jurisdiction, the Commission extended its interconnection requirements for cellular carriers to all CMRS providers.^{6/} The Commission reiterated that mutual

^{1/} Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 RR 2d 1275, 1283 (1986) ("Policy Statement"), clarified, Declaratory Ruling, 2 FCC Rcd 2910 (1987) ("Interconnection Order"), aff'd on recon., 4 FCC Rcd 2369 (1989).

^{2/} Interconnection Order, 2 FCC Rcd at 2915; see also 47 C.F.R. § 20.11(b) (requiring mutual compensation for LEC-to-cellular interconnection).

^{3/} Id.

^{4/} Id. at 2912.

^{5/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

^{6/} See Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994) ("CMRS Second Report").

compensation is an essential component of any reasonable interconnection standard.^{7/} Although the FCC declined to preempt state jurisdiction over LEC intrastate interconnection rates, the agency restated its 1987 commitment to intervene on state rate matters if LEC charges effectively preclude interconnection and thereby "negate the federal decision to permit interconnection."^{8/}

State Interconnection Policies Discriminate Against Wireless Carriers

Recent actions by some states that erect barriers to mutual compensation and non-discriminatory interconnection rates for CMRS providers demonstrate the need for the Commission to move promptly to assert its plenary jurisdiction over LEC-to-CMRS interconnection. These barriers undermine the Commission's requirement that LECs provide "reasonable and fair interconnection" for all commercial mobile services.^{9/}

In Connecticut, for example, the Department of Public Utility Control ("DPUC") expressly prohibits the local telephone company from entering into reciprocal compensation agreements with wireless carriers.^{10/} Significantly, the DPUC justifies its decision to deny wireless carriers mutual compensation on the state's inability to impose local service obligations on such providers.^{11/} The mutual compensation rules adopted by the California PUC ("CPUC") do not explicitly exclude wireless carriers, but they condition eligibility for

^{7/} Id. Recognizing that states and LECs have consistently ignored these federal policy objectives, the Commission released a notice of proposed rulemaking earlier this year proposing to adopt "bill and keep" as an interim compensation mechanism. Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers: Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185, FCC No. 95-505 (rel. Jan. 11, 1996). Shortly thereafter, Congress enacted the Telecommunications Act of 1996, which requires the Commission to promulgate national rules governing interconnection between incumbent LECs and new entrants for both interstate and intrastate services. See Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) ("1996 Act"). Both the LEC-to-CMRS docket and the proceeding implementing the interconnection provisions of the 1996 Act remain pending. The Commission need not await the outcome of these proceedings to confirm that states and LECs are required to comply with the principles of mutual compensation and nondiscriminatory interconnection rates because the 1996 Act clearly does not empower the states to impose entry barriers or otherwise act contrary to the goals and policies of Section 332(c).

^{8/} Id. at 1497.

^{9/} Interconnection Order, 2 FCC Rcd at 2910 (the Commission has the authority to preempt state rate regulation if it interferes with federal interconnection policies).

^{10/} State of Connecticut Department of Public Utility Control, DPUC Investigation into Wireless Mutual Compensation Plans, Docket No. 95-04-04, Decision, September 22, 1995.

^{11/} Id. at 15, 16.

such compensation on certification as a competitive local carrier.^{12/} The CPUC has granted such certification to wireline carriers that submit to its extensive entry and rate regulation, including, among other things, tariff and contract filing, prior notification of rate changes, and approval before discontinuing service.^{13/}

In addition to the lack of mutual compensation, states regularly permit LECs to charge wireless carriers significantly higher rates than competitive LECs ("CLECs") for intrastate interconnection. In New York, for instance, CLECs pay less than a penny per minute for intrastate interconnection. Wireless providers, by contrast, pay an average of 2.6 cents per minute. To assert the right to intercarrier compensation at the rates given to other carriers, a wireless provider must be certified to provide local exchange service.^{14/}

The absurd situation in which CMRS providers find themselves today is highlighted by recent CLEC offers to provide AT&T Wireless Services, Inc. ("AT&T") with interconnection services at a markup over the preferential rates CLECs receive from LECs. These offers demonstrate that CLECs are taking exactly the same interconnection service from LECs that CMRS providers require. The fact that the rates offered by CLECs to AT&T remain lower than those AT&T can get directly from LECs, even taking into account the arbitrage price charged by the CLECs, demonstrates that the prices wireless carriers are required to pay LECs for interconnection are blatantly discriminatory.

These State Actions Violate Federal Interconnection Policies and Regulatory Goals

While many of the state certification requirements are inapposite to the type of service provided by wireless carriers, almost all state commissions have made clear that mutual compensation and nondiscriminatory rates will not be forthcoming without compliance. Conditioning mutual compensation and reasonable interconnection charges on a wireless carrier's relinquishment of other federally conferred rights, such as the freedom from state

^{12/} California Public Utilities Commission, Competition for Local Exchange Service, D.95-07-054, R.95-04-043, I.95-04-044, at 15, 35 (July 24, 1995).

^{13/} *Id.* at 35-36. The CPUC recognizes that it is preempted from regulating entry and rates of CMRS providers. It nonetheless appears to require wireless providers to meet the entry and rate eligibility criteria for mutual compensation. *Id.* at 15.

^{14/} New York State Department of Public Service, Opinion and Order Adopting Regulatory Framework, Case 94-C-0095, at 22-23 (May 22, 1996). Certification, in turn, requires carriers to file tariffs and provide a number of services, such as 911 access and Lifeline service, as well as contribute to the statewide relay access system and comply with the NYPSA's Open Network Architecture principles and service quality standards. *Id.* at 22-23. See also New York State Department of Public Service, Order Instituting Framework for Directory Listings, Interconnection and Intercarrier Compensation, Case 94-C-0095 (September 27, 1995).

entry and rate regulation, constitutes an unlawful barrier to the effective provision of wireless services, in violation of Section 332(c)(3)'s preemption of state entry regulation.

These state actions undermine the congressional objective set forth in Section 332(c) of ensuring a consistent and coherent national regulatory regime that fosters the growth and development of mobile services. Congress recognized that CMRS is different from other services in that it "operate[s] without regard to state lines."^{15/} CMRS calls that begin as intrastate calls may become interstate because of the mobile nature of CMRS traffic. Also, the nationwide roaming capability offered by many CMRS providers sometimes results in interstate calls appearing to be intrastate.^{16/} Congress thus intended that the CMRS marketplace operate with a minimum of regulatory interference, whether federal or state. Policies, such as those adopted by Connecticut, California, and New York, effectively allow states to dismantle the regulatory framework carefully crafted by Congress and the FCC by holding hostage essential elements of interconnection until CMRS providers submit to state jurisdiction.

Although the FCC initially chose not to preempt state regulation of the rates for intrastate LEC-to-CMRS interconnection, it has now become clear that state-imposed conditions on nondiscriminatory, mutual compensation for interconnection interferes impermissibly with the congressional objective of creating a national regulatory framework for the provision of wireless services. The discriminatory LEC charges described above have no basis whatsoever in the costs of providing interconnection services and flow directly from state policies disfavoring CMRS. Accordingly, the Commission should restate its policy that the principles of mutual compensation and nondiscrimination apply to all interconnection rates and preempt state policies that would force CMRS providers to choose

^{15/} Budget Act House Report at 260.

^{16/} For instance, a cellular telephone purchased from a system in Washington, D.C. would have a 202 area code, which would not change when the cellular customer was roaming. When a landline caller within the 202 area code calls the roaming cellular customer, neither the caller nor the LEC switch that routes the landline customer's call can discern where the cellular customer is located. What appears to be an intrastate call to the LEC switch may be interstate if the cellular customer is roaming outside the Washington, D.C. area. Similarly, it is not always possible to tell the jurisdiction of a call when a roaming cellular subscriber calls a landline customer. For example, the subscriber might have a cellular phone with a New Jersey 201 area code and use it to call from his car in New York to his home in New Jersey. The CMRS and LEC switches would not know that this was an interstate call.

between reasonable interconnection charges and the statutorily-conferred freedom from entry and rate regulation.^{17/}

F1/54563.1

^{17/} Specifically with regard to mutual compensation, AT&T has previously asked the FCC to clarify that the principle applies to intrastate interconnection arrangements. See Petition for Clarification of McCaw Cellular Communications, Inc., Docket No. 93-252, at 6-7, filed May 19, 1994. Through prompt action on AT&T's pending petition for clarification, the Commission can ensure that the wireless industry has an equal opportunity to grow, and that the competitive national marketplace Congress envisioned has a chance to develop.