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Communications

July 5, 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 Friday, July 5, 1996, Brian Fontes of CTIA, Jon Chambers of Sprint Telecommunications Venture, Leonard Kennedy of Comcast Cellular Communications, Inc. and I, on behalf of AirTouch Communications, Inc., met with Regina Keeney, Chief of the Common Carrier Bureau and the following staff, Lawrence Atlas, Kathy Franco, Richard Metzger, and Greg Rosston, to discuss the above proceedings. Please associate the attached material with the above-referenced proceedings.

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 Q. Abernathy

cc: Regina Keeney
Lawrence Atlas
Kathy Franco
Richard Metzger
Greg Rosston

AirTouch Communications

LEC/CMRS Interconnection Issues

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

June 28, 1996

Important Federal Interests Require the Commission to Assert its Jurisdiction

- The Budget Act demonstrates Congressional intent to shift responsibility to the Federal Communications Commission 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 LEC's 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.

  - Section 20.11 (b) (1) requires LEC's to pay "reasonable compensation" to CMRS providers for LEC originating traffic terminated by the CMRS provider, yet mutual compensation is virtually nonexistent.

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

- According to H.R. Rep. No. 103111, Section 332(c)(1)(b) was added because "interconnection serves to enhance competition and advance a seamless <u>national</u> network." (emphasis added)

The Telecommunications Act of 1996

- NPRM in CC Docket 96-98 demonstrates Federal Communications Commission has authority to adopt pricing rules under Sections 251 and 252.
    - Federal Communications Commission 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 LEC's from extracting monopoly rents, and encourage entry and to promote competition. (See, e.g., para. 199)
- Federal Communications Commission is not questioning its authority to adopt nationwide pricing rules; instead asking whether it is appropriate to do so.
- Federal Communications Commission also tentatively concluded that some form of LIRC-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)

Need for Interim Relief

- Existing interconnection agreements do not provide for mutual compensation and result in excessively high interconnection rates.

- If Federal Communications Commission order is released in August and interconnection negotiations commence under the terms set forth in Section 252 of the Communications Act, existing rates will likely remain in effect for an additional nine months.

- In order to avoid delay and eliminate current rule violations,The Commission should provide for immediate interim relief in its August decision.

  - The Commission can order that all interconnection payments between LECs and CMRS providers cease until a new rate is negotiated pursuant to new pricing guidelines and the requirements set forth in Section 252.

  - Once parties negotiate a new interconnection rate it would be retroactive to August and a "true-up" can occur so that both parties are made whole.

- Under this scenario the LECs have an incentive to cooperate with CMRS providers in the negotiation process.

  - Absent interim relief the LECs will continue to delay the negotiation process since they alone benefit from the status quo.

(c) Any provider of private land mobile service before August 10, 1993 (including any system expansions, modifications, or acquisitions of additional licenses in the same service, even if authorized after this date), and any private paging service utilizing frequencies allocated as of January 1, 1993, that meet the definition of commercial mobile radio service, shall, except for purposes of §20.5 (applicable August 10, 1993 for the providers listed in this paragraph), be treated as private mobile radio service until August 10, 1996. After this date, these entities will be treated as commercial mobile radio service providers regulated under this part.

§20.10 Who may sign applications. - See Part 1 of this chapter, §1.743, for practices and procedures governing signatures on license applications.

Historical Note

Section added by order (DA 95-805) released April 12, 1995 and effective upon publication in the Federal Register. For Order see 77 RR 2d

§20.11 Interconnection to facilities of local exchange carriers. - *(a)* A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable. Complaints against carriers under Section 208 of the Communications Act, 47 USC §208, alleging a violation of this section shall follow the requirements of §§1.711-1.734 of this chapter, 47 CFR §§1.711-1.734.

(b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.

(1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

(2) A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

SECOND REPORT AND ORDER

Adopted: February 3, 1994; **Released:** March 7, 1994

By the Commission: Commissioner Barrett issuing a statement.

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at this time, state regulation of the rates LECs charge for PCS interconnection.[468] In addition, several parties support the Commission's proposal to require LECs to tariff rates for PCS interconnection.[469]

b. Discussion

227. The *Notice* refers to the right of mobile service providers, particularly PCS providers, to interconnect with LEC facilities. The "right of interconnection" to which the *Notice* refers is the right that flows from the common carrier obligation of LECs "to establish physical connections with other carriers" under Section 201 of the Act.[470] The new provisions of Section 332 do not augment or otherwise affect this obligation of interconnection.

228. Previously, the Commission has required local exchange carriers to provide the type of interconnection reasonably requested by all Part 22 licenses.[471] In the case of cellular carriers, the Commission found that separate interconnection arrangements for interstate and intrastate services are not feasible. Therefore, we concluded that the Commission has plenary jurisdiction over the physical plant used in the interconnection of cellular carriers and we preempted state regulation of interconnection. We found, however, that a LEC's rates for interconnection are severable because the underlying costs of interconnection are segregable. Therefore, we declined to preempt state regulation of a LEC's rates for interconnection. The Commission recognized, however, that the charge for the intrastate component of interconnection may be so high as to effectively preclude interconnection. This would negate the federal decision to permit interconnection, thus potentially warranting our preemption of some aspects of particular intrastate charges.[472]

229. The Commission has allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers. We required these negotiations to be conducted in good faith. The Commission stated, "we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection."[473] We also preempted any state regulation of the good faith negotiation of the terms and conditions of interconnection between LECs and cellular carriers. The *Notice*, however, requested comment on whether we should require LECs to file tariffs specifying interconnection rates for PCS providers.

230. We see no distinction between a LEC's obligation to offer interconnection to Part 22 licensees and all other CMRS providers, including PCS providers. Therefore, the Commission will require LECs to provide reasonable and fair interconnection for all commercial

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[468] MCI Comments at 9; *see also* CTP Comments at 2 (contending that the Commission does not need to preempt the rate setting of a settlements process as long as the same process is used for independent telephone companies); Nevada Reply Comments at 1-3 (Commission preemption is neither necessary nor permissible). *But see* Pagemart Comments at 20 (urging preemption).

[469] Cox Comments at 5-6; CTP Comments at 1-2; Pagemart Comments at 19; *see also* Comcast Comments at 11-12 (urging the Commission to order LECs to submit sufficient information, such as intrastate interconnection tariffs and all contracts for interconnection and for billing and collection). *But see* Pacific Comments at 20 (opposing a federal tariff requirement).

[470] 47 U.S.C. § 201.

[471] *Interconnection Order*, 2 FCC Rcd at 2913.

[472] *Id.* at 2912.

[473] *Id.* at 2916.

mobile radio services. The Commission finds it is in the public interest to require LECs t provide the type of interconnection reasonably requested by all CMRS providers. Th Commission further finds that separate interconnection arrangements for interstate and intrastat commercial mobile radio services are not feasible (*i.e.*, intrastate and interstate interconnectio in this context is inseverable) and that state regulation of the right and type of interconnectio would negate the important federal purpose of ensuring CMRS interconnection to the interstat network. Therefore, we preempt state and local regulations of the kind of interconnection t which CMRS providers are entitled.[474]

231. With regard to the issue of LEC intrastate interconnection rates, we continue t believe that LEC costs associated with the provision of interconnection for interstate an intrastate cellular services are segregable,[475] and, therefore, we will not preempt state regulation of LEC intrastate interconnection rates applicable to cellular carriers at this time. With regard to paging operations, PageNet and Pagemart argue that we should preempt state regulation of LEC rates charged to paging carriers for interconnection because LEC costs associated with such interconnection are not jurisdictionally segregable.[476] We do not find the arguments presented by PageNet and Pagemart to be persuasive, in light of the fact that our Part 22 Rules already have been applied to LEC interconnection rates for common carrier paging companies, as well as cellular companies, without any complaints.

232. In providing reasonable interconnection to CMRS providers, LECs shall be subject to the following requirements. First, the principle of mutual compensation shall apply, under which LECs shall compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities. Commercial mobile radio service providers, as well, shall be required to provide such compensation to LECs in connection with mobile-originated traffic terminating on LEC facilities. This requirement is in keeping with actions we already have taken with regard to Part 22 providers.[477]

233. Second, we require that LECs shall establish reasonable charges for interstate interconnection provided to commercial mobile radio service licensees. These charges should not vary from charges established by LECs for interconnection provided to other mobile radio service providers. In a complaint proceeding, under Section 208 of the Act, if a complainant shows that a LEC is charging different rates for the same type of interconnection, then the LEC shall bear the burden of demonstrating that any variance in such charges does not constitute an unreasonable discrimination in violation of Section 202(a) of the Act.

234. Third, in determining the type of interconnection that is reasonable for a commercial mobile radio service system, the LEC shall not have authority to deny to a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or other customer, unless the LEC meets its burden of demonstrating that the provision of such interconnection arrangement to the requesting commercial mobile radio service provider either is not technically feasible or is not economically reasonable.

235. Although we requested comment on whether LECs should tariff interconnection rates for PCS providers only, our experience with cellular interconnection issues and our review

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[474] *See Louisiana PSC*, 476 U.S. at 375 n.4; Maryland Pub. Serv. Comm'n v. FCC, 909 F.2d 1510 (D.C. Cir. 1990); California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Illinois Bell Tel. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); *NARUC II*; *Texas PUC*; *NCUC I*; *NCUC II*.

[475] *See Interconnection Order*, 2 FCC Rcd at 2912.

[476] PageNet Comments at 28 n.75; Pagemart Comments at 12.

[477] *See Interconnection Order*, 2 FCC Rcd at 2915.

of the comments have convinced us that our current system of individually negotiated contracts between LECs and Part 22 providers warrants review and possible revision.[478] We believe that commercial mobile radio service interconnection with the public switched network will be an essential component in the successful establishment and growth of CMRS offerings. From the perspective of customers, the ubiquity of such interconnection arrangements will help facilitate the universal deployment of diverse commercial mobile radio services. From a competitive perspective, the LECs' provision of interconnection to CMRS licensees at reasonable rates, and on reasonable terms and conditions, will ensure that LEC commercial mobile radio service affiliates do not receive any unfair competitive advantage over other providers in the CMRS marketplace. Therefore, we intend to issue a Notice of Proposed Rule Making requesting comment on whether we should require LECs to tariff all interconnection rates.[479]

236. Although we requested comment on whether to impose equal access obligations on PCS providers, the Budget Act does not require us to make such a determination within any statutory deadline. Because this issue also arises in a pending petition for rule making filed by MCI[480] regarding equal access obligations for cellular service providers, we believe it is more efficient to defer any final decision in this area and to address these issues in the context of the MCI petition.

237. The *Notice* also requested comment on whether we should require CMRS providers to provide interconnection to other carriers. As commenters point out, our analysis of this issue must acknowledge that CMRS providers do not have control over bottleneck facilities. In addition, we note that the relatively few complaints the Commission has received concerning cellular carriers' denial of interconnection have involved allegations that cellular carriers refused to allow resellers to interconnect their own facilities with those of cellular carriers under reasonable or non-discriminatory terms and conditions.[481] This situation may change as more competitors enter the CMRS marketplace. In particular, PCS providers may wish to interconnect with cellular facilities, or vice versa, which could also allow for the advantages of interconnecting with a LEC. Also, we do not wish to encourage a situation where most commercial traffic must go through a LEC in order for a subscriber to send a message to a subscriber of another commercial mobile radio service. Because the comments on this issue are so conflicting and the complexities of the issue warrant further examination in the record, we have decided to explore this issue in a Notice of Inquiry. This proceeding will address many of the related issues raised by commenters. For example, MCI raises the issue of whether CMRS providers' interconnection obligations include providing access to mobile location data bases, and providing routing

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[478] *See, e.g.*, Comcast Comments at 6-10; Cox Comments at 2-4; GCI Comments at 4-5; MCI Comments at 3; Rig Comments at 6 & n.3.

[479] This *Notice* may also request comment on whether we should mandate specific tariff rate elements and, if so, how these rate elements should be structured, or whether we should apply alternative requirements on LECs that would ensure reasonable interconnection charges for CMRS providers.

[480] MCI Telecommunications Corp., Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, RM-8012, filed June 2, 1992. We note that the federal court having jurisdiction over the Modification of Final Judgment in the Bell System divestiture proceeding may be asked to determine whether equal access obligations attach to GTE's or the Bell Operating Companies' offering of PCS.

[481] *See, e.g.*, Continental Mobile Tel. Co. v. Chicago SMSA Limited Partnership, File No. E-92-02 (filed Oct. 9, 1991); Cellnet Communications, Inc. v. Detroit SMSA Limited Partnership, File No. 91-95 (filed Mar. 6, 1991).

information to interexchange carriers and other carriers.[482] We agree, however, with commenters who say that the statutory language is clear, that if we do require interconnection by all CMRS providers, the statute preempts state regulation of interconnection rates of CMRS providers.[483]

238. The Notice of Inquiry will also allow the Commission to explore the issue of resale of commercial mobile radio service. NCRA raises the issue of CMRS providers' interconnection obligations to resellers. Several commenters also question whether the Commission should require CMRS providers to allow facilities-based competitors to resell their services. The Commission has a long history of dealing with issues relating to resellers.[484] Our policy has been to prohibit wireline common carriers and cellular carriers from denying service to resellers.[485] In the case of cellular, however, the Commission has allowed a cellular carrier to deny resale to its facilities-based competitor in the same market after that competitor's five-year fill-in period has expired.[486] The Commission reasoned that requiring resale to a facilities-based competitor would discourage cellular licensees from building out their own systems.[487] While these issues are pending before us, we will continue our resale policy with respect to cellular CMRS providers. Our Notice of Inquiry will explore whether we should require all CMRS licensees to provide resale to those who are non-facilities based competitors in the licensees' service area as well as to facilities-based competitors that have held licenses less than five years.

239. In addition, we requested comments on whether we should require local exchange carriers to interconnect with PMRS licensees. Although Section 201(a) of the Act provides the Commission with explicit jurisdiction to require carriers to "establish physical connections with other carriers," and there is no similar provision for interconnection with non-carriers, this does not preclude the Commission's ability to create a right to interconnection for PMRS licensees.[488] In this regard, we conclude that if a complainant shows that a common carrier provides interconnection to CMRS licensees while denying interconnection of the same type and at the same rate to PMRS licensees, the carrier will bear the burden of establishing why this would not constitute denial of a reasonable request for service in violation of Section 201(a),

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[482] *See* MCI Comments at 10. We note that these issues are being explored for dominant carriers in the Commission's Intelligent Network proceeding. *See* Intelligent Networks, CC Docket No. 91-346, Notice of Proposed Rule Making, 8 FCC Rcd 6813 (1993).

[483] Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3).

[484] *E.g.*, Resale and Shared Use of Common Carriers Services and Facilities, Docket No. 20097, Report and Order, 60 FCC 2d 261 (1976), *modified on other grounds*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, CC Docket No. 80-54, Report and Order, 83 FCC 2d 167 (1980); Cellular Communications Systems, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469 (1981), *modified*, 89 FCC 2d 58 (1982), *further modified*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

[485] See Commission decisions cited in note 484, *supra*.

[486] Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006 (1992).

[487] *Id.* at 4007-08.

[488] *See, e.g.*, *Texas PUC*, 886 F.2d 1325, 1327-35 (D.C.Cir. 1989); Fort Mill Tel. Co. v. FCC, 719 F.2d 89, 92 (4th Cir. 1983); *NCUC I*, 537 F.2d at 794-795; Hush-A-Phone Corp. v. United States, 238 F.2d 266, 269 (D.C.Cir. 1956); AT&T, 71 FCC 2d 1, 10-11 (1979).

establishment of an unreasonable condition of service in violation of Section 201(b), and unreasonable discrimination in violation of Section 202(a).[489] We also note that if a service classified as PMRS is provided for profit and made available to the public, interconnection would bring the service within the definition of a CMRS because the definition of interconnected service includes "service for which a request for interconnection is pending pursuant to subsection (c)(1)(B)."[490]

2. *State Petitions To Extend Rate Regulation Authority*

a. Background and Pleadings

240. The statute preempts state and local rate and entry regulation of all commercial mobile radio services, effective August 10, 1994.[491] Under Section 332(c)(3)(B), however, any state that has rate regulation in effect as of June 1, 1993, may petition the Commission to extend that authority based on a showing that (1) "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 (2) "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."[492]

241. Section 332(c)(3)(B) of the revised statute further provides that the Commission must complete all actions on such petitions, including reconsideration, within 12 months of submission. Under Section 332(c)(3)(A) of the revised statute, states may also petition the Commission to initiate rate regulation, based on the criteria noted above, if no such rate regulation has been in effect in the state involved.[493] If the Commission authorizes state rate regulation under either procedure, interested parties may, after a "reasonable time," petition the Commission to suspend the regulations.[494] In the *Notice* we indicated that we intended to establish procedures for the filing of such petitions by the states and interested parties, and we sought comments on what factors should be considered in establishing such procedures.

242. Most of the commenters point out that Section 332(c)(3)(A) is clear as to the congressional intent to preempt State and local rate and entry regulation of commercial mobile

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[489] *See* Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rule Making, 7 FCC Rcd 7369, 7472-73 (1992), *appeal pending sub nom.* Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992), *recon.*, 8 FCC Rcd 127 (1992), *further recon.*, 8 FCC Rcd 7341 (1993), Second Report and Order and Third Notice of Proposed Rule Making, 8 FCC Rcd 7374 (1993). We note that the Commission may not forbear regarding the requirements of Sections 201, 202, and 208 of the Act. *See* Communications Act, § 332(c)(1)(A), 47 U.S.C. § 332(c)(1)(A).

[490] Communications Act, § 332(d)(2), 47 U.S.C. § 332(d)(2).

[491] Budget Act, § 6002(c)(2)(A).

[492] Communications Act, § 332(c)(3)(A)-(B), 47 U.S.C. § 332(c)(3)(A)-(B). States must file such petitions prior to August 10, 1994. Communications Act, § 332(c)(3)(B), 47 U.S.C. § 332(c)(3)(B).

[493] Communications Act, § 332(c)(3)(A), 47 U.S.C. § 332(c)(3)(A). The Commission must allow public comment on any such petition and must grant or deny the petition within nine months of submission.

[494] The Commission must allow public comment on any such petition and grant or deny the petition in whole or in part within nine months of the date of submission. Communications Act, § 332(c)(3)(B), 47 U.S.C. § 332(c)(3)(B).