

EX PARTE OR LATE FILED



Building The
Wireless Future™

July 18, 1996

CTIA

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Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re **Ex Parte Presentation**
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 Thursday, July 18, 1996, the attached CTIA White Paper, "WHY HAVE SOME REGULATORS PREJUDGED -- AND DISMISSED -- WIRELESS COMPETITION?" with the accompanying cover letter, were delivered to FCC Chairman Reed E. Hundt, Commissioner James H. Quello, Commissioner Susan Ness, Commissioner Rachelle B. Chong and the Commission employees listed below:

Rosalind Allen	Laurence Atlas	Rudolfo Baca
Lauren Belvin	Nancy Boocker	Karen Brinkmann
James Casserly	Jackie Chorney	John Cimko
James Coltharp	David Ellen	Michelle Farquhar
Joseph Farrell	David Furth	Donald Gips
Pamela Greer	Daniel Grosh	Michael Hamra
Regina Keeney	William Kennard	Linda Kinney
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John Nakahata	Robert Pepper	Dan Phythyon
Gregory Rosstor	David Siddall	David Solomon
D'Wana Speight	Peter Tenhula	Suzanne Toller
Michael Wack	Jennifer Warren	Stanley Wiggins
Christopher Wright		

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Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachment are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,



Robert F. Roche

Attachments



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Randall S. Coleman
Vice President for
Regulatory Policy and Law

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554-0101

Re: Ex Parte Presentation
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, "WHY HAVE SOME REGULATORS PREJUDGED -- AND DISMISSED -- WIRELESS COMPETITION?" makes three essential points:

1. Some state regulators dismiss the possibility of LEC-CMRS competition, and therefore refuse to extend to CMRS providers the same co-carrier status and rights enjoyed by LECs and CLECs.
2. Such refusals constitute a prejudgment of the viability of LEC-CMRS competition, and threaten to become a self-fulfilling prophecy, to the misfortune of consumers deprived of the benefits of competition.
3. Congress has directed that competition be tested in the marketplace, and such a national policy requires FCC action to insure that this policy is not foreclosed by inconsistent state regulations that effectively deprive consumers of the wireless option.

Neither turf issues nor prejudgments as to which providers or technologies may ultimately win in the marketplace justify depriving consumers of choice, nor do they justify the imposition of discriminatory and excessive interconnection rates. Regulatory parity, and the consumer interest it is intended to serve, demands FCC action.

Sincerely,

Randall S. Coleman

Attachment



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LEC-CMRS Interconnection WHITE PAPER No. 5 First Series

WHY HAVE SOME REGULATORS PREJUDGED -- AND DISMISSED -- WIRELESS COMPETITION?

July 18, 1996

WHY HAVE SOME REGULATORS PREJUDGED -- AND DISMISSED -- WIRELESS COMPETITION?

It's an open secret that some regulators don't believe that the FCC should act to support wireless competition with the local telephone companies. Even though the Telecommunications Act of 1996 states that it is national policy to favor competition throughout the telecommunications industry, these regulators would like to ignore the fact that the Act doesn't grant the FCC the authority to selectively disregard this Congressional mandate.

Specifically, these regulators dismiss the possibility of wireless competition with local telephone companies, and therefore deny that the FCC should entertain any proposals which promote parity between wired and wireless providers. Just as they refused to live up to the FCC's decade-old policy of co-carrier status for wireless service providers, they have concluded that the mandates of the Omnibus Budget Reconciliation Act of 1993 and the Telecommunications Act of 1996 simply are not warranted. Rather than implement the broad principles of parity and reciprocity both implicit and explicit in these policy statements, they seem to call for a policy of technological discrimination that, in effect, reduces customer choice and preserves a LEC monopoly.

A PRO-MONOPOLY CONCLUSION IS SELF-FULFILLING

This not only ignores the mandate of Congress, it puts the cart before the horse. It is a conclusory judgment and a self-fulfilling proposition. The effect of such a conclusion and the policy that grows from it is protectionism for the existing LEC industry at consumers' expense. Ironically, LEC representatives have mischaracterized this protectionism as warranted to prevent an "unfair" advantage for wireless -- ignoring the fact that wired systems have acted in ways that flout the FCC's co-carrier policy, and that wireless carriers' reciprocal termination proposals are predicated upon establishing parity between wired and wireless systems by applying identical practices reciprocally.

The premature conclusion that LEC-wireless competition is impossible echoes another premature conclusion made by the FCC twenty-two years ago. At that time, the FCC concluded that cellular should be a LEC-owned monopoly because: "a cellular system is technically complex, expensive, and requires a large amount of spectrum to make it economically viable," and "as these systems will require extensive interconnection with the wireline telephone system, and nation-wide compatibility is desirable, . . . only wireline carriers should be licensed to operate them." *Second Report and Order, Land Mobile Services*, 46 FCC 2d 753, 760 (1974).

Upon reconsideration, the FCC took note of the argument of Airsignal International that:

this policy is unwise, because it effectively vests another monopoly . . . and . . . is not supported by the evidence, because it turns on the (unfounded) assumption that no other entity possesses the necessary resources, financial and otherwise, to proceed with cellular systems even on a limited developmental basis. Airsignal points out that if the Commission's factual conclusion is correct, then our policy conclusion is unnecessary, and concludes that, separately or as a member of a consortium, it would be willing and able to test and develop a cellular system in a fair competitive market.

Memorandum Opinion and Order, 51 FCC 2d 945, 953 (1975).

CONGRESS HAS DECREED: LET COMPETITION BE TESTED IN THE MARKETPLACE

Here, too, some regulators are making an unnecessary and unjustified leap of faith. If competition in the local loop is not feasible in some circumstances or in some areas, then the marketplace is where this will be demonstrated. A pre-determination that such competition is not feasible, used to justify inaction on the part of the FCC, will simply foreclose the market test of this proposition, to the ongoing advantage of the incumbent carriers. This foreclosure is inconsistent with the mandate of the Telecommunications Act that competition be fostered throughout the telecommunications industry.

If competition is infeasible in some markets, under some circumstances, the marketplace is the appropriate place for such a determination to be made. Regulatory policy should not presume to foreclose such a test -- or "protect" would-be competitors from the prospect of failure. If the conclusion is correct, the marketplace will prove it. If the conclusion is incorrect, a policy predicated upon it will simply deny the benefits of competition to consumers.

The Existing LEC-Wireless Regime is Intolerably Flawed

Likewise, the proposition that the existing wireless-LEC arrangements are adequate and equitable and consistent with the pro-competitive intent of Congress is unsupported, and indeed is insupportable.

First, the existing arrangements reflect the market power of the incumbent LECs, and are not cost-justified.

Second, the existing arrangements constitute a unilateral, unequal, non-reciprocal, and non-compensatory regime predicated upon perpetuating a continuing market advantage to the incumbent LECs.

Third, the existing arrangements thereby deny the co-carrier status of wireless service providers, and fail to fulfill the mandate of the FCC expressed in the *Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 63 RR 2d (P&F) 7, 22 (1987), *aff'd and clarified on recon.*, 4 FCC Rcd. 2369 (1989).

As the Washington Utilities and Transportation Commission observed last October, in adopting reciprocal termination principles for local competition:

That bill and keep is a fair compensation method is evident from the fact that it is the dominant current practice between adjacent LECs around the country . . . for terminating local (EAS) [Extended Area Service] traffic between adjacent exchanges. Where there is no gain to be achieved from anticompetitive or inefficient behavior, companies have elected bill and keep because of its inherent simplicity and efficiencies. As Dr. Zepp stated: 'This intercompany compensation method has been used . . . to establish intercompany compensation between local co-carriers who are neighbors. It is just as appropriate for local co-carriers who are competitors.'

Washington Utilities and Transportation Commission, et al v. US WEST Communications, Inc., Docket Nos. UT-941464, UT-941465, UT-950146 and UT-950265, October 31, 1995, at 36. *aff'd sub nom US WEST Communications, Inc. v. Washington Util. & Transportation Comm'n*, Case No. 96-2-00177-5 SEA (Wash. Sup. Ct. King County, adopted January 23, 1996).

But even states which have recognized the merits of reciprocal termination for competitive carriers have applied it narrowly to CLECs. Apparently failing to recognize that competition policy should be technologically neutral, states such as Connecticut and Washington have refused to extend this equitable policy to CMRS providers.

TURF DOESN'T JUSTIFY UNDERCUTTING COMPETITION

Why then do these regulators oppose the FCC taking steps to help create a level playing field for wireless LEC competition? Simply put, some regulators cannot bring themselves to admit that the public interest can be or was served by their surrendering authority over CMRS providers. But turf considerations are not a sound basis for public policy.

Other regulators cannot bring themselves to concede that competition can provide more efficient incentives and produce more efficient results than regulatory processes. Accustomed to substituting their judgments for those of system operators (without bearing the responsibility and the risk for meeting public demand), they are unable to resist second-guessing the marketplace.

Ironically, in the name of protecting consumers they propose to reduce consumer choice; in the guise of predicting competitive outcomes, they would protect incumbent carriers from competition