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Building The Wireless Future™

CTIA

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Brian F. Fontes
Senior Vice President for Policy and Administration

July 26, 1996

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

DOCKET FILE COPY ORIGINAL

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 Friday, July 26, 1996, the attached letter, with the accompanying memorandum, 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:

Blair Levin
Regina Keeney
Michele C. Farquhar
Richard Metzgar
Larry Atlas
Karen Brinkmann
William Kennard
David Solomon
John Nakahata
Jackie Chorney
Lauren Belvin
James Coltharp
Rudolfo Baca
Susan Toller
James Casserly

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

No. of Copies rec'd 0+1
List ABCDE

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Brian F. Fontes
Senior Vice President for
Policy and Administration

July 26, 1996

DOCKET FILE COPY ORIGINAL

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554-0001

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:

It has recently come to our attention that the Commission may be considering an action that will impose new regulatory burdens and costs upon both providers and consumers of CMRS services. This course of action would ignite a firestorm of controversy.

Specifically, by limiting the scope of interconnection to the local calling area of the LEC and allowing states to define such areas, in concert with imposing access charges on the traffic of CMRS providers which originate outside those calling areas, the Commission would for the first time subject wireless carriers and their customers to the interstate access regime. Such an action would benefit no one, and would remove the Commission's authority to determine the breadth of local loop competition.

As the attached memorandum demonstrates, this is an unwise course which the Commission can easily avoid while still meeting its legitimate concerns.

Sincerely,

Brian F. Fontes

cc: Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness

Attachment

THE COMMISSION SHOULD NOT IMPOSE AN ACCESS CHARGE REGIME ON CMRS CARRIERS

The CMRS industry is not now and has never been subject to the interstate access charge regime.[1] The existing access charge regime has been overtaken by the increasing opportunities for local transmission competition, a reality universally recognized. That reality has given rise to the necessity for new arrangements, which the Commission is expected to address within a very few months. In addition, the Commission apparently is working out a method to maintain the existing access charge arrangements for a short transitional period notwithstanding adoption of the new regulations (e.g., unbundled network elements) required by Part II of the Telecommunications Act of 1996. In this transitional setting, the notion of sweeping firms or industry segments such as CMRS that have not been subject to access charges into the access charge scheme is very strange. It would merely introduce new, major complications into a set of arrangements that is being phased out.[2]

Subjecting CMRS carriers to the access charge regime is not necessary to prevent circumvention of the payments by interexchange carriers. Concerns regarding improper "conversion" of IXC minutes into wireless minutes are easily addressed. Simple regulatory prohibition of funneling toll calls through wireless companies is sufficient considering that such actions: (1) constitute fraud; (2) cannot occur without the knowledge and cooperation of a federally-licensed CMRS carrier; and (3) can be easily detected by the ILECs at low cost.[3]

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1 Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rule Making in CC Docket 95-185, 11 FCC Rcd 5020, ¶ 115 (1996)("We held in 1984 that radio common carriers and cellular carriers are not IXCs and therefore are not required to pay LECs interstate access charges.") (citation omitted).

2 See Chairman Reed E. Hundt, Remarks at the Interactive Services Association's 11th Annual Conference, (July 23, 1996) ("Others want us to make Internet service providers pay interstate access charges that long-distance carriers pay to local phone companies for originating and terminating calls. Let's not apply out-of-date rules to new situations, even as we are trying to reform the creaky old access charge regime.")

3 Significantly, the ILEC, the party with the vested interest in policing such activity, is best positioned to do so, and already has monitoring and measuring functions in place. See 47 C.F.R. § § 69.105, 69.106 (the carrier common line charge (CCL) and the local switching charge are assessed to

Empowering ILECs to impose access charges on the CMRS industry would be especially unusual under the present circumstances, where the Commission knows that ILECs have very strong competitive reasons to raise CMRS carriers' costs. If the FCC is committed to fostering efficient competition within the ILEC's core business, consistent with Congressional intent in the 1993 amendments to Section 332[4] and in the 1996 Act, enabling the entrenched local exchange companies to impose new costs on their potential competitors is entirely counterproductive.

This issue dramatically illustrates the importance of preserving the Commission's jurisdiction over ILEC-CMRS interconnection under Section 332. If a consequence of merging CMRS interconnection issues into CLEC interconnection issues under the 1996 amendments is the extension of access charges to the CMRS industry, it constitutes very strong evidence that Sections 251 and 252 cannot reasonably be understood to supersede Section 332. Separate consideration of ILEC-CMRS interconnection issues properly recognizes the significant technical and commercial differences existing between CMRS-ILEC and CLEC-ILEC interconnection.

This issue also raises serious competitive implications of a different kind. Permitting the ILECs to determine the size of their service areas for purposes of interconnection authorizes the ILECs to determine whether interconnection will be "local" or "toll access," i.e., how it will be priced during the access charge transition. The Commission will unavoidably permit the ILECs to prevent competition within their core business. In essence, if the ILECs are vested with the authority to determine how large or how small the local service area will be, and the access charge regime is tied into this determination, competition will be substantially hampered.

On a related note, the Commission's decision to permit the ILECs to determine the size of the service area for purposes of interconnection directly thwarts the Commission's and Congress' recognition of[5] the inherently interstate nature of mobile services. That is, when adopting the larger MTA and BTA

IXCs on a per-access minute of use basis). It is inconceivable that an ILEC would not be aware immediately of any dramatic increase in traffic passed to it for termination by a CMRS carrier.

4 47 U.S.C. § 332.

5 See H.R. Rep. No. 111, 103rd Cong., 1st Sess., 260 (1993) (In preempting states from regulating CMRS rates and entry, Congress specifically recognized that "mobile services. . . by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.")

service areas for PCS -- geographic areas which follow patterns of trade and not state boundaries -- the Commission recognized the benefits associated with larger, interstate service areas. This is not a one-size-fits-all situation. Forcing CMRS carriers to follow the market patterns determined by the ILECs will hamper its ultimate development, directly contrary to Congressional intent.