BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98

OPPOSITION OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION TO THE JOINT MOTION OF GTE AND SNET FOR STAY PENDING JUDICIAL REVIEW

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The Cellular Telecommunications Industry Association ("CTIA")[1] hereby files its Opposition to the Joint Motion of GTE Corporation ("GTE") and the Southern New England Telephone Company ("SNET") (the "Movants") for stay of the rules adopted in the Commission's First Report and Order in the above-captioned proceeding.[2]

INTRODUCTION AND SUMMARY

The Joint Motion is notable for its breadth: it requests the Commission to stay the rules adopted in the First Report and

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1 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including cellular, personal communications services ("PCS"), enhanced specialized mobile radio, and mobile satellite services.

2 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order (released August 8, 1996) ("First Report and Order").

Order in their entirety.[3] Importantly, in its 100 plus pages of pleadings and supporting materials, the Joint Motion does not mention interconnection compensation issues as they relate to the regulation of incumbent local exchange carrier ("ILEC") interconnection with commercial mobile radio service ("CMRS") providers. Such omission, whether intended or inadvertent, renders the Movants' arguments unconvincing when applied to ILEC-CMRS interconnection issues. CTIA opposes the Movants' request to stay any or all of the rules adopted in the First Report and Order. CTIA's Opposition focuses primarily on the general arguments made within the Joint Motion to the extent that they may implicate ILEC-CMRS interconnection.

In determining whether a stay pending judicial review is warranted, the Commission must consider the following four factors: (1) the likelihood that the movant will succeed on the merits; (2) the likelihood of irreparable harm to the movant if a stay is not granted; (3) the harm to other parties if the stay is granted; and (4) the effect of granting or denying the stay upon the public interest.[4] To succeed in obtaining a stay, a party must demonstrate "either a high probability of success and some injury or *vice versa*."[5]

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3 Joint Motion at 3 of Summary.

4 See Cuomo v. NRC, 772 F.2d 972, 974 (D.C. Cir. 1985); Washington Metropolitan Area Transit Commission v. Holiday Tours, 559 F.2d 841, 843 (D.C. Cir. 1977).

5 Cuomo, 772 F.2d at 974. See, also, Wisconsin Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985) (where movant wholly fails to demonstrate irreparable injury in the

As demonstrated below, the Movants have failed to make either showing. Thus, certainly with respect to ILEC-CMRS interconnection, their motion for stay must be denied. Moreover, any further delay in the implementation of the FCC's rules will further frustrate CMRS providers' longstanding rights of co-carrier status and reciprocal compensation.

I. THE MOVANTS ARE UNLIKELY TO PREVAIL ON THE MERITS.

One of the primary bases upon which GTE and SNET rely in the Joint Motion is that the Commission lacks the authority under Sections 251 and 252, or any other provision of the Telecommunications Act of 1996, to promulgate rules governing pricing standards for agreements between ILECs and competing carriers. Specifically, GTE and SNET claim that Section 2(b) explicitly restricts the Commission's pricing authority in this regard.[6] According to GTE and SNET:

> Under the plain terms of [Section 2(b)], the Commission does not have power to promulgate rules governing pricing for the type of agreements concerning local services that will be concluded under § 251, and indeed lacks any authority to regulate matters purely within the local exchange. This 'congressional denial of power to the FCC' in § 2(b), moreover, could only be circumvented if Congress included 'unambiguous' and 'straightforward' language in the Act either modifying § 2(b) or at a minimum explicitly granting the Commission added authority.[7]

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absence of injunctive relief, the other requirements for a stay need not be reviewed).

6 Joint Motion at 6-12.

7 Id. at 9 (citation omitted).

The Commission should reject the Movants' argument that Section 2(b) in any way limits its pricing authority. Assuming, for the sake of argument, the veracity of the Movants' claim regarding the scope of Sections 251 and 252 of the 1996 Act, it is clear that with respect to CMRS the Commission suffers under no such handicap. As CTIA has maintained in its pleadings in this docket,[8] Sections 251 and 252 are superfluous to the debate surrounding ILEC-CMRS interconnection arrangements, as Section 332 already defines the relevant regulatory parameters.[9]

A. The Commission Has Authority Under Section 332 to Determine ILEC-CMRS Interconnection Compensation Rates.

With regard to the jurisdictional aspects governing ILEC-CMRS interconnection, the First Report and Order found that the relevant provisions of the Act, Sections 251, 252, 332 and 201, "are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and

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8 See Comments of the Cellular Telecommunications Industry Association in CC Docket 96-98 (May 16, 1996); Reply Comments of the Cellular Telecommunications Industry Association in CC Docket 96-98 (May 30, 1996). See also Comments of the Cellular Telecommunications Industry Association in CC Docket 95-185 and CC Docket 94-54 (March 4, 1996); Reply Comments of the Cellular Telecommunications Industry Association in CC Docket 95-185 and CC Docket 94-54 (March 25, 1996) (The Commission has jurisdiction under Section 332, and alternatively, Section 2(b) preemption jurisprudence to adopt reciprocal termination to govern ILEC-CMRS interconnection compensation.)

9 Moreover, as noted below, the "impossibility" analysis under Section 2(b) preemption jurisprudence, provides an alternative basis for the Commission's authority to adopt the rate governing ILEC-CMRS interconnection.

conditions that are just, reasonable, and fair."[10] While "opting to proceed under Sections 251 and 252" at this time, the Commission specifically acknowledged that "section 332, in tandem with section 201, is a basis for jurisdiction over ILEC-CMRS interconnection."[11] As explained below, Section 332 provides a separate jurisdictional basis to govern ILEC-CMRS interconnection, independent of the authority provided by Sections 251 and 252.

In revising Section 332 in 1993, Congress transformed the regulatory environment governing CMRS carriers: Congress, among other things, (1) granted the Commission the ability to forbear from unnecessary, burdensome common carrier obligations regarding CMRS carriers, (2) preempted state regulation of CMRS rates and entry, and (3) established the regulatory parameters to govern the competitive entry of CMRS into local exchange services.[12]

In preempting state rate and entry regulation, Congress deliberately and profoundly circumscribed the States' authority under Section 2(b). Specifically, Section 332(c)(3)(A) provides:

> <u>Notwithstanding sections 2(b)</u> and 221(b), <u>no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service</u> . . . except that this paragraph shall not prohibit a State from regulating

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10 First Report and Order at ¶ 1023.

11 <u>Id.</u> at ¶¶ 34, 1023.

12 <u>See</u> 47 U.S.C. § 332.

> the other terms and conditions of commercial mobile services.[13]

Thus, the statute provides that states have no authority over rates charged by CMRS providers, nor can states regulate CMRS entry.

Congress' action to preempt entry regulation for mobile services represents a monumental shift in policy from Section 2(b) of the Act. Because of that shift, states no longer "retain jurisdiction over purely intrastate calls notwithstanding the economic effect such State jurisdiction might have on the interstate market."[14] Inherently, this rule includes a prohibition against state regulation of intrastate interconnection compensation charges negotiated between ILECs and CMRS carriers.

In addition, the explicit and absolute prescription against entry regulation grants the Commission authority to set interconnection compensation rates. That is, states are prohibited from establishing any entry barriers, whether entirely or merely partially effective, whether direct or indirect. Therefore, as the Commission recognized in the First Report and Order,[15] notwithstanding the Section 251-252 pricing regime,

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13 See 47 U.S.C. § 332(c)(3)(A) (emphasis added).

14 See Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC, 746 F.2d 1492, 1500 (D.C. Cir. 1984) (Bork, J.).

15 See First Report and Order at ¶ 1025 (noting that, Sections 251 and 252 notwithstanding, "Section 332 generally precludes states from rate and entry regulation of CMRS

states may not directly or indirectly impede entry, either entirely or partially (e.g., through added cost or delay) by their regulation of ILEC to CMRS interconnection compensation rates.[16]

In summary, Congress intended that the mobile services marketplace function efficiently, competitively, progressively, and with a minimum of regulatory intervention. Regulatory intervention, whether federal or state, is not tolerated if it introduces disparate treatment of similar services. By amending Section 332, Congress ensured that neither local nor federal government could harm CMRS competition or impair the continued build out of our nation's wireless communications infrastructure. State and local governments may not lawfully bar entry, create regulatory disparities or introduce significant inefficiencies in the production of CMRS through their regulation of ILEC to CMRS interconnection compensation rates.

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providers, and thus, differentiates CMRS providers from other carriers").

[16] The legislative history of the 1993 legislation also supports this construction of Section 332. For example, Congress found it necessary to "preempt state rate and entry regulation" of CMRS providers to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure." H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993) ("House Report"). Moreover, while Section 332 permits states to petition under certain circumstances to re-regulate CMRS provider rates, Congress intended that the Commission, when considering such petitions, should "give the policies embodie[d] in Section 332(c) an adequate opportunity to yield the benefits of increased competition and subscriber choice." Id. at 261.

B. The Commission Also Has Authority to Adopt Rates Governing ILEC-CMRS Interconnection to Ensure the Efficient, Competitive Buildout of Nationwide Wireless Communications Infrastructure.

The "impossibility" analysis under Section 2(b) provides an alternative basis for Commission preemption of state and local regulation in favor of national ILEC-CMRS interconnection compensation standards. Under this rationale, the Commission is justified in establishing overriding interconnection compensation rates to ensure the efficient, competitive buildout of the nationwide wireless communications infrastructure. The MTA/BTA service area structure governing PCS licenses -- geographic boundaries which do not respect state lines -- expressly recognizes and accounts for the inherently interstate nature of mobile services. For this reason, preemption of state regulation in favor of national standards would be warranted under a Section 2(b) analysis as well.

In Louisiana Pub. Serv. Comm'n v FCC,[17] the Supreme Court recognized an "inseverability" exception to the limitation of the Commission's preemption authority set forth in Section 2(b)(1) of the Communications Act.[18] In Louisiana, the Court found that the FCC may preempt state regulation where it is "not possible to

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[17] 476 U.S. 355 (1986).

[18] See 47 U.S.C. § 152(b) ("nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to [] charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . .").

separate the interstate and intrastate components of the asserted FCC regulation."[19] The Court accordingly cited with approval previous cases which relied upon the inseverability of interstate and intrastate policy components in concluding that preemption was warranted.[20]

The cases interpreting the Commission's preemption powers, both those surviving and interpreting Louisiana, can be understood to recognize both economic and physical inseverability. Economic inseverability occurs where a Commission's economic policy could be rendered nugatory by inconsistent state regulations.[21] Physical inseverability occurs where enforcement of an inconsistent state regulation would be either physically impossible or require impractical alterations to the physical network.[22]

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[19] Louisiana, 476 U.S. at 376 n.4.

[20] See id. (citing North Carolina Util. Comm'n v. FCC, 537 F.2d 787 (4th Cir. 1976), cert. denied, 429 U.S. 1027 (1976); North Carolina Util. Comm'n v. FCC, 552 F.2d 1036 (4th Cir. 1976), cert. denied, 434 U.S. 874 (1977) (inseparability doctrine gives FCC authority to allow subscribers to provide their own telephones and to preempt state regulations prohibiting connection of such phones)).

[21] See California v. FCC, 39 F.3d 919 (9th Cir. 1994) (on review of remand, FCC's limited preemption of state structural separation requirements for jurisdictionally-mixed enhanced services, and of CPNI and network disclosure rules upheld), cert. denied, 115 S.Ct. 1427; Illinois Bell Tel. v. FCC, 883 F.2d 104 (D.C. Cir. 1989) (FCC preemption of state Centrex marketing regulations, including structural separation requirements, upheld because interstate and intrastate components of the regulation could not be separated).

[22] North Carolina Util. Comm'n v. FCC, 552 F.2d 1036 (4th Cir. 1976), for example, concerned a North Carolina regulation

State ILEC-CMRS interconnection regulations that are incompatible with the Commission's guidelines would create physical inseverability. First, the policy supporting the Commission's pricing guidelines is the promotion of an efficient, competitive buildout of a nationwide wireless communications network.[23] The continuing development of cellular service has demonstrated that efficient buildout of wireless networks requires "clustering" of systems into regional areas. Indeed, recognizing the benefits of larger, interstate service areas, the Commission adopted an MTA/BTA scheme for licensing PCS. The larger CMRS service areas (both cellular and PCS) effectively dictate the most efficient system architecture, including the optimal number and location of ILEC to CMRS interconnections.

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which prohibited customer provided CPE unless used exclusively for interstate calls. In order for this regulation to coexist with federal regulations permitting customers to provide their own CPE, users would need access to separate lines for interstate and intrastate service, an impractical alteration to the network. See also California v. FCC, 75 F.3d 1350 (9th Cir. 1996) (upholding FCC preemption of technically incompatible state regulations for preventing disclosure of unpublished numbers when Caller ID goes into effect); National Ass'n of Regulatory Util. Comm'rs v. FCC, 880 F.2d 422 (D.C. Cir. 1989) (recognizing similar problem with regard to state regulations in conflict with federal policy of unbundling of inside wiring, although remanding to FCC for more narrow FCC ruling).

23 See 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 in CC Dockets 95-185 and 94-54, 11 FCC Rcd 5020, at ¶ 111 (1996) ("preemption under Louisiana PSC may well be warranted here on the basis of inseverability, particularly in light of the strong federal policy underlying Section 332 favoring a nationwide wireless network") (citation omitted).

However, where states mandate differing interconnection compensation arrangements, a single efficient system configuration is no longer possible. Thus, it will be impossible to achieve Congress' and the Commission's goal of creating efficient interstate services if CMRS systems must be designed to accommodate varying requirements resulting from each state's differing approach to interconnection.

Second, state traffic termination regulations would create a physical inseverability at least as severe as the economic inseverability. The simple fact is that wireless billing procedures are not designed to track state borders.

Indeed, in virtually every respect, wireless networks operate without reference to state borders. As explained above, in preempting state rate and entry regulation of CMRS, Congress specifically recognized and accounted for the fact that "mobile services . . . by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[24] Moreover, the Commission's adoption of PCS service areas based upon MTAs and BTAs -- geographic areas which follow patterns of trade rather than state lines -- demonstrates an express recognition of the interstate nature of mobile services.

To implement a separate state regime, wireless carriers would be required to make costly and impractical additions to the

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[24] House Report at 260.

network to determine the jurisdictional nature of each call. This is all the more so in the instant situation since, as discussed above, Section 332 of the Act essentially eliminates state jurisdiction over CMRS rates. Alterations to the network to accommodate dual jurisdictional schemes for traffic termination would therefore have no other use than to enforce the discrete state traffic termination policy.

II. THE MOVANTS HAVE FAILED TO DEMONSTRATE THAT THEY WILL SUFFER IRREPARABLE HARM IF THE STAY IS DENIED.

The Movants contend that they will suffer irreparable injury absent a stay because (1) the Commission's rules will cause them to lose bargaining opportunities in negotiating Section 252 agreements by taking "a host of issues off the bargaining table;" (2) Section 252 agreements could not be renegotiated should the Commission's rules be overturned; and (3) ILECs will suffer unrecoverable losses in revenue, market share, and goodwill if forced to offer services to competitors at below-cost pricing standards. The Movants' purported injuries are insufficient to justify a stay of the Commission's order.[25]

The Movants cannot demonstrate irreparable harm from the perceived loss of certain negotiating options.[26] To be

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[25] See Reynolds Metals Co. v. FERC, 777 F.2d 760, 762 (D.C. Cir. 1985) (irreparable injury is the sine qua non for grant of a motion for stay).

[26] The cases relied on by the Movants to support their claim that the loss of bargaining opportunities constitutes irreparable harm are distinguishable on their facts. Carson v. American Brands, Inc., 450 U.S. 79 (1981) involved the question of whether a district court's refusal to enforce a consent decree in which parties waive their right to

irreparable, an injury must be "certain and great; it must be actual and not theoretical."[27] As the owners of essential local exchange facilities, the Movants have tremendous bargaining power. It strains credulity to assert that they will not be able to take advantage, either through renegotiation or by the terms of interconnection agreements themselves, of future changes in the Commission's interconnection regime.[28]

Moreover, "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."[29] As indicated, nothing prevents the Movants from entering into Section 251-252 agreements whose terms are contingent upon the validity of the Commission's orders. For that matter, the entire agreement could be subject to renegotiation should the Commission's order be struck down.[30]

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litigate issues in return for a settlement of their claim constituted a final order. That issue is obviously not relevant to the instant case. In Local Division 732, Amalgamated Transit Union AFL-CIO v. Metropolitan Atlanta Rapid Transit Auth., 519 F. Supp. 498 (N.D. Ga. 1981), an employer lowered the wages paid to employees upon expiration of their bargaining agreement. The court stayed that wage plan because otherwise the employees might forfeit their ability to bargain given the critical need for their full wages. In contrast to the employees in Local Division 732, the Movants are well-financed and are not subject to such financial constraints.

27 Wisconsin Gas, 758 F.2d at 674.

28 See id.

29 Virginia Petroleum, 259 F.2d at 925.

30 With respect to pricing, the Movants could enter into agreements that required the requesting carriers to repay

Although the Movants contend that such renegotiations are "not possible" because "decisions about investments in technology, reconfigurations of the network, reassignment of personnel, and the provisioning of service offerings" will become set,[31] such business decisions are not immutable. That should be especially so where, as here, such decisions are made in the face of outstanding legal challenges to the Commission's rules such that parties should be on notice that the terms of their agreement might have to be renegotiated depending on the outcome of the legal challenges. Finally, the fact that the Movants may have to expend resources renegotiating their agreements is insufficient to justify a stay.[32]

Nor may the Movants justify a stay based on the allegedly irreparable loss of revenue and customers. That supposed injury is based on nothing more than the Movants' assertions that carriers will receive the Movants' services at prices below costs and that carriers will then resell the services at prices below the Movants' costs.[33] At this stage in the implementation of Sections 251 and 252, such injuries are neither "certain" nor

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the difference between the price prior to the striking down of the Commission's rules and the price negotiated thereafter.

31 See Joint Motion at 29-30,

32 See Virginia Petroleum, 259 F.2d at 925 ("[m]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough").

33 See Joint Motion at 34-35.

"great" given that competitors are not yet widely offering services competitive with those offered by the Movants pursuant to agreements reached after the FCC issued its rules.[34] Consequently, it cannot be said what pricing strategy will be adopted by competing carriers. Moreover, it is well-established that lost customers, profits, and market share are not enough to justify a stay.[35]

The Movants' purported goodwill injuries are likewise insufficient to justify a stay. Such injuries are theoretical as they are predicated on the Movants' hypothesis that competitors will offer lower prices and that such lower prices will injure the Movants' goodwill.[36] Furthermore, the speculative nature of the injury to the Movants' goodwill is reinforced by the fact that the Movants have provided no explanation as to how their goodwill would be injured irreparably if competitors offered lower prices.[37] To the extent that the goodwill injury

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34 See Wisconsin Gas, 758 F.2d at 674.

35 See Virginia Petroleum, 259 F.2d at 925 (monetary injuries are not irreparable). See also Holiday Tours, 559 F.2d at 842 (business must be unable to run in its "current form" to justify injunctive relief).

36 The MaClintock Affidavit, which the Movants' rely on for the proposition of goodwill injuries, see Joint Motion at 34, contains only a conclusory allegation of goodwill injuries.

37 The Movants rely on a number of cases to support their claim of goodwill losses. The circumstances here differ significantly from those cases. For example, in K-Mart Corp. v. Oriental Plaza, 875 F.2d 907, 915 (1st Cir. 1989), the irreparable injury to goodwill stemmed from the fact that construction near a K-Mart store had (1) interfered with the store's "presence" by blocking pubic view of the store from the highway, (2) lessened available parking, and

constitutes a loss of customers, the Movants have the ability to quantify such a loss.[38] Thus, the Movants have failed to demonstrate that they will be irreparably harmed if a stay is not granted.

III. CMRS PROVIDERS WILL BE SEVERELY HARMED IF THE INTERCONNECTION RULES ARE STAYED.

The Movants argue that a stay of the interconnection rules will not harm other carriers and the general public because (1) a stay will not prevent new entrants (and presumably CMRS providers currently providing service) from entering into voluntarily negotiated interconnection agreements with ILECs while the appeal is pending, and (2) if the rules withstand legal challenge, those agreements can "be readily modified to include the Commission's prescribed national standards."[39] These arguments are without foundation.

First, the fact that CMRS providers can enter into negotiated agreements with ILECs in no way means that CMRS providers will not be harmed by a stay of the interconnection rules. Any such "voluntarily" negotiated agreements would be far less advantageous to CMRS providers and their customers than agreements reached under the rules challenged here. This is because ILECs have much greater bargaining power than CMRS

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(3) interfered with both vehicular maneuverability and pedestrian safety.

[38] Virginia Petroleum, 259 F.2d at 925 (monetary injuries are not irreparable).

[39] Joint Motion at 35-36.

providers. The ILECS simply do not need to terminate calls on CMRS networks as much as CMRS providers need to terminate calls on ILEC networks. It was precisely this unequal bargaining power that the Commission sought to address in its rules.

For example, in agreements negotiated before the adoption of the interconnection rules, some CMRS providers were forced to compensate ILECs for traffic that originated on ILEC networks. The Commission's interconnection rules prohibit this blatant use of the incumbents' market power.[40] Further, under previous interconnection agreements between ILECs and CMRS providers, CMRS providers paid high traffic termination rates while the ILECs paid nothing to have their traffic terminated on CMRS networks. The Commission's interconnection rules prohibit this use of unequal bargaining power as well by requiring that rates for transport and termination between ILECs and CMRS providers be symmetrical.[41]

Remove these requirements and the incumbents are certain to reassert their superior bargaining power in interconnection negotiations. Moreover, if the Commission's interconnection rules are ultimately upheld there exists no mechanism through

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40 See First Report and Order at ¶ 1042.

41 See id. at ¶¶ 1085-87. (Adopting requirement that rates for transport and termination be symmetrical and observing that "LECs have used their unequal bargaining position to impose asymmetrical rates for CMRS providers and, in some instances, have charged CMRS providers origination as well as termination charges")(citation omitted). Id. at ¶ 1087.

which wireless providers could recoup losses suffered in the interim.

Second, CTIA agrees that interconnection agreements could be revised to incorporate a change in the status of the Commission's interconnection regime. It is exactly for this reason that the Movants' assertion of irreparable harm resulting from lost negotiating opportunities is discussed above baseless. But this does not mean that wireless service providers and their customers will not be harmed by lost opportunities to lower rates created by the Commission's rules and the inability to expand market share and accumulate customer goodwill. Indeed, given that wireless providers are less able to resort to "self help," they are likely to suffer greater losses that their wireline competitors would while a beneficial interconnection regime is held in abeyance.[42]

Thus, the Movants' assertions that other parties will not be harmed by a stay is simply incorrect. CMRS providers will continue to pay dearly for their unequal bargaining position if the Commission's interconnection regime is stayed. This result is particularly egregious considering that, for almost a decade, the FCC has deemed CMRS providers to be co-carriers entitled to mutual compensation for the use of their network facilities to

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42 Of course, any harm incumbent ILECs might suffer if the interconnection rules are not stayed and are ultimately overturned does not warrant a stay.

originate and terminate interstate traffic exchanged with local exchange carriers.[43]

IV. THE PUBLIC INTEREST DOES NOT FAVOR A STAY.

In enacting the Telecommunications Act of 1996, Congress introduced a new legal regime for telecommunications services. It sought to replace decades of regulation designed to protect local monopolies with laws that would increase competition and opportunities for investment in new and innovative telecommunications technologies. Implicit in the 1996 Act is the recognition that these developments will not occur without some federal regulatory intervention. Indeed, Congress essentially left to the FCC the job of determining how to introduce new competition into the local exchange. Now that the Commission has established rules that, while not perfect, go a long way towards achieving this goal, it should come as no surprise that the Movants, want them stayed. But to grant such a stay would undermine the public interest.

If the Commission's rules must await resolution of this appeal to take effect, consumers will have to wait that much longer to realize the benefits of increased innovation and competition. In particular, a stay of the Commission's rules will make it more difficult for both PCS licensees, who are currently building their networks, and cellular providers, who

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43 See, e.g., The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, Report No. CL-379, 2 FCC Rcd 2910, 2915-2916 (1987).

are transitioning to digital format, to lower their costs and compete with ILECs. It will also make it more difficult for these firms to develop innovative services in the near future. Judging by the strict deadlines established in the statute for the conclusion of the FCC's implementation proceedings, Congress did not intend that the new legal regime would be delayed any longer than necessary. The public interest therefore supports implementation of the Commission's rules as soon as possible.

CONCLUSION

For the reasons described herein, the Commission should deny the Movants' Motion for Stay of the interconnection rules.

Respectfully submitted,

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September 4, 1996

CERTIFICATE OF SERVICE

I, Michael F. Altschul, hereby certify that a copy of "The Opposition of the Cellular Telecommunications Industry Association to the Joint Motion of GTE Corporation and the Southern New England Telephone Company for Stay Pending Judicial Review" has been served via U.S. Post Office first class mail this day upon the following parties:

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