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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Amendment to the Commission's Rules)
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

WT Docket No. 96-6 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION OR
CLARIFICATION**

BellSouth Corporation ("BellSouth"), by its attorneys, hereby petitions for partial reconsideration or clarification of *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 F.C.C.R. 8965 (1996), summarized 61 Fed. Reg. 45336 (Aug. 29, 1996) ("*Report and Order*"). Although BellSouth applauds the Commission's efforts to permit all CMRS providers to use their spectrum for both mobile and fixed wireless applications, without restriction, it appears that Section 22.323 was inadvertently retained without change. Because this rule is inconsistent with the *Report and Order*, BellSouth requests that the Commission either (i) issue an *Erratum* eliminating the rule; (ii) reconsider its decision not to eliminate or modify the rule; or (iii) issue a declaratory ruling stating that Section 22.323 is inapplicable to CMRS licensees providing services pursuant to Section 22.901 or the *Report and Order*.

In the *Report and Order*, the Commission found that

The limitations in our rules governing the provision of fixed services on PCS and other CMRS spectrum have caused uncertainty among carriers. Although terms such as "ancillary," "auxiliary," and "incidental" are intended to provide licensees who offer CMRS services with flexibility, these terms are not defined in the rules and have been subject to varying

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interpretations. As a result of this lack of clarity, we have found that carriers are hesitant to take advantage of the flexibility allowed by the current rules to explore potential flexible uses of their spectrum without further guidance from the Commission.

11 F.C.C.R. at 8970 (emphasis added). To alleviate this uncertainty, the Commission stated that

[r]ather than continuing to define allowable fixed services in terms of whether they are “ancillary,” “auxiliary,” or “*incidental*” to mobile services, we conclude that our rules should more broadly allow fixed services to be provided on a co-primary basis with mobile services.

11 F.C.C.R. at 8973 (emphasis added). Consistent with this decision, Section 22.901(d) was amended to read as follows:

Alternative technologies and co-primary services. Licensees of cellular systems may use alternative cellular technologies and/or provide fixed services on a co-primary basis with their mobile offerings, including personal communications services (as defined in Part 24 of this chapter) on the spectrum within their assigned channel block. . . .

47 C.F.R. § 22.901(d). The Commission, however, failed to eliminate Section 22.323 which governs the provision of *incidental* communications services.

Section 22.323 states that Part 22 licensees may use their stations “to provide other communications services incidental to the primary public mobile service for which the authorizations were issued.” 47 C.F.R. § 22.323. In order to provide such service, however, the following conditions must be satisfied:

(a) The costs and charges of subscribers who do not wish to use the incidental services are not increased as a result of the provision of incidental services to other subscribers;

(b) The quality of the primary public mobile service does not materially deteriorate as a result of provision of incidental services, and neither growth nor availability of the primary public mobile service is significantly diminished as a result of provision of incidental services;

(c) The provision of the incidental services is not inconsistent with the Communications Act of 1934, as amended, or with FCC rules and polices; and

(d) The licensee notifies the FCC by letter before providing the incidental services. This notification must include a complete description of the incidental services.

47 C.F.R. § 22.323. Based on BellSouth's experience, this section has been applied to the provision of fixed services. Thus, unless it is deleted, it may have an effect on the provision of fixed services by Part 22 licensees. To avoid such a chilling effect, the Commission should eliminate the rule.¹

As BellSouth has previously demonstrated, the notification requirement in Section 22.323(d) serves no practical purpose.² Specifically, the wireless industry would not jeopardize its mobile customer base (a segment growing at an estimated 30-40% per annum) by raising rates to mobile customers or decreasing quality as a result of providing fixed services to a relatively small and emerging segment. See 47 C.F.R. § 22.323(a). Because the marketplace is becoming increasingly competitive, any increase in rates or decrease in quality without a countervailing benefit to the mobile subscriber will encourage the subscriber to find another carrier.

Even if fixed applications became more prevalent, however, the *Report and Order* permits CMRS carriers to offer such services on a co-primary basis. Thus, there should be no notification requirement, just as there is no notification requirement for the provision of mobile services. Moreover, it may become impossible for a carrier to comply with the notification requirement since devices have become increasingly available to customers for use on a fixed basis without a carrier's knowledge.

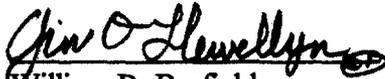
¹ Alternatively, the Commission should clarify that Section 22.323 does not apply to any services offered pursuant to Section 22.901 or the *Report and Order*.

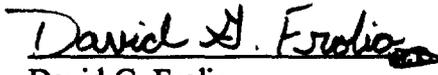
² Comments of BellSouth, CC Docket No. 92-115, Appendix 2 at 30 (Oct. 5, 1992).

CONCLUSION

For the aforementioned reasons, BellSouth urges the Commission either (i) to issue an *Erratum* eliminating the rule; (ii) to reconsider its decision not to eliminate or modify the rule; or (iii) to issue a declaratory ruling stating that Section 22.323 is inapplicable to CMRS licensees providing services pursuant to Section 22.901 or the *Report and Order*.

Respectfully submitted,
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September 30, 1996

CERTIFICATE OF SERVICE

I, M. Jeanette Trigeiro, hereby certify that I have, this 30th day of September, 1996, served a copy of the foregoing "Petition for Partial Reconsideration or Clarification," by First-Class United States Mail, postage pre-paid to the following:

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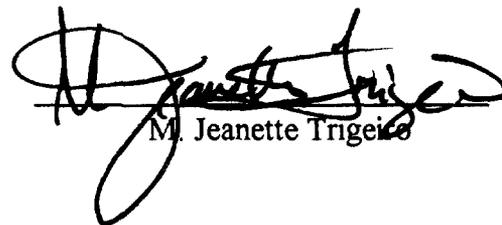
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