§51.717 Renegotiation of existing non-reciprocal arrangements

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) of this section until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

Exhibit 2

Declaration of Jeffrey E. Smith

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Iowa Utilities Board *et al.*,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 96-3321
	)	and consolidated cases
Federal Communications Commission	)	
et al.,	)	
	)	
Respondents.	)	

DECLARATION OF JEFFREY E. SMITH

I, JEFFREY E. SMITH, make the following declaration, under penalty of perjury:

1. I am the Vice President and General Counsel of Comcast Cellular Communications, Inc. ("Comcast Cellular") and Deputy General Counsel of Comcast Corporation ("Comcast"). I am providing this declaration in support of the Joint Response in Support of AirTouch's Emergency Motion To Modify Stay. I have personal knowledge of the matters stated herein.

2. In my current position I have been involved in negotiations for and the administration of an interconnection arrangement between Comcast's cellular subsidiaries and the incumbent local exchange carrier, Bell Atlantic.

3. Comcast Cellular has been unable to negotiate a satisfactory interconnection arrangement with Bell Atlantic during the past several years. For the last ten years, Comcast Cellular has paid Bell Atlantic nearly 2.5 cents per minute for interconnection. This interconnection rate exceeds costs by a factor of 10. During this same period, Bell Atlantic has made no payment to Comcast Cellular for the termination services Comcast Cellular has provided to Bell Atlantic's

customers, despite the statutory requirement of reciprocal compensation set forth in Section 20.11 of the Federal Communications Commission's Rules (47 C.F.R. § 20.11) and Section 251(b)(5) of Title 47.

4. As an indication that the rate charged by Bell Atlantic for interconnection is unreasonable, Bell Atlantic recently requested approval of an interconnection agreement which included a 0.3 cent per minute reciprocal charge for interconnection between Bell Atlantic and a wireline new entrant. Pennsylvania approved this rate in an arbitration conducted pursuant to the provisions of Section 252 of Title 47.

5. Bell Atlantic has been unwilling to provide Comcast Cellular with a draft interconnection agreement pending this Court's resolution of the Emergency Motion To Modify Stay filed by AirTouch Communications, Inc., notwithstanding that Comcast Cellular requested, by letter dated August 23, 1996, that interconnection negotiations promptly be commenced. Further, upon information and belief, after this Court entered its Order Granting Stay Pending Judicial Review (Oct. 15, 1996), Bell Atlantic determined it would revise its negotiating position with respect to the local calling area for which reduced interconnection rates would apply.

6. This Court's action in staying the non-pricing reciprocal compensation provisions of the FCC's rules has resulted in a large loss of revenue for Comcast Cellular in its interconnection arrangement with Bell Atlantic that the company will be unable to recoup even if this appeal were resolved in favor of the FCC's position.

I declare under penalty of perjury that the foregoing is true and correct.

JEFFREY E. SMITH

October 24, 1996

Date

EXHIBIT D

DOW, LOHNES & ALBERTSON
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

LEONARD JERVEY KENNEDY
DIRECT DIAL 202-776-2505

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 · FACSIMILE 202-776-2222

ONE RAVINIA DRIVE · SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

July 25, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554
STOP CODE: 1170

RECEIVED JUL 25 1996
STAMP & RETURN

Re: Ex Parte Communication in CC Docket Nos. 95-185 and 96-98

Pursuant to Section 1.1206 of the Commission's rules, Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits this written *ex parte* communication in the above-captioned proceedings to address two matters of vital import to the commercial mobile radio service marketplace and the public interest. First, the Commission must confirm that imposition of incumbent LEC local calling areas and "access" charges upon competing CMRS providers is contrary to the Telecommunications Act of 1996 (the "1996 Act"). The Commission also must find that imposition of ILEC access charges for traffic the CMRS provider treats as local would result in serious anticompetitive harm, hamper the realization of the Commission's pro-competitive goals for the CMRS marketplace and increase cellular rates. Second, the Commission must adhere to the fundamental goals of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") and the 1996 Act by establishing incremental cost-based rates to govern mutual and reciprocal compensation for the transport and termination of traffic between ILECs and CMRS providers. It is essential that *all* CMRS providers be included in any interim relief measures the Commission may adopt in CC Docket No. 96-98 to remedy existing anticompetitive abuses in the landline LEC-to-CLEC context, regardless of the status of their present interconnection arrangements.

I. APPLICATION OF A LANDLINE LOCAL CALLING AREA CONCEPT AND ACCESS CHARGES ON CMRS INTERCONNECTION IS CONTRARY TO THE PUBLIC INTEREST.

Both the Budget Act of 1993 and the 1996 Act endorse the peer network relationship between ILECs and CMRS providers and seek to advance actual facilities-based competition. The 1996 Act requires that the rates governing mutual and reciprocal compensation for transport and termination of traffic between such carriers be based on the long-run incremental cost ("LRIC") of providing such service. 47 U.S.C. §§ 332(c), 251(b)(5), 252(d)(2). Because of this peer network relationship and the co-carrier status of CMRS providers, imposition of end-user access charges on LEC-to-CMRS interconnection arrangements for calls beyond the landline LEC local calling area is inappropriate. Under this proposal, for example, if Comcast Cellular were to originate a cellular call in Philadelphia, Pennsylvania and terminate it on Bell Atlantic's network in New Brunswick, New Jersey, Bell Atlantic would charge Comcast Cellular for an

interLATA toll call even though the call, is a purely local call, entirely within Comcast Cellular's contiguous footprint.

A local calling area access charge thus would improperly introduce an additional charge into the co-carrier relationship contrary to the Budget Act and the 1996 Act's requirement that CMRS providers pay only the incremental cost for the mutual and reciprocal exchange of traffic for call transport and termination. Furthermore, a local calling area access charge would deprive facilities-based CMRS providers of their co-carrier status and improperly treat them as end users. Thus, proposals to interpose a local calling area "access" charge on CMRS providers would undermine the growth of a wireless and wired "network of networks" and leave in its place an antediluvian system of ILEC monopoly profit-taking. The ILECs should not be rewarded for their attempts to gerrymander uneconomic and improper access charges.

Both Congress and the Commission, moreover, have long recognized that wireless local exchange and exchange access operations, by their very nature, must be allowed unfettered discretion to cover wide-area locations ranging from PCS Major Trading Areas to cellular MSAs. A local calling area "access charge" concept would balkanize CMRS operations into ILEC fiefdoms and introduce uneconomic charges into LEC-to-CMRS interconnection arrangements contrary to the dictates of the Budget Act and the 1996 Act. The Commission must therefore rule that the local calling area "access" proposal is contrary to the public interest.[1/]

II. ANY INTERIM RELIEF AFFORDED LEC-TO-CLEC INTERCONNECTION ARRANGEMENTS IN DOCKET 96-98 ALSO MUST BE MADE AVAILABLE TO CELLULAR PROVIDERS IN DOCKET 95-185.

If the Commission adopts an interim rate to remedy anticompetitive abuses in LEC-to-CLEC interconnection arrangements in CC Docket No. 96-98 pending voluntary negotiation or Commission establishment of a permanent rate, cellular providers also must receive the benefits of any such interim relief measures. Any attempt to distinguish between parties "with contracts" and those under "tariff" has as its design the punishment of cellular carriers simply for being existing wireless carriers. The endemic anticompetitive abuses in existing one-sided LEC-to-cellular interconnection arrangements provide a compelling rationale for extending any interim and pro-competitive relief provided to competing landline LECs to cellular licensees. It would be a perverse result indeed to single out cellular licensees for exclusion from interim relief when the Commission itself acknowledged that the purpose of initiating Docket No. 95-185 was to correct anticompetitive abuses in existing LEC-to-cellular interconnection by adopting such interim relief measures.

It is unrebutted that cellular licensees have paid and continue to pay exorbitant termination rates to the ILECs and, contrary to principles of mutual compensation, are not

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1/ In addition, neither Notice included any reasonable notice of a potential change in FCC policy on the issue of calling scope and LEC call rating.

compensated at all in return. Cellular licensees therefore are entitled to any interim relief the Commission may adopt to remedy these anticompetitive measures. Insofar as existing LEC-to-cellular interconnection arrangements are one-sided contracts of adhesion without any mutual compensation, moreover, it is well-settled as a matter of law that a regulatory agency may abrogate these contracts as contrary to the public interest in order to implement interim relief.[2/]

The 1996 Act's requirement that mutual compensation for transport and termination of traffic be based on incremental cost also mandates that cellular licensee as telecommunications carriers be allowed to share in any interim remedy pending establishment of a permanent interconnection rate. If the Commission determines that establishing an interim rate would facilitate the introduction of cost-based mutual compensation for transport and termination of CLEC traffic, the Commission must extend such a finding to cellular licensees as well. *See* 47 U.S.C. § 251(i). Moreover, to exclude only cellular licensees from any interim relief measures to be adopted would be particularly unconscionable when it was Comcast Cellular who proposed interim bill and keep over two years ago and thereby galvanized the pro-competitive interconnection reform efforts underlying the Commission's decision to initiate Docket No. 95-185 in the first place.

III. CONCLUSION

The Commission's implementation of the pro-competitive interconnection policies set forth in the Budget Act and the 1996 Act are vital to the development of actual facilities-based competition and the rapid deployment of wireless technologies to the nation. The Commission must confirm that proposals to establish local calling area access charges are contrary to the public interest, will stifle wireless competition and are in essence no more than misguided, anticompetitive attempts to maintain revenues that should be put at risk by the advent of competition. Finally, the Commission must follow through on its pro-competitive intent in initiating Docket No. 95-185 by extending to existing LEC-to-cellular and future LEC-to-CMRS interconnection arrangements any interim and other relief accorded LEC-to-CLEC interconnection arrangements in Docket No. 96-98.

Respectfully submitted,

COMCAST CELLULAR COMMUNICATIONS, INC.

Leonard J Kennedy/LHP

Leonard J. Kennedy

Its Attorney

2/ *See Lincoln Tel. & Tel. v. FCC*, 659 F.2d 1092, 1107-8 (D.C. Cir. 1981); *Exchange Network Facilities for Interstate Access*, 93 F.C.C.2d 739, 758-763 (1983), *aff'd mem. sub nom.*, *GTE Sprint Communications Corp. v. FCC*, 733 F.2d 966 (D.C. Cir. 1984); *Western Union Telegraph Co.*, 1 FCC Rcd 829, 833-4 (1986).

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1996, the foregoing "Comments on and Oppositions to Petitions for Reconsideration and Clarification" was sent via U.S. first class mail, postage prepaid, or via hand delivery where indicated, to the following:

The Honorable Reed E. Hundt *
Chairman
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, DC 20554

The Honorable Susan Ness *
Commissioner
Federal Communications Commission
1919 M St., N.W., Room 832
Washington, DC 20554

The Honorable James H. Quello *
Commissioner
Federal Communications Commission
1919 M St., N.W., Room 802
Washington, DC 20554

The Honorable Rachelle B. Chong *
Commissioner
Federal Communications Commission
1919 M St., N.W., Room 844
Washington, DC 20554

Michele Farquhar *
Chief, Wireless Telecommunications
Bureau
Federal Communications Commission
2025 M St., N.W., Room 5002
Washington, DC 20554

Janice Myles *
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, DC 20554

Regina Keeney *
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, DC 20554

William E. Kennard *
Office of General Counsel
Federal Communications Commission
1919 M St., N.W., Room 614-B
Washington, DC 20554

Walter Steimel, Jr.
Marjorie K. Conner
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006-1109

Perry S. Goldschein
Joanne Salvatore Bochis
National Exchange Carrier Assn.
100 S. Jefferson Road
Whippany, NJ 07981

Russell D. Lukas
Lukas, McGowan, Nace &
Gutierrez, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Robert J. Aamoth
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Ellyn Crutcher
Consolidated Communications Telecom
Services, Inc.
121 South 17th Street
Mattoon, IL 61938

Leon M. Kestenbaum
Jay C. Keithley
Richard Juhnke
Sprint Corporation
1850 M Street, N.W.
Washington, D.C. 20036

Mark C. Rosenblum
Roy E. Hoffinger
Stephen C. Garavito
Richard H. Rubin
AT&T Corporation
295 N. Maple Avenue
Basking Ridge, NJ 07920

Lisa B. Smith
Don Sussman
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Paul H. Kuzia
Arch Communications Group, Inc.
1800 West Park Drive, Suite 350
Westborough, MA 01581

Dana Frix
Antony R. Petrilla
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Judith St. Ledger-Roty
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3317

James Baller
Lana Meller
The Baller Law Group
1820 Jefferson Place, N.W.
Suite 200
Washington, D.C. 20036

Dale G. Stoodley
Joanne M. Scanlon
Delmarva Power & Light Co.
800 King Street, P.O. Box 231
Wilmington, DE 19899

Mary L. Krayeske
John D. McMahon
Consolidated Edison Company
of New York, Inc.
4 Irving Place - Room 1815-S
New York, NY 10003

John H. O'Neill, Jr.
Norman J. Fry
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Jeffrey L. Sheldon
Sean A. Stokes
UTC
1140 Connecticut Ave., N.W.
Suite 1140
Washington, D.C. 20036

David L. Swanson
Edison Electric Institute
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Shirley S. Fujimoto
Christine M. Gill
McDermott, Will & Emery
1850 K Street, N.W., Suite 500
Washington, D.C. 20006

Thomas J. Keller
Kathy D. Smith
Verner, Liipfert, Bernhard,
McPherson & Hand, Chtd.
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005

Anthony Marquez
First Assistant Attorney General
State of Colorado
1580 Logan Street, OL2
Denver, CO 80203

Charles A. Zielinski
Bell, Boyd & Lloyd
1615 L Street, N.W.
Washington, D.C. 20036-5601

Pat Wood, III
Robert W. Gee
Judy Walsh
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

Michael S. Varda
Public Service Commission of
Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

Mitchell F. Brecher
Fleischman & Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036

William F. Maher, Jr.
David Colton
Halprin, Temple, Goodman &
Sugrue
1100 New York Ave., N.W.
Suite 650 East
Washington, D.C. 20005

Jonathan Jacob Nadler
Brian J. McHugh
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
P.O. Box 407
Washington, D.C. 20044

Teresa Marrero
Teleport Communications Group, Inc.
Two Teleport Drive
Staten Island, NY 10311

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications
Industry Association
1250 Connecticut Ave., N.W.
Suite 200
Washington, D.C. 20036-3384

Carl W. Northrop
Christine M. Crowe
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Ave., N.W.
10th Floor
Washington, D.C. 20004-2400

Richard J. Metzger
Emily M. Williams
Association for Local Telecommunications
Services
1200 19th Street, N.W.
Suite 560
Washington, D.C. 20036

Linda L. Agerter
Shirley A. Woo
Pacific Gas and Electric Company
Law Department, B30A
San Francisco, CA 94120

Ralph Miller
General Manager
Kalida Telephone Company, Inc.
121 E. Main Street, Box 267
Kakida, OH 45853

Charles H. Helein
General Counsel
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Richard E. Jones
Walter Steimel, Jr.
Marjorie K. Conner
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006

Daniel L. Brenner
Neal M. Goldberg
David L. Nicoll
The National Cable Television
Association, Inc.
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Representative Dave Weldon
Congress of the United States
House of Representatives
216 Cannon House Office Building
Washington, D.C. 20515

Representative Carrie P. Meek
Congress of the United States
House of Representatives
404 Cannon House Office Building
Washington, D.C. 20515

Jesse A. Dillon
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, PA 18101-1179

Steven W. Smith
Assistant Attorney General
Attorney General of Washington
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
Olympia, WA 98504-0128

Steven T. Nourse
Jodi J. Bair
Assistant Attorneys General
Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Daniel S. Goldberg, Esq.
Goldberg, Godles, Wiener &
Wright
1229 19th Street, N.W.
Washington, D.C. 20036

Rolayne Wiest
Special Assistant Attorney General for the
State of South Dakota, and
General Counsel
South Dakota Public Service Commission
500 E. Capitol Avenue
Pierre, SD 57501-5070

Anthony C. Epstein
Donald B. Verrilli, Jr.
Jodie L. Kelley
Jenner and Block
601 - 13th St., N.W.
Washington, DC 20005

Howard J. Symons
Christopher J. Harvie
Sara F. Seidman
Gina M. Spade
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Penn. Ave., N.W., Suite 900
Washington, DC 20004

Constance A. Randolph

Constance A. Randolph

October 31, 1996

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* Denotes Hand Delivery.