

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

Interconnection between Local Exchange )  
Carriers and Commercial Mobile Radio )  
Service Providers )

CC Docket No. 95-185

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**CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**  
**REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

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**CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION REPLY TO  
OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

The Cellular Telecommunications Industry Association ("CTIA")<sup>1</sup> hereby submits its Reply to Oppositions to Petitions for Reconsideration ("Reply") in the above-captioned proceeding.<sup>2</sup>

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<sup>1</sup> 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 48 of the 50 largest cellular, broadband personal communications service ("PCS"), enhanced specialized mobile radio, and mobile satellite service providers. CTIA represents more broadband PCS carriers, and more cellular carriers, than any other trade association.

<sup>2</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, CC Docket Nos. 96-98, 95-185, FCC 96-325 (released August 8, 1996) ("First Report and Order").

## I. INTRODUCTION

In its Opposition to Petitions for Reconsideration,<sup>3</sup> CTIA refuted petitioner claims that the Commission acted outside its authority in adopting the First Report and Order. That is, contrary to petitioners' assertions,

- The Commission was acting within its authority when it refrained from classifying CMRS providers as LECs;
- The Commission was acting within its authority when it defined the local service areas for CMRS calls based on MTA boundaries; and
- The Commission was acting within its authority when it interpreted Section 224<sup>4</sup> to apply not only to cable television systems and wireline carriers, but to all telecommunications carriers, including CMRS providers.<sup>5</sup>

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<sup>3</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Opposition to Petitions for Reconsideration of the Cellular Telecommunications Industry Association, CC Docket Nos. 96-98, 95-185, FCC 96-325 (filed Oct. 31, 1996) ("CTIA Opposition").

<sup>4</sup> 47 U.S.C. § 224.

<sup>5</sup> CTIA agrees with the assessments made by MCI, the Joint Cable Parties, and Cox in their respective oppositions, that utility companies' opposition to CMRS access to poles and rights-of-way is likely motivated by anti-competitive considerations. See MCI Opposition at 35, n.40 (noting that "[a] February 1996 study . . . found that 33 utilities are pursuing various broadband communications projects."); Joint Cable Parties Opposition at 11 (detailing the extensive wireless projects of the utilities, including "what has been described as the largest pole-mounted wireless network in the world.") (citation omitted); Cox Communications, Inc. Opposition at 9 (noting that "current pole attachments are not limited to wiring or cables. Utility poles often carry amplifiers and other equipment, placed by both the utilities that own the poles and by other users.").

CTIA limits its Reply to the following: The Commission's determination to establish MTA boundaries as the local calling areas for CMRS providers is within its authority granted by Congress and promotes efficiency and competition.

**II. THE COMMISSION'S DETERMINATION TO ESTABLISH THE MTA BOUNDARY AS THE LOCAL CALLING AREA FOR CMRS TRAFFIC IS ENTIRELY WITHIN ITS AUTHORITY AND IS PREDICATED UPON THE MOST EFFICIENT AND COMPETITIVE USE OF CMRS NETWORKS.**

Several parties oppose the Commission's adoption of MTA boundaries as the CMRS local calling area as being discriminatory. These parties claim that such action favors CMRS technology at the expense of wireline carriers and will disturb the interstate/intrastate separations process.

Contrary to these claims, the Commission was acting fully within its authority in adopting the MTA calling areas. Moreover, MTA calling areas are efficient, and will promote competition.

Several commenters argue that the MTA boundary is discriminatory in that it treats wireless carriers different than landline carriers.<sup>6</sup> This claim, however, fails to recognize the congressionally-authorized distinctions between the licensing of

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<sup>6</sup> See e.g., USTA Opposition at 39 (asserting that permitting CMRS providers to define their local calling areas based on MTAs would "exacerbate the competitive imbalance" already present in the First Report and Order).

radio-based CMRS and landline carriers.<sup>7</sup> Historically, the Commission, in reliance upon its Title III licensing authority, has established the service areas of radio common carriers. With regard to intrastate wireline carriers, service area boundaries have been drawn by the States. The Commission's decision to establish the MTA calling area for CMRS merely continues the Commission's long-standing authority. Moreover, MTA boundaries represent an efficient solution considering that mobile services by their nature operate without regard to state lines.

After over a decade of operation, CMRS networks have evolved independent of state boundaries. Cellular providers promoted the efficient buildout of their networks by "clustering" their systems into regional areas. Recognizing the benefits of the larger, interstate service areas, the Commission adopted the MTA/BTA service area scheme for licensing PCS. As MTAs are the largest of the licensed service areas for CMRS, they represent the logical choice for the local calling boundary. A reversal of this policy would reverse the progress in the development of CMRS

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<sup>7</sup> See 47 U.S.C. § 153(26) (defining "local exchange carrier" to exclude CMRS providers); see also, 47 U.S.C. § 332(c)(1) (permitting the Commission to exempt CMRS providers from Title II obligations); The Commission recognized this difference when it adopted the MTA boundary to be consistent with the manner under which many wireless carriers are licensed. First Report and Order at ¶ 1036 ("Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic").

networks, thereby removing from consumers a potential alternative to traditional landline telephony.

The notion that all telecommunications carriers would have to adjust their operations to conform with incumbent LEC methods of doing business discriminates in favor of the incumbents and runs afoul of the Commission's commitment to promoting competition, not competitors<sup>8</sup> (just as would a requirement that incumbent LECs redesign their networks and billing practices to conform with wireless standards). The Commission's decision to retain MTAs as the local calling areas for CMRS establishes rules for a competitive telecommunications framework that promote competition, not competitors, and allows for the efficient provision of telecommunications services to consumers. The Commission should not alter that decision.

Commenters opposed to the use of MTAs for CMRS local calling areas also assert that the Commission's decision will lead to a shift in revenues from the intrastate jurisdiction to the interstate jurisdiction.<sup>9</sup> The claim that the Commission's determination will cause a shift in revenues from the interstate to the intrastate jurisdiction is a red herring. Actually, any jurisdictional revenue shift would occur from the adoption of the commenters' proposals.

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<sup>8</sup> First Report and Order at ¶ 12 (indicating the Commission's refusal to indicate a preference for a particular entry strategy when developing its Section 251 rules).

<sup>9</sup> See e.g., USTA Opposition at 40.

These commenters' statements assume incorrectly that use of the MTA for establishing CMRS local calling areas is a shift from the traditional practice and that CMRS have traditionally been required to pay access charges and access-based rates to landline LECs in accordance with landline LEC local calling areas. They assume that the CMRS local calling areas and landline LEC local calling areas were effectively identical and that any change in the local calling area boundaries would consequently shift the jurisdictional separations process. In fact, CMRS local calling areas have never coincided with the local calling areas of landline LECs.<sup>10</sup> Thus, the elimination of MTAs as the basis for CMRS local calling areas would constitute the change and, consequently, would result in a jurisdictional revenue allocation shift from the traditional levels.

In sum, the Commission was within its authority to adopt MTAs as the local calling areas for CMRS providers.<sup>11</sup> The

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<sup>10</sup> See First Report and Order at ¶ 1043 ("Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges.") (emphasis added).

<sup>11</sup> It cannot be disputed that Congress granted the Commission broad discretion in regulating the CMRS market. In 1993, Congress granted the Commission the authority to forbear from burdensome Title II obligations for CMRS and it preempted states from regulating CMRS rates and entry. 47 U.S.C. § 332(c)(3). Although it declined to define the extent of its jurisdiction, the Commission recognized this Section 332 authority to regulate LEC-CMRS interconnection. First Report and Order at ¶ 1023 ("section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection").

Commission relied upon its Title III licensing authority as the basis for defining the local calling areas of CMRS providers.<sup>12</sup> The Eighth Circuit's recent action represents its preliminary assessment that the Commission has not overstepped its authority.<sup>13</sup> Hence, the Commission should continue to rely upon the sound legal and policy bases for defining CMRS local calling areas as it did in the First Report and Order, and should reject the petitions to reconsider that decision.

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<sup>12</sup> First Report and Order at ¶ 1036 ("in light of the Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network").

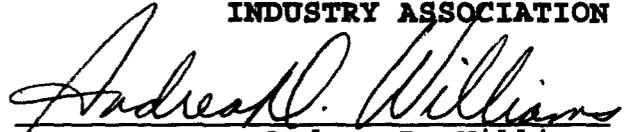
<sup>13</sup> Iowa Util. Bd. v. FCC, No. 96-3321, *Order Lifting Stay In Part*, (8th Cir. Nov. 1, 1996).

**III. CONCLUSION**

For these reasons, CTIA respectfully requests that the Commission deny the Oppositions detailed herein.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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