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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Building The Wireless Future™

CTIA

Cellular Telecommunications Industry Association
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January 16, 1997

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

Re: *Ex Parte* Presentation
CC Docket No. 96-98 / 95-185 (Implementation of the Local Competition Provision in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers);

Dear Mr. Caton:

On Thursday, January 16, 1997, the Cellular Telecommunications Industry Association ("CTIA") sent the attached documents and other documents that have already been filed in the record for the above proceeding, to Mr. Julius Genachowski, Chief Counsel to FCC Chairman Reed Hundt.

Pursuant to Section 1.1206 of the Commission's Rules', an original and one copy of this letter and the attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Katherine Harris

Katherine Harris

Attachment

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Randall S. Coleman
Vice President for
Regulatory Policy and La

January 16, 1996

Mr. Julius Genachowski
Chief Counsel to the Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Dear Mr. Genachowski,

Per your request, attached are three briefing binders. The first binder contains summaries of the positions CTIA has taken in comments, reply comments, letters, and petitions on record at the FCC. The second binder holds the documents from which the aforementioned summaries are derived. Additionally, we have included a general binder holding CTIA White Papers you may find helpful in your new position.

CTIA hopes these binders are helpful to you in learning more about the "wireless world." CTIA looks forward to an enduring partnership with you. If you have any questions or comments please feel free to contact us.

Sincerely,

Randall S. Coleman
Vice President for Regulatory Policy and Law

Attachments

Index to CTIA's Position Summaries*

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*Alphabetical listing corresponds with Tabs in CTIA's corresponding policy binder enclosing filings on record with the FCC

Summary of CTIA's Position on Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services

- CTIA believes that Commission imposition of an automatic roaming requirement is entirely premature.[1] An automatic roaming requirement would represent a significant and unnecessary departure from the Commission's long-standing policy to provide CMRS carriers with maximum flexibility by permitting market forces to shape the development of CMRS.[2]

- The Commission would need to address many complex issues if it imposed an automatic roaming requirement among CMRS carriers. Current roaming agreements are the product of a detailed negotiation process. The numerous variables would be difficult to accommodate within a regulatory structure. In other words, Commission attempts to define the rights of similarly situated carriers would require intrusive scrutiny and would significantly impair needed carrier flexibility.[3]

- CTIA also challenges the notion raised in the comments that cellular technology should be the default standard for PCS roaming. For the Commission to agree to this proposition would in essence be imposing automatic roaming requirements solely on cellular providers. Given that there is no record evidence of pervasive market failure, that many PCS carriers have announced their intent to provide nationwide roaming within the PCS bands, and that roaming represents a strategic business decision on the part of CMRS carriers, the Commission should refrain from such measures

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[1] CTIA has consistently demonstrated throughout this proceeding that CMRS carriers lack persistent and sustained market power deserving of a regulatory imposition of a duty to deal. See, e.g., CTIA comments Docket no. 94-54, filed October 4, 1996, at 5-7 & n.14. Concepts of regulatory parity between cellular and PCS carriers also dictate that the duty should not be imposed solely upon cellular carriers.

[2] See Notice at ¶ 26-27. The Commission has also noted that automatic roaming may be at odds with Congress' intent in passing the Telecommunications Act of 1996. Notice at ¶ 27.

[3] As the Commission noted, an "[automatic roaming] rule would need to recognize that not all carriers are similarly situated." Notice at ¶ 22. Given the disparate licensing schemes adopted by the Commission for cellular MSAs and RSAs, and the broadband PCS bands, defining those carriers that are similarly situated for the purpose of automatic roaming will be a burdensome task requiring many arbitrary assumptions.

Summary of CTIA's Position on Taxation

- The Commission has the authority and the obligation to preempt discriminatory and/or excessive State and local taxes and assessments. This means that State and local excise, usage, property, utility and other taxes and assessments which (1) favor one telecommunications service or provider at the expense of another or (2) impede or preclude the offering of any telecommunications service by imposing excessive or unreasonable costs, are prohibited.

- The Commission's preemptive authority has existed since 1934, and remains today. The Telecommunications Act of 1996 and the 1993 amendments to Section 332 of the Communications Act, in radically changing the entire telecommunications landscape, inevitably alter what constitutes "discriminatory" and "excessive" conduct barred by the Communications Act. The recent trend of State and local governments attempting to impose taxes in conflict with the Communications Act make urgent the Commission's exercise of its preemptive authority.

- The reasons for Congress' actions and the resulting need for Commission intervention are readily apparent: the importance to the national economy of telecommunications services generally and CMRS in particular. Congress, in a radical, distinct policy shift, enacted sweeping changes in 1993 and 1996 that favor competition -- where efficient, low-cost operations flourish -- over protectionist regulation. It necessarily and explicitly contemplated Federal, State and local government policies which uniformly decrease, rather than expand, costs imposed upon telecommunications firms. Congress wanted to ensure that these significant activities were not disproportionately burdened. Given the circumstances in which CMRS carriers operate -- competitive milieus with multistate operations -- burdens imposed by one State's costs are not borne by only that State's consumers -- a principle that applies to taxes just as much as to other costs. This obviously presents a profound "moral hazard," one requiring a strong federal remedy.

Summary of CTIA's Position on Antennae Siting

- Antennae are the building blocks of the nation's wireless systems. It is the mesh of wireless antennae that make seamless mobile telecommunications a reality. As of mid - 1996, the number of cell sites in the United States had grown to almost 25,000.

- Unlike many other telecommunications service providers, the wireless industry must build infrastructure in line with each new subscriber. As the wireless industry continues its extraordinary growth, new cell sites must be continually deployed. New subscribers create additional demand on the wireless networks in a way unlike other -- wired -- technologies. To maintain the high quality service that wireless customers have come to expect, the industry reinvests a substantial amount of its returns into its networks.

- Without additional infrastructure, all of these new wireless users would be forced to use the same fixed "amount" of network capacity. Past a certain point, this scenario becomes a technical impossibility, resulting in deteriorating call quality, increased call blocking, and frequent busy signals. However, the industry continually adds more cell site antennae, more switching equipment and more transmission capability to meet this demand and to continue to provide high-quality voice and data service.

- Until the passage of the Telecommunications Act of 1996, the deployment of wireless antennae was hindered by the actions of the almost 39,000 state, county and local governments. These governments added significant delay to wireless carriers' deployment plans, *and in some cases forbade any new construction of wireless facilities.*

- The new legislation is the first step in ensuring that these governments do not interfere with the deployment of a truly national wireless network. However, the wireless industry will continue to face these antenna siting issues:

  1. Aesthetic objections without regard to engineering studies which assure safety of the antennae and the quality of the resulting services. In fact, the wireless industry makes every effort to locate antennae on existing structures and to camouflage the facilities as much as possible. For example, as of the beginning of 1995, American Personal Communications (operating the new Sprint Spectrum service in the Washington-Baltimore MTA) has located 87% of their on-air cell sites on buildings or already existing towers.

2. Arbitrary objections concerning Radiofrequency (RF) emissions without regard to expert studies which ensure that a given cell site falls under the Federal standard for RF emissions. As a result of the new Federal legislation, the FCC must act quickly to preempt state and local entities from using unsupported RF concerns as a means to deny an antenna site application.

- The Telecommunications Act of 1996 also codifies the existing Presidential memorandum on the use of Federal properties for siting wireless facilities. Federal agencies must continue establishing procedures to make available their properties, rights of way and other easements at a fair and reasonable price for services dependent upon Federal spectrum.

Summary of CTIA's Comments Regarding New Spectrum

- Auctions are efficient spectrum assignment mechanisms but their use is inappropriate for spectrum allocation. The Communications Act charges the Commission with specific spectrum allocation responsibilities. The Commission may not ignore these responsibilities nor may it place them in the hands of private entities: it must ensure, not merely theorize, that the spectrum will be used in a manner that serves the public interest. To do so, the Commission must allocate the 2.3 GHz band to a specific initial use. The Commission must assign the spectrum so as to facilitate wireless competition and to encourage the efficient use of the spectrum, benefits offered by licensing the band in 10 MHz blocks for a geographic area no larger than an MTA.

- CTIA encourages the Commission to consider the public interest benefits of setting aside portions of the 2.3 GHz band to provide schools and libraries with access to a wireless information network. Similarly, CTIA notes the broad support among commenters for serving the needs of Public Safety agencies through the 2.3 GHz band.

- Further, the effective fulfillment of statutory responsibilities and the need to maintain regulatory parity direct the Commission to consider the impact of WCS auctions on other wireless carriers. The Commission should extend the flexible use, disaggregation and partitioning proposals for WCS to cellular, PCS and SMR providers. Further, it should impose parallel build-out requirements on all wireless providers and should raise the spectrum cap to 55 Mhz.

- Finally, to help mitigate the impact of WCS auctions on PCS licensees, the PCS auctions and licensing should be completed before the commencement of WCS auctions.

Summary of CTIA's Position On Universal Service and Federal-State Joint Board Recommended Decision

- CTIA applauds the Joint Board's recommendation that the Commission ensure that universal service support funding be available to all eligible carriers on a technology and competitively neutral basis.

- CTIA also believes that the Commission must make a conscious effort to include wireless technologies in its rules and policies by adopting flexible definitions of services, service standards and service areas that do not effectively exclude wireless providers from eligibility, and by requiring that States do so as well.

- It is particularly important that the Commission, at a minimum, account for the provision of service by wireless carriers when developing and adopting a proxy cost model to determine the appropriate level of high cost support available in an area. This will avoid subsidizing the provision of service by unnecessarily high-cost carriers and support the efficient provision of supported services. Similarly, the Commission should ensure that wireless carriers and wireless technology are available to schools and libraries by including wireless services in the definition of supported services for schools and libraries.

- In addition to the issues related to the incorporation of wireless providers into the Federal universal service rules, CTIA addresses an important jurisdictional matter in its comments. CTIA strongly disagrees with the Joint Board's finding that CMRS providers may be compelled by States to contribute to State-administered universal service funds. On the contrary, the plain meaning of Section 332 (c) (3), as confirmed by its legislative history, prohibits mandatory contribution by CMRS providers to State universal service funds.

Summary of CTIA's Position on Fixed Use / Flexible Use

- CTIA wholeheartedly endorses the Commission's decision to liberalize the use of CMRS spectrum, allowing spectrum to be used "on a co-primary basis for fixed services, mobile services, or any combination of the two."[1] As described by the Commission, its decision offers administrative simplicity and certainty, which will encourage innovation and experimentation.[2] Allowing flexible use of CMRS spectrum also will stimulate competition,[3] encourage efficient spectrum use, and promote diversity in the types and combinations of services offered to the public.[4]

- However, CTIA is concerned that several of the proposals outlined in the Further Notice, if adopted, would essentially undercut the public interest benefits described above. In the Further Notice, the Commission seeks comment on proposals to regulate the services offered by CMRS providers on a service-by-service basis, thereby potentially subjecting these services to pervasive regulation under the Communications Act of 1934 and reintroducing the specter of inconsistent state regulation. Such a result is contrary to the public interest and inconsistent with Section 332 of the Communications Act. Imposing unnecessary regulation is particularly wasteful in light of the Commission's express authority to preserve the public interest benefits of its flexible use decision by continuing to apply the CMRS model in this context.

- The Flexible Use Notice[5] proposed to "treat fixed wireless local loop services as an integral part of the CMRS services offered by a CMRS provider, so long as the carrier otherwise offers interconnected, for-profit mobile service to the public on licensed CMRS spectrum."[6] However, in the Further Notice, the Commission retreated from this sound policy and legal judgment. Instead, the Further Notice determined that it was "premature to attempt a final comprehensive determination regarding the regulatory treatment of these various types of fixed services that may be offered by licensees,"[7] and that the approach suggested in the Flexible Use Notice should be modified to provide "guidelines for determining when fixed wireless services may fall within the scope of CMRS regulation."[8]

- In essence, the Further Notice addresses two fundamental questions with regard to the regulatory treatment of fixed use of CMRS spectrum: First, does the Commission

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[1] First Report and Order, Docket No. 96-6, at ¶ 2.
[2] See id. at ¶ 19.
[3] See id. at ¶ 20.
[4] See id. at ¶ 22.
[5] Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rulemaking in WT Docket 96-6, 11 FCC Rcd 2445 (1996) ("Flexible Use Notice").
[6] Flexible Use Notice at 2449.
[7] Further Notice at ¶ 47.
[8] Id.

have the statutory authority to regulate fixed use of CMRS spectrum under section 332? Second, assuming the Commission possesses that authority, should the fixed use of CMRS spectrum be regulated under Section 332? In response to these questions, the Commission has clear statutory authority to regulate flexible uses of CMRS spectrum under section 332. In fact, such an outcome is the only decision consistent with the Communications Act of 1934, as amended, and with the public interest.

- In sum, the Commission should:
    - recognize and exercise its statutory authority to regulate any service offered using CMRS spectrum under Section 332 of the Act;
    - permit state regulation of CMRS wireless services only where the wireless service has supplanted the incumbent local exchange service provider and the CMRS provider offers the only available local exchange service in that market.

Summary of CTIA's E911 Comments

- While CTIA and its members strongly support the goal of this proceeding, that is the broadened availability of enhanced 911 ("E911") services to users of wireless telecommunications, CTIA's Comments on the Further Notice opposed the Commission's proposal to require a higher degree of automatic location ("ALI") accuracy after the five-year Phase II period,[1] noting that the proposed requirements are overly aggressive and are not based on any evidence that such requirements are technically feasible.

- CTIA and the Public Safety Communicators continue to support deployment of the "Phase II" location systems set forth in the Commission's Order & Further Notice. However, as other commenters have observed, the most likely consequence of enacting the Commission's proposal to increase the location accuracy target would be to delay, or even prevent, deployment of the Phase II "ALI" capabilities.

- CTIA opposes the Commission's proposal to require CMRS providers to transmit 911 calls from wireless handsets that do not transmit a code identification <u>even without a request from the PSAP Administrator.</u>[2]

- To accomplish the original goal, to broaden availability of enhanced 911 services to users of wireless telecommunications, the Commission should focus its efforts on providing CMRS licensees with the access they need to federal, state and local lands and facilities, as well as preempting zoning restrictions that frustrate carriers' ability to provide reliable 911 services to wireless callers.

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[1] The Commission proposes that covered carriers be capable of providing to PSAPs, after the initial five-year period, information that locates a wireless 911 caller within a radius of 40 feet, using longitude, latitude, and vertical location data, and that provides this degree of accuracy for 90 percent of the 911 calls processed. Order & Further Notice at ¶ 138.

[2] Order & Further Notice at ¶ 149.

Summary of CTIA's Comments on Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation and on OET Bulletin No. 65

- The compliance process established by the new RF guidelines requires three major steps. First, licensees for certain services that previously were "categorically excluded" from compliance evaluations, such as cellular and "covered specialized mobile radio ("SMR") services, now must determine whether their transmitting facilities must be evaluated for compliance according to conditions based on operating power, location, and/or height above ground.[1] If a licensee determines that an evaluation is required, the licensee must then determine whether the installed transmitters comply with the limits for Maximum Permissible Exposure ("MPE"). Finally, if that evaluation indicates that the transmitting facility, operation or device exceeds or will exceed the MPE limits, the licensee must either prepare an Environmental Assessment or ensure that procedures are in place to limit accessibility or otherwise control exposure so that the guidelines are met. Each step of this process will require intensive resources on behalf of individual licensees, some of which have hundreds or thousands of transmitting facilities that will be affected.

- CTIA's comments on the released draft of the OET Bulletin No. 65 requested a clarification on issues regarding (1) the use of spatial averaging to determine compliance with the maximum permissible exposure limits; (2) the use of a cylindrical model when evaluating near-field exposures; (3) the definitions of "site" and "facility" when determining multi-transmitter site compliance; and (4) the application of the new RF guidelines on existing licensees.

- On December 23, the FCC released the order extending to September 1, 1997, the transition period for CMRS licensees' determining their compliance with the new FCC requirements. The text of the Order states that the FCC did not concur with the petitioners who suggested that extending the transition period would have significant adverse effects on public health.

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[1] Order at ¶ 90.

Summary of CTIA's Telephone Number Portability Petition

- CTIA petitioned the Commission to conform the implementation requirements of CMRS providers to that of LECs such that CMRS providers are required to provide number portability only to the 100 largest markets by December 31, 1998. This uniform implementation schedule will ensure that number portability is implemented in an efficient and competitively neutral manner, consistent with a national number portability policy.

- CTIA requested that the Chief of the Wireless Bureau should be given delegated authority to waive or stay any of the dates of the implementation schedule for an unlimited period of time based on the requisite showing by the CMRS industry that the schedule established by the Commission in its number portability docket, Docket No. 95-116, released July 2, 1996, is not achievable.

Summary of CTIA's Petition for Limited Clarification Regarding Access Charges

- CTIA wishes to ensure that the Commission, in adopting transport and termination rules governing CMRS traffic within an MTA, does not create any new or additional obligations for CMRS providers to pay incumbent local exchange carriers ("LEC") access charges for CMRS traffic which crosses MTA boundaries (inter-MTA traffic).

- CTIA supports the Commission's decision in the First Report and Order in Docket Nos. 96-98, 95-185, released August 8, 1996, designating MTA boundaries as the perimeter for local service of CMRS Traffic, and its determination that CMRS providers should not pay interstate access charges for traffic not currently subject to such charges at the time of the adoption of the First Report and Order.

- While CTIA does not necessarily oppose the imposition of access charges for calls carried between two or more MTAs, it believes that the establishment of such a policy is more appropriate in the forthcoming access charge reform proceeding.

Summary of CTIA's Position on the Implementation of Section 255 of the Telecommunications Act of 1996

- Congress in enacting Section 255 spoke clearly, and in a manner reflecting its confidence that competitive solutions should be primarily relied upon to achieve the accessibility of telecommunications to individuals with disabilities, not government fiat. It therefore emphasized statutory limitations to the exercise of fiat, balancing costs and benefits, and encouraging alternative approaches to achieving its goals.

- CTIA recommended that the Commission, in fulfilling its obligations under Section 255, adopt a non-binding policy statement or set of voluntary guidelines to clarify the obligations of service providers under Section 255. This approach also would provide maximum flexibility to equipment and service providers in deploying technologies that are capable of providing the highest degree of access and use by persons with disabilities.