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June 19, 1997

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JUN 19 1997

Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

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

Re: CC Docket No. 96-162 Ex Parte Presentation

Dear Mr. Caton:

This letter is to advise you that Michael S. Wroblewski of Latham & Watkins, Glenn Rabin of ALLTEL and David Zesiger of the Independent Telephone and Telecommunication Association ("ITTA") met with Suzanne Toller, Legal Advisor to Commissioner Rachelle B. Chong to discuss matters involved in the above-captioned proceeding. The attached handout also was discussed. Pursuant to Section 1.206(a)(2) of the Commission's Rules, two copies of this letter have been filed with the Secretary. Please contact the undersigned if there are any questions regarding this matter.

Respectfully submitted,



Michael S. Wroblewski

cc: Glenn Rabin
David Zesiger
Suzanne Toller

Attachment

No. of Copies filed 0+2
Date Filed

Safeguards for LECs Offering CMRS -- Updated June 18, 1997
Independent Telephone and Telecommunications Alliance
WT Docket No. 96-162

A. The Commission's Proposal for Tier 1 LEC Offering of In-Region CMRS:

1. Develop and implement a nonstructural safeguard plan that:
 - a) Establishes a CMRS affiliate that must:
 - 1) Maintain separate books of account;
 - 2) Not jointly own transmission or switching facilities with the exchange telephone company; and
 - 3) Obtain any exchange telephone company services at tariffed rates and conditions.
 - b) Comply with Part 64 and Part 32 accounting rules.
 - c) Describe planned compliance with interconnection obligations.
 - d) Describe compliance with network disclosure rules.
 - e) Describe planned compliance with CPNI requirements of Section 222.
2. Justification for new regulatory burdens: To protect against cost-shifting and anticompetitive conduct by a LEC.

B. Tier 1 LECs include "2% Companies." 2% Companies are those with fewer than two percent of the Nation's subscribed lines. Congress has recognized that a 2% Company "faces competition from a telecommunications carrier that is a large global or nationwide entity that has greater financial or technological resources that are significantly greater than the resources of" the 2% Company. As a result, Congress has provided special treatment for 2% Companies based that is consistent with the size and scope of their operations. See Section 251(f).

C. ITTA's Concerns with the Commission's Proposals

1. Do Not Impose Unnecessary New Regulatory Burdens: The Commission should not impose separate affiliate requirements on the 2% Companies. In an era in which the Telecom Act has radically changed the market structure for telecommunications services by eliminating barriers to entry, there is no rational basis to adopt additional regulatory burdens. In fact, there is no support in the record for the proposition that 2% Companies have used their "bottleneck control" to cost-shift improperly or engage in anticompetitive behavior in the CMRS market, such that these new burdens are necessary.

2. Regulatory Symmetry Does Not Require New Burdens on 2% Companies: The Court in Cincinnati Bell required the Commission to regulate similar services similarly, not to regulate all LECs that provide CMRS similarly, which LECs Congress has recognized occupy different positions in the market.

3. Definition of “In-Region” CMRS Is Overly Broad: Under the Commission’s proposal, “in-region” CMRS includes a LEC’s statewide operations even though a 2% Company’s exchange operations may be limited to a few geographic areas within the state. As a result, 2% Companies must maintain separate affiliates in geographic areas in which they do not have exchange operations, thus increasing 2% Companies’ regulatory burdens without providing corresponding public interest benefits.

4. Inconsistent Regulatory Regimes by State: 2% Companies that have operations in many states, as a result of the Commission’s proposal, may have to comply with different regulatory requirements for their CMRS operations depending upon their size in that particular state.

5. 10 Mhz of In-Region PCS Spectrum Should Not Trigger the Separate Affiliate Requirements: With 120 Mhz of PCS spectrum and 50 of cellular spectrum already licensed to CMRS providers, if any CMRS provider uses 10 Mhz of spectrum or less, the separate affiliate requirement should not apply.

D. Increased Regulation of the 2% Companies is Unnecessary Because the Markets for CMRS and Long Distance Services Differ Significantly.

While the 2% Companies have made the case against imposing separate affiliate safeguards on their provision of long distance services (see, e.g. Cincinnati Bell and ITTA filing in CC Docket No. 96-149), the case against imposing such safeguards on 2% Company provision of CMRS is even more compelling. There are fundamental structural differences between LEC provision of long distance services and CMRS services that make it even more unlikely that 2% Companies would be able to discriminate against CMRS competitors. These differences include:

1. The CMRS market, unlike the long distance market, has been competitive from its inception -- CMRS has never been exclusively offered by a LEC.

2. Because of the nature of CMRS services, and particularly the ability to connect CMRS calls on a roaming basis, LECs are effectively foreclosed from discriminating against CMRS services other than its own. Unlike long distance services that always originate or terminate in the LEC’s local service territory, a LEC’s CMRS customer may originate, terminate or roam a CMRS call outside the LEC’s CMRS service territory. As a result, there is no incentive for a LEC to discriminate against CMRS competitors because such discrimination would only degrade the quality of service the LEC’s own CMRS customers experience. The impending arrival of dual-mode handsets will make this kind of discrimination all the more self-defeating.

3. Long distance services are dependent on the prior provision of local service by local exchange carriers. Although long distance services have never been offered on a stand-alone basis, CMRS services always have. Thus, it follows that while local exchange carriers are subject to “equal access” requirements that allow customers to freely choose their long distance carrier, no such requirement was ever found to be necessary for CMRS providers.