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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 8, 1997

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

Re: *Ex Parte* Presentation
- Policy and Rules Concerning the Interstate, Interexchange Marketplace
- CC Docket No. 96-61

Dear Mr. Caton:

This letter serves as notification that on September 8, 1997, Bill Roughton (representing PrimeCo Personal Communications, LP), Kathleen Abernathy (representing AirTouch Communications, Inc.), Mike Altschul, Wendy Chow, and Howard Symons (representing the Cellular Telecommunications Industry Association), John Scott (representing Bell Atlantic), Jon Chambers, and Roger Sherman (representing Sprint Spectrum), Luisa Lancetti and Wade Lindsay (from the offices of Wilkinson, Barker, Knauer & Quinn, LLP), had a meeting with James Schlichting, Patrick Donovan, and William Bailey (Competitive Pricing Division, Common Carrier Bureau). The purpose of the meeting was to discuss the application of the Commission's rate integration rule to Commercial Mobile Radio Service providers.

The substance of the discussion held reflected the written submission distributed during the meeting. A copy of the presentation material is attached hereto.

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Pursuant to Section 1.1206(a), an original and one copy of this letter are being filed with your office. Please associate this letter with the file in the above-captioned proceeding.

Please contact us should you have questions concerning the foregoing.

Sincerely yours,

WILKINSON, BARKER, KNAUER & QUINN

By: Luisa L. Lancetti
Wade Lindsay

Enclosure

cc: James Schlichting (by hand, w/attachment)
Patrick Donovan (by hand, w/attachment)
William Bailey (by hand, w/attachment)
Bill Roughton
Kathleen Abernathy
Mike Altschul
Wendy Chow
Howard Symons
John Scott
Jon Chambers
Roger Sherman

RATE INTEGRATION *ORDER ON RECONSIDERATION*

CMRS IMPACTS

FCC PRESENTATION
CC DOCKET NO. 96-61

September, 1997

Introduction

- The *Reconsideration Order* announces for the first time that CMRS providers will be subject to the rate integration rule, Section 64.1801.
- Imposition of rate integration obligations will have significant unforseen anti-competitive consequences.
- The *Notice of Proposed Rulemaking* and *Rate Averaging/Integration Order* did not mention imposing rate integration upon CMRS providers.
- The *Reconsideration Order* provides no analysis supporting the decision to impose rate integration obligations upon CMRS providers.
- The Commission should develop and thoroughly analyze an evidentiary record regarding CMRS rate integration requirements.
- A temporary stay would promote the public interest by maintaining the *status quo ante* while the Commission undertakes this analysis.

CMRS Industry Concerns

- The problems fall into three principal categories:
  - Definition Issues: *What CMRS Offerings are Affected?*
  - Rate Issues: *What CMRS Rates Must be Integrated?*
  - Affiliate Issues: *How are CMRS Ownership and Partnership Structures to be Treated Under the Affiliate Rule?*

What CMRS Offerings are Affected?

Unlike landline service, it is difficult to define what constitutes "interstate, interexchange services" in the CMRS context.

- CMRS are mobile services that, by their nature, constitute a unique, end-to-end service without regard to "exchanges" or even state boundaries.

- The FCC has defined local calling areas for CMRS providers to be Major Trading Areas ("MTA"), which often encompass two or more states.

- Sprint Spectrum and other CMRS providers have combined adjacent MTAs to create multi-state wide-area local calling areas in which they offer customers local calling rates throughout the combined multi-state region.

- CMRS rate integration in this context could effectively eliminate these wide-area local calling options.

What CMRS Rates Must be Integrated?

- CMRS interstate rates (other than local calling options) typically include two elements — toll and airtime charges. Often, the toll and airtime charges each vary from one market to the next.

- If the integration rule applies only to toll charges, customers in different geographic markets will still pay different rates for interexchange calls because of variances in airtime charges.

How are CMRS Ownership/Partnership Structures to be Treated Under the Affiliate Rule?

- Numerous CMRS providers operate as partnerships with other CMRS providers. The *Reconsideration Order* requires that the controlling partner in these markets integrate in all markets served by that partner. This would override the interests of the non-controlling partners and potentially breach the attendant fiduciary obligations owed to those partners.

- PrimeCo presents a related problem. PrimeCo is controlled by three partners, each of whom is itself a CMRS provider (Bell Atlantic, U S WEST, and AirTouch). Under the integration rule, it appears that all three controlling partners would have to integrate their interstate, interexchange rates. This result runs counter to fundamental antitrust policies.

- The same problem arises for Bell Atlantic and Frontier Corporation. Bell Atlantic and Frontier Corporation have a 50/50 control relationship in Upstate Cellular Network. Consequently, the rate integration rule could require both carriers to agree to integrate their interstate, interexchange rates.

Relief Request

- The Commission should, on its own motion, give further consideration to whether and to what extent the rate integration and affiliate rules should apply to the CMRS industry.

- Under Commission Rule 1.108, such action by the Commission is permissible within 30 days of publication in the *Federal Register.*

- The Commission should temporarily stay the *Reconsideration Order* pending this analysis.

  - Stay would permit the Commission to develop a record upon which it can resolve the many implementation issues of the integration and affiliate rules applied to the CMRS industry.

  - Stay is consistent with the Commission's order staying the effectiveness of its slamming rules (11 FCC Rcd. 856 (1995)) pending Commission analysis of un-anticipated and unintended consequences of the rules.