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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	CCB/CPD 97-54
Implementation of Section 254(g) of the Communications Act as amended	)	

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION ON THE MOTION FOR STAY OF ENFORCEMENT OF PRIMECO PERSONAL COMMUNICATIONS, LP

The Cellular Telecommunications Industry Association ("CTIA"),[1/] by its attorneys, hereby submits its comments in support of the Motion for Stay of Enforcement filed in the above-captioned proceeding by PrimeCo Personal Communications, LP ("PrimeCo").[2/] PrimeCo asks the Commission to stay enforcement of section 64.1801 of the Commission's rules to the extent that

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[1/] 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, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

[2/] Expedited Pleading Cycle Established for PrimeCo's Motion for Stay of Enforcement of Rate Integration Requirements as Applied to CMRS Providers, Public Notice DA 97-2086 (rel. Sept. 25, 1997).

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the Reconsideration Order in this proceeding extended the application of that rule to Commercial Mobile Radio Services ("CMRS") carriers and to carriers that they own or control.[3/]

CTIA supports PrimeCo's motion. Grant of the motion would avoid the harm to consumers that could result from unintended consequences of the Reconsideration Order, as described below, pending the Commission's consideration of petitions for clarification or further reconsideration of the Reconsideration Order that will be filed by PrimeCo, CTIA, and others.

Read literally, the Reconsideration Order could be interpreted to impose obligations and limitations on CMRS providers that Congress did not intend. As a threshold matter, application of the affiliate definition adopted there would yield blatantly anticompetitive results. As PrimeCo explains in its motion, requiring CMRS providers to integrate rates across affiliates may require separate and competing carriers that are partners in one market to coordinate and charge the same CMRS interstate, interexchange rates in markets where they operate as

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[3/] Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, First Memorandum Opinion and Order on Reconsideration, FCC 97-269 at ¶ 18 (rel. July 30, 1997) ("Reconsideration Order").

competitors.[4/] In the latter markets, a carrier could effectively be precluded from cutting its interstate rates to attract subscribers unless the other carrier also did so. Such an outcome does not serve the public interest in a competitive marketplace and it was surely not the intent of Congress in enacting section 254(g) to repeal the antitrust laws' proscription on price fixing.

Beyond this threshold issue, there is considerable evidence that section 254(g) is largely inapplicable to CMRS providers. As the legislative history of section 254(g) demonstrates, this provision was only intended to codify existing rate integration and averaging policies, not to expand these requirements to apply to additional services or providers.[5/] CMRS was not subject to rate integration or averaging requirements at the time the Telecommunications Act of 1996 was enacted.

The inapplicability of the rate integration rule to CMRS is underscored by the practical difficulties of applying the rule to

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[4/] PrimeCo Motion at 7-9.

[5/] See H.R. Conf. Rep. No. 104-458, at 132 ("The conferees intend the Commission's rules to require geographic rate averaging and rate integration, and to incorporate the policies contained in the Commission's proceeding entitled 'Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands' (61 FCC 2d 380 (1976).").

wireless carriers. First, the mobile nature of CMRS would create considerable difficulty in identifying "interstate" calls for purposes of section 254(g). In the case of calls made by roamers,[6] moreover, there is an additional problem of determining whether the charges would have to be integrated with the rates of the roamed-upon system or those of the home system.

Second, CMRS service areas do not follow state lines and do not coincide with local exchange carrier ("LEC") "exchanges." Rather, CMRS licenses are issued by MSAs and MTAs, which frequently cover multistate areas. Wide-area local calling plans often permit calls between locations in different States without a separate toll charge. The Commission recently acknowledged the differences between CMRS and LEC exchanges and designated MTAs as the appropriate local calling area for CMRS.[7] Because intra-MTA calls are thus not "interexchange" calls, section 254(g) does not apply.

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[6] "Roaming" occurs where the subscriber of one CMRS provider uses the facilities of another CMRS provider with which the subscriber has no direct or pre-existing relationship in order to place and receive calls while the subscriber is in the service area of the "roamed upon" carrier. In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 at ¶ 3 (1996).

[7] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 at ¶ 1036 (1996) ("Local Competition Order").

Third, even with regard to inter-MTA calls, there is frequently no toll charge. Indeed, some wireless carriers have combined portions of multiple MTAs into single "local" calling areas for billing purposes. Other CMRS providers offer local and long distance services at a single undifferentiated charge. Still other carriers have begun offering service at geographically-insensitive rates. Section 254(g) presumes that interstate service is being provided at a separately-identifiable "interstate" rate. Any attempt to apply the rate integration requirement to situations where there is no such rate would deprive consumers of the benefits of these innovative rate plans.

Fourth, literal compliance with rate integration requirements would also require CMRS providers to act in ways that are inconsistent with prior congressional and Commission directives. For example, CMRS carriers have traditionally priced local and toll services flexibly, a practice that was recognized by Congress in 1993[8/] and endorsed by the Commission in its decision to forbear from tariffing CRMS.[9/] Application of rate

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[8/] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(b)(2), 107 Stat. 312 (1993) (codified at 47 U.S.C. § 332(c)(3)(A)) (preempting state regulation of CMRS rates).

[9/] Implementation of Section (3)(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411, 1511 (1994) ("CMRS Second Report and Order").

integration requirements to CMRS would prevent CMRS providers from continuing to respond to competitive pressures by reducing interstate rates in particular markets.

Fifth, where interstate CMRS offerings have separate toll and airtime charges, the airtime charges often vary from market to market. Under these circumstances, even requiring integration of interstate toll rates would not result in the same rates being charged in each State. Rate regulation of CMRS airtime charges is beyond the scope of section 254(g). Congress could not have intended to deprive CMRS customers of the benefits of flexible pricing and competition in the wireless marketplace, or to force the wholesale reregulation or restructuring of CMRS rates.

Because of the inherent differences between mobile and conventional telecommunications services, Congress created a separate regulatory regime for CMRS in 1993. Nothing in section 254(g) suggests that Congress intended for CMRS providers to undertake the substantial efforts that would be required to conform their offerings to those of conventional interstate carriers, or that Congress wished to deprive consumers of the pricing flexibility and marketplace responsiveness they have come to expect from wireless carriers. Enforcement of the Reconsideration Order as to CMRS providers should be stayed,

pending further reconsideration of how, if at all, to apply the rate integration rule to wireless carriers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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