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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
PETITION FOR FORBEARANCE OR RECONSIDERATION

The Personal Communications Industry Association ("PCIA")[1] hereby petitions the Commission to forbear from applying rate integration obligations to CMRS providers or, in the alternative, to reconsider and clarify the *First Memorandum Opinion and Order* in the above-captioned docket.[2] PCIA respectfully requests that the Commission exercise its authority under Section 10 to forbear from applying Section 254(g) of the Act and Section 64.1801 of the Commission's rules to CMRS providers. If forbearance relief is not forthcoming, PCIA asks the Commission, at a minimum: (1) to reconsider its decision to require providers to integrate rates

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[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Mobile Wireless Communications Alliance, the Site Owners and Managers Association, the Association of Communications Technicians, and the Private Systems Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] FCC 97-269 (rel. July 30, 1997) (*"First MO&O"*). The *First MO&O* was published in the Federal Register on September 3, 1997, 62 Fed. Reg. 46447.

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across affiliates; (2) to clarify the definition of an "interstate interexchange" service in the CMRS context; and (3) to clarify the types of CMRS rates that must be integrated. In the absence of forbearance relief, the clarifications sought herein are absolutely critical to ensure compliance with the Commission's new rate integration obligations.

INTRODUCTION AND SUMMARY

On August 7, 1996, the Commission released the *Rate Averaging/Integration Order*[3] implementing Section 254(g) of the Communications Act, as amended. Section 254(g) requires that "a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."[4] As the legislative history of the Act makes clear, the purpose of Section 254(g) was "to incorporate the policies of rate averaging and rate integration of interexchange services."[5] The legislative history, however, does not contain any discussion of how or why such rate integration should apply in the CMRS context.

On July 30, 1997, the Commission released the *First MO&O* denying various petitions for reconsideration of the *Rate Averaging/Integration Order*. In the *First MO&O,* the Commission, *inter alia*, imposed rate integration obligations on CMRS providers for the first

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[3] *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation Section 254(g) of the Communications Act of 1934, as amended,* 11 FCC Rcd 9564, 9598 (1996) ("*Rate Averaging/Integration Order* ").

[4] 47 U.S.C. § 254(g).

[5] H.R. Conf. Rep. No. 104-458, at 132 (1996) *reprinted in* 1996 U.S.C.C.A.N. 124, 144 ("Joint Explanatory Statement").

time. In addition, the Commission affirmed its previous determination "that section 254(g) requires the implementation of rate integration across affiliates."[6]

On September 23, 1997, PrimeCo Personal Communications, LP ("PrimeCo") asked the Commission to stay the enforcement of Section 64.1801, pending reconsideration of the *First MO&O*, to the extent that Section 64.1801 applies to CMRS providers and to carriers that they own or control.[7] PrimeCo further requested that, at a minimum, the Commission should stay the application of the requirement that CMRS providers integrate across affiliates. After substantial comment in favor of PrimeCo's stay request, the Commission granted limited relief for CMRS providers.[8] Specifically, the Commission agreed to suspend the enforcement of the requirement that CMRS carriers integrate rates across affiliates pending reconsideration of the *First MO&O*.

As evidenced by the overwhelming support of PrimeCo's stay request, it is clear that significant implementation issues exist that must be resolved before the CMRS industry can move forward to comply with the Commission's rate integration obligations. Parties commenting on PrimeCo's motion aptly demonstrated the many unanticipated consequences and difficulties associated with applying the new rate integration requirements to CMRS providers. The Commission has taken the first step in the right direction by granting the stay request. As detailed below, the Commission should now use its Section 10 authority to forbear from imposing rate integration requirements on CMRS providers.

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6 *First MO&O*, ¶ 16.

7 Motion for Stay of Enforcement of PrimeCo Personal Communications, LP, CC Docket No. 96-61 (filed Sept. 23, 1997) ("PrimeCo Motion").

8 *See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation Section 254(g) of the Communications Act of 1934, as amended*, CC Docket 96-61, Order, FCC 97-357 (rel. Oct. 3, 1997).

I. THE COMMISSION SHOULD FORBEAR FROM IMPOSING ANY RATE INTEGRATION OBLIGATIONS ON CMRS PROVIDERS.

PCIA fully supports BellSouth's request that the Commission forbear from applying Section 254(g) and Section 64.1801 of its rules to CMRS providers.[9] As BellSouth demonstrates, the Commission is compelled to forbear from applying these rate integration requirements to CMRS providers under the Section 10 standard. PCIA is a strong proponent of forbearance for the wireless industry, and earlier this year submitted a petition asking the Commission to forbear from imposing outdated and unnecessary regulatory burdens on broadband PCS providers.[10]

PCIA agrees that forbearance is warranted in the instant case to protect and enhance both the vigorous competition that currently exists in the wireless market and the diversity of service options available to consumers. As BellSouth stated, "Congress [has] specifically indicated that forbearance from applying Section 254(g) may be warranted in certain circumstances."[11] Specifically, in the context of rate averaging, Congress indicated that the "Commission, where appropriate, could continue to authorize limited exceptions to the general geographic rate

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[9] *See* BellSouth's Comments in Support of PrimeCo's Motion for Stay of Enforcement, CC Docket 96-61; CCB/CPD 97-54 (filed Sept. 29, 1997) ("BellSouth Comments").

[10] *See* PCIA's Petition for Forbearance (filed May 22, 1997) seeking forbearance from complying with Section 201 and 202, mandatory resale obligations, TOCSIA, international 214 facilities authorization and tariffing requirements, and Section 310(d)'s prior approval requirements for *pro forma* transactions. The Commission has yet to act on PCIA's forbearance petition.

[11] BellSouth Comments at 7.

averaging policy using the authority provided by new section 10 of the Communications Act."[12] Thus, the Commission clearly has the authority to forbear from applying Section 254(g), and the circumstances warrant such relief.

BellSouth's analysis fully demonstrates that the three-prongs of the Section 10 forbearance standard are satisfied. Specifically, Section 10(a) *requires* the Commission to forbear from applying any provision of the Act if the Commission determines that: (1) enforcement is not necessary to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.[13] In analyzing whether forbearance is in the public interest, Section 10(b) requires the Commission to consider whether forbearance will "promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[14]

PCIA submits that the forbearance test is satisfied with respect to the enforcement of rate integration requirements as applied to CMRS providers. First, imposing rate integration obligations on CMRS carriers is unnecessary to ensure that rates and practices are just, reasonable, and not unjustly discriminatory. As PCIA demonstrated in its prior forbearance petition and the Commission itself has recognized, competitive market forces are vigorously at

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12 Joint Explanatory Statement at 132.

13 47 U.S.C. § 160(a)(1)-(3).

14 47 U.S.C. § 160(b).

work to drive down the prices of mobile services.[15] Unlike the wireline industry, CMRS has never been subject to rate integration requirements, and there is no need to start now. Imposing new rate integration obligations on CMRS providers is both inconsistent with the trend toward a more deregulatory environment and results in more harm than good. As CTIA states, "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."[16]

Second, forbearance is warranted because imposing rate integration obligations on CMRS providers is not necessary to protect consumers. To the contrary, forbearance is more likely to protect consumers than additional regulation. As BellSouth accurately points out, "[t]he inevitable result of the Commission's rejection of the market-based pricing arrangements that have governed CMRS in the past will be diminished consumer choice, lessened competition, and increased prices."[17] The Commission certainly could not have intended its rate integration rules to have such adverse effects on consumers.

As several parties explained in their responses to PrimeCo's stay request, some CMRS providers have created multi-state, wide-area local calling areas by combining adjacent MTAs.[18]

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15 *See* PCIA Forbearance Petition at 12-13; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 97-75, Second Report, at 13-15 (rel. Mar. 5, 1997) ("*Second Annual CMRS Competition Report*").

16 CTIA Comments at 6.

17 BellSouth Comments at 10.

18 *See, e.g.*, Comments of the Cellular Communications Industry Association on the Motion for Stay of Enforcement of PrimeCo Personal Communications, LP, CC Docket 96-61; CCB/CPD 97-54, at 4 (filed Sept. 29, 1997) ("CTIA Comments"); Comments of Comcast

Through wide-area local calling plans, providers can charge customers local calling rates without a separate toll charge for calls made throughout the combined multi-state region. Imposing rate integration obligations in this case would eliminate these wide-area calling options, thereby limiting price flexibility for the carrier and, more importantly, choice for the consumer. A grant of forbearance would avoid such harm to consumers. Indeed, as Omnipoint states, "[t]he goal of vibrant competition for wireless interstate telecommunications is best served in this proceeding by leaving pricing and calling area plans to the marketplace."[19]

Finally, as discussed above, forbearance will serve the public interest by allowing CMRS carriers to respond to competitive market pressures. The beneficiaries of such pricing flexibility are the consumers. It would be a tremendous disservice to the public to deprive consumers of the benefits of competitive rate structures and innovative service offerings by moving away from pricing flexibility and toward more detailed regulation.

* * *

As demonstrated above, all of the factors necessary for the Commission to forbear from applying rate integration requirements to CMRS providers are present. There is no simply no justification for placing additional regulatory burdens on CMRS providers. Moreover, imposing such obligations on wireless carriers is likely to have adverse consequences for consumers, the CMRS industry, and the public interest as a whole. Accordingly, the Commission must forbear from applying Section 254(g) and Section 64.1801 of its rules to CMRS providers.

(. . . Continued)
Cellular Communications, Inc., CC Docket 96-61; CCB/CPD 97-54, at 3 (filed Sept. 29, 1997) ("Comcast Comments").

[19] Comments of Omnipoint Communications, Inc., CC Docket 96-61; CCB/CPD 97-54, at 2 (filed Sept. 29, 1997) ("Omnipoint Comments").

II. IF FORBEARANCE RELIEF IS NOT FORTHCOMING, THE COMMISSION, AT A MINIMUM, SHOULD RECONSIDER AND CLARIFY SEVERAL ASPECTS OF THE *FIRST MO&O*.

A. The Commission Should Reconsider Its Decision To Require Providers To Integrate Rates Across Affiliates.

In its *First MO&O*, the Commission affirmed its previous determination "that section 254(g) requires the implementation of rate integration across affiliates."[20] As several parties have correctly pointed out, the requirement that providers integrate rates across affiliates is not mandated by the Act, but rather arises from the Commission's interpretation of the Act[21] — an interpretation that some parties have considered flawed.[22] Specifically, Section 254(g) requires that "a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."[23]

Requiring rate integration across affiliates is completely inconsistent with Congressional intent and past Commission policies. The legislative history of Section 254(g) clearly reveals that Congress intended the Commision "to incorporate the policies of rate averaging and rate integration of interexchange services."[24] The Commission itself has acknowledged that "Congress intended section 254(g) to incorporate the Commission's existing rate integration

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20 *First MO&O*, ¶ 16.

21 *See, e.g.*, PrimeCo Motion at 2-3; GTE Comments in Support of PrimeCo Personal Communications, LP Motion for Stay of Enforcement, CC Docket 96-61; CCB/CPD 97-54, at 2-3 (filed Sept. 29, 1997) ("GTE Comments").

22 *See, e.g.*, GTE Comments at 2-3.

23 47 U.S.C. § 254(g).

24 *See supra* note 5.

policy."[25] Prior rate integration policy never required any carrier to integrate rates across affiliates. There is absolutely no justification for doing so now.

Moreover, as demonstrated by the overwhelming majority of parties commenting on PrimeCo's stay request, absurd and unintended anti-competitive consequences will result in the CMRS context if carriers are required to rate integrate across affiliates.[26] A number of parties pointed out that, unlike the landline industry, where ownership relations are fairly straightforward, the ownership structures in the CMRS industry typically consists of partnership arrangements among carriers that are often competitors in other markets. As PrimeCo and others explained, requiring CMRS providers to integrate rates across affiliates could result in coordinated pricing practices that would raise questions under the antitrust laws.[27]

Even the State of Hawaii, which opposed PrimeCo's motion, did not object to a stay of the "across affiliates" requirement. Hawaii clearly recognized that the complex ownership structures prevalent in the CMRS industry "present novel issues" that must be addressed.[28] PCIA submits that elimination of the requirement that a provider integrate rates across its affiliates would be consistent with the Act and would eliminate the immense practical difficulties of complying with this requirement.

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25 *First MO&O*, ¶ 2.

26 *See, e.g.*, CTIA Comments at 2; GTE Comments at 3-5; Comments of US West, CC Docket 96-61; CCB/CPD 97-54, at 4-5 (filed Sept. 29, 1997) ("U S West Comments").

27 *See, e.g.*, PrimeCo Motion at 3, 7-9; CTIA Comments at 31 U S West Comments at 5.

28 Opposition of the State of Hawaii, CC Docket 96-61; CCB/CPD 97-54, at 10-11 (filed Sept. 29, 1997) ("Hawaii Comments").

B. The Commission Should Clarify the Definition of an 'Interstate Interexchange" Service in the CMRS Context.

The *First MO&O* "requires CMRS providers to provide [] interstate interexchange CMRS service on an integrated basis in all their states."[29] Although the Commission states that "interstate interexchange CMRS offerings are not the same service as other interstate interexchange services,"[30] it neither explains this distinction nor defines an "interstate interexchange CMRS service."

The mobile nature of CMRS makes it extremely difficult to define what constitutes an "interstate interexchange" service for purposes of Section 254(g). The Commission has typically defined local calling areas for CMRS providers to be MTAs, which do not necessarily coincide with state lines or LEC exchanges. In fact, MTAs frequently encompass two or more states. As explained above, many CMRS carriers have created wide-area calling plans that allow customers to extend their local, toll-free calling area to larger territories or specific areas. Should the Commission find that optional wide-area calling plans are interstate interexchange services subject to rate integration, consumers will be harmed. Such a result conflicts directly with the Commission's goal of bringing a wide variety of service offerings to consumers.

C. The Commission Should Clarify the Types of CMRS Rates That Must Be Integrated.

Another area of uncertainty is the types of CMRS rates must be integrated. The *First MO&O* offers no guidance in this area. In the CMRS industry, interstate rates (other than local

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29 *First MO&O*, ¶ 18.

30 *Id.*

calling options) typically include two rate elements — toll and airtime charges. Airtime charges often vary from market to market. Thus, even if the Commission were to require the integration of interstate toll charges, customers in different geographic markets would still pay different rates for interexchange calls because of varying airtime charges.[31]

In addition, as CTIA points out, roaming raises a separate issues. With roaming, there is the 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.[32] Accordingly, to eliminate any ambiguity and ensure compliance with the rate integration requirements, the Commission should clarify the types of CMRS rates that must be integrated.

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31 *See, e.g.*, CTIA Comments at 6; Comcast Comments at 3.

32 CTIA Comments at 4.

CONCLUSION

In light of the foregoing, PCIA believes that the public interest would best be served by the Commission forbearing from imposing rate integration obligations on CMRS providers. In the event that forbearance is not forthcoming, the Commission should reconsider and clarify several aspects of its *First MO&O* as requested herein.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By: Mark J. Golden /ANW

Mark J. Golden
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

October 3, 1997

CERTIFICATE OF SERVICE

I, Gina M. Stuart, hereby certify that a copy of the foregoing "Personal Communications Industry Association Petition for Forbearance or Reconsideration" was served upon the following via hand delivery on this 2nd day of October, 1997:

Gina M. Stuart

Gina M. Stuart

ITS
1231 20th Street
Room 112
Washington, D.C. 20036

Wanda Harris
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554
(2 copies)

James Schlichting, Chief
Competitive Pricing Division
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554

Jeanine Poltronieri
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5002
Washington, D.C. 20554

Rosalind K. Allen
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5002
Washington, D.C. 20554

Patrick J. Donovan
Common Carrier Bureau
Federal Communications Commission
2033 M Street, NW
Room 500
Washington, D.C. 20554

William Bailey
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554