49. With the conclusion of the World Trade Organization (WTO) Basic Telecommunications Agreement, we expect to see a shift away from monopoly provision of foreign telecommunications services and toward competition and open entry in WTO member countries. Nonetheless, many foreign markets will continue to be served by monopoly or dominant providers of services or facilities that are necessary for the provision of U.S. international service. Even in countries where liberalization is occurring, carriers may continue for some time to possess market power in foreign termination services. Our regulation of international common carrier services has historically focused on ensuring that all U.S. carriers have fair and nondiscriminatory access to foreign termination services that are necessary for the provision of U.S. international service.[149] Applicants for international section 214 authority that are affiliated with foreign carriers present the greatest regulatory concern because the foreign carrier affiliate may have the ability and incentive to discriminate against unaffiliated U.S. carriers in terminating U.S. traffic. However, we also regulate all U.S. carriers' dealings with foreign carriers to ensure that no carrier is able to acquire an anticompetitive advantage along any particular U.S. international route.[150]

50. The section 214 authorization requirement serves several purposes. It enables the Commission to screen applications for risks to competition and to deny or condition authorizations as appropriate. The review process also includes consultation with Executive Branch agencies on national security, law enforcement, foreign policy, and trade concerns that may be unique to the provision of international services.[151] The section 214 authorization requirement also helps us monitor competitive conditions along U.S. international routes as well as each carrier's compliance with our rules and policies governing the provision of international services. Authorized carriers are required to file annual reports of their traffic and revenue, and facilities-based carriers must file annual circuit status reports. We also condition the authorization of every foreign-affiliated facilities-based carrier on its affiliate's having in effect a settlement rate with U.S. carriers that is at or below the Commission's benchmark rate.[152] Carriers regulated as dominant along a particular route due to an affiliation with a foreign carrier that has market power are additionally required to file quarterly reports of their traffic and revenue,[153] circuit status, and provisioning and maintenance of circuits on the affiliated route. So that we can continue to monitor foreign affiliations, we also require carriers to notify the Commission

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[149] *See generally International Services*, 7 FCC Rcd. 7331.

[150] *See* 47 C.F.R. § 63.14 (prohibition on agreeing to accept special concessions); Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd. 23891, 23955-65, ¶¶ 150-170 (1997) (*Foreign Participation Order*), *recon. pending.*

[151] *See Foreign Participation Order*, 12 FCC Rcd. at 23918-21, ¶¶ 59-66.

[152] *See* International Settlement Rates, *Report and Order*, 12 FCC Rcd. 19806, 19897-912, ¶¶ 195-231 (1997) (*Benchmarks Order*), *recon. and appeals pending.*

[153] Omnipoint asks, in its comments in this proceeding, that we forbear from enforcing the international traffic and revenue reporting requirements of section 43.61 of our rules with respect to CMRS providers. This request is not properly before us in this proceeding. Nevertheless, we anticipate reviewing this and other requirements in future proceedings.

(and, in some cases, to seek prior approval) of new affiliations with foreign carriers.[154] We developed these requirements very recently as narrowly tailored safeguards against the leveraging of foreign market power to the detriment of U.S. consumers.[155] The section 214 authorization requirement is important to the Commission's efforts to monitor and enforce compliance with its safeguards, and it also serves to inform small carriers of their special obligations as providers of international service.

51. We have noted that domestic wireless markets are becoming increasingly competitive, although competition remains limited in some respects.[156] Nonetheless, we are unable to conclude on this record that forbearance from the section 214 authorization requirement would be consistent with the public interest as required under the section 10 standard. PCIA's petition does not address the leveraging of foreign market power by foreign-affiliated carriers except to assert that "as new entrants into the international telecommunication market, broadband PCS providers are without international market power and, therefore, lack the ability to engage in unjust or unreasonable practices."[157] In its reply comments, PCIA argues that "this hypothetical situation is completely speculative, particularly given the small share of international services attributed to CMRS providers," and that there is no evidence that such a situation exists.[158] On the contrary, we are concerned that a broadband PCS provider, like any other carrier of international traffic that competes against other international carriers, could acquire an affiliation with a foreign carrier that has market power and that the foreign affiliate would then have the ability and incentive to discriminate against unaffiliated U.S. international carriers on the affiliated route. Indeed, a number of wireless carriers already have relationships with foreign carriers, and we anticipate that, as a result of the recent World Trade Organization agreement to liberalize telecommunications markets, these relationships will become even more common. This is a time of great change in international telecommunications markets, when many markets are characterized by asymmetrical market power that can have anticompetitive effects and harm U.S. consumers. In the absence of a section 214 authorization requirement, we might be unable to monitor foreign affiliations and compliance with our safeguards or to bring enforcement action against a carrier for failure to adhere to our international rules and policies.

52. We thus continue to have a need to impose certain conditions on all international section 214 authorizations, and in particular cases to impose dominant carrier regulation. We also cannot yet rule out the possibility of a need to impose other conditions on particular authorizations.[159] We therefore must continue to require that international service be provided only pursuant to an authorization that can be conditioned or revoked if necessary to ensure that rates and conditions of

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[154] *See* 47 C.F.R. § 63.11.

[155] *See Foreign Participation Order*, 12 FCC Rcd. at 23950-54, ¶¶ 143-149.

[156] *See* paras. 21-23, *supra*.

[157] PCIA Petition at 54.

[158] PCIA Reply Comments at 29.

[159] *See Foreign Participation Order*, 12 FCC Rcd. at 23912-16, ¶¶ 51-58.

service are just, reasonable, and nondiscriminatory and to protect consumers.[160] We may also need to review (in consultation with Executive Branch agencies) any given carrier's international section 214 authorization for national security, law enforcement, foreign policy, and trade concerns.

53. PCIA's argument that forbearance would serve the public interest is unpersuasive in light of the above considerations. The great majority of international section 214 applications are granted through a streamlined process under which the applicant may commence service on the 36th day after public notice of its application. Applications that are opposed or that the Commission deems unsuitable for streamlined processing are generally disposed of within 90 days.[161] This delay is not so great a burden as to outweigh the needs described above.

54. For the reasons discussed above, we conclude that the record does not show that it would be consistent with the public interest to forbear from the international section 214 authorization requirement. Therefore, the third prong of the forbearance standard is not met. Because the third prong of the standard is not satisfied, we cannot grant the forbearance PCIA seeks, and we need not address the first two prongs.

D. International Tariffing Requirements

55. PCIA next asks us to forbear from imposing on broadband PCS carriers the requirement of filing tariffs for their international services. In the *CMRS Second Report and Order*, we exercised our forbearance authority under section 332(c) to forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers.[162] We did not address the tariffing obligations as they apply to international services.

56. We conclude, based on this record, that the section 10 standard is met for forbearance from the international tariffing requirement for CMRS providers that offer international service directly to their customers for international routes where they are not affiliated with any carrier that terminates U.S. international traffic and collects settlement payments from U.S. carriers. Thus, we will forbear from the mandatory tariffing requirement and adopt permissive detariffing of international services to unaffiliated points[163] for CMRS providers.

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[160] See *id.* at 24022-23, ¶¶ 293-296, for a discussion of the need to investigate allegations that a violation of our rules has occurred and of our authority to enforce our safeguards to prevent harm to competition or consumers in the U.S. market.

[161] *See* 47 C.F.R. § 63.12.

[162] *See CMRS Second Report and Order*, 9 FCC Rcd. at 1480, ¶ 179.

[163] We use the term *affiliated route* or *affiliated point* in this order to refer to an authorized CMRS carrier's provision of international service to a destination where a carrier that is affiliated with the authorized carrier terminates U.S. international traffic and collects settlement payments from U.S. carriers. *Unaffiliated route* or *unaffiliated point* refers to an authorized carrier's provision of service to an international destination where it has no such affiliated foreign carrier. The existence of an affiliation is determined by the definition of *affiliation* found in Section 63.18(h)(1)(i) of the Commission's rules. *See* n.172, *infra*.

57. Under the first criterion for forbearance under section 10, we must determine that mandatory tariff filing requirements are unnecessary to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.[164] In the domestic context, we have determined that tariffing is not necessary to ensure reasonable rates for carriers that lack market power.[165] In the *CMRS Second Report and Order*, we found that competition in the CMRS market for domestic services will lead to reasonable rates and that enforcement of the tariffing requirement is therefore not necessary.[166] In the absence of an affiliation with a foreign carrier, the same considerations apply in the CMRS market for international services. The CMRS market is sufficiently competitive that there is no reason to regulate any CMRS carrier as dominant on an international route for any reason other than an affiliation with a foreign carrier. Therefore, we conclude that tariffs are not necessary to ensure that unaffiliated CMRS providers' charges, practices, classifications, or regulations for international services are just and reasonable and are not unjustly or unreasonably discriminatory.

58. Under the second statutory criterion for forbearance, we must determine that mandatory tariff filing requirements for CMRS providers serving unaffiliated international routes are unnecessary to protect consumers.[167] As explained above, tariffs are not necessary to ensure that rates are just and reasonable. Therefore, tariffs are also not necessary to protect consumers. Accordingly, the second criterion is met.[168]

59. Under the third criterion, we must determine that permissive detariffing of CMRS providers serving unaffiliated international routes is consistent with the public interest.[169] Permissive detariffing reduces transaction costs for service providers and reduces administrative burdens on service providers and the Commission. Thus, carriers that choose not to file tariffs would not need to undertake the time and expense of preparing and filing tariffs, and the Commission would not incur the administrative burden of reviewing them. Section 10(b) requires the Commission, in determining whether forbearance would be consistent with the public interest, to consider whether forbearance would promote competitive market conditions.[170] We believe that permissive detariffing would enable carriers to avoid impediments that mandatory tariffing might impose on a carrier's ability to introduce services because of the time and expense of preparing and filing tariffs. Thus, detariffing should lower the cost of entry into the international services market by CMRS providers. Further, as Omnipoint

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[164] 47 U.S.C. § 160(a)(1).

[165] *See CAP Forbearance Order*, 12 FCC Rcd. at 8608, ¶ 23; *IXC Forbearance Order*, 11 FCC Rcd. at 20742-47, ¶¶ 21-28.

[166] *CMRS Second Report and Order*, 9 FCC Rcd. at 1478-79, ¶¶ 174-175.

[167] 47 U.S.C. § 160(a)(2).

[168] *Cf. CAP Forbearance Order*, 12 FCC Rcd. at 8609-10, ¶ 26.

[169] 47 U.S.C. § 160(a)(3).

[170] 47 U.S.C. § 160(b).

argues,[171] permissive detariffing would facilitate the provision of international service by CMRS providers by not requiring that they disclose their prices to competitors and would enable carriers that offer international services directly to their customers to enjoy the benefits of our earlier decision to prohibit tariffs for domestic CMRS services. These considerations outweigh any public interest benefit of requiring CMRS providers to file tariffs for the provision of international service on unaffiliated routes. Accordingly, we conclude that permissive detariffing, in contrast to mandatory tariffing, would be consistent with the public interest by reducing administrative burdens on carriers and on the Commission, promoting competitive market conditions, facilitating provision of new service offerings, and promoting market entry. Thus, permissive detariffing will also further the goal of the 1996 Act to "promote competition and reduce regulation . . . to secure lower prices and higher quality service for American telecommunication consumers and encourage the rapid development of new telecommunications technologies."[172]

60. We are unable to find, however, that it would be consistent with the public interest to adopt permissive detariffing for CMRS providers serving international routes where the carrier is affiliated[173] with a foreign carrier that terminates U.S. international traffic. Currently, our ability to detect and deter certain kinds of anticompetitive pricing practices on affiliated routes depends on the availability of tariffed rates on those routes. When an international carrier serves an affiliated route, the carrier and its affiliate may have the ability and incentive to engage in anticompetitive pricing behavior that can harm competition and consumers in the U.S. market. In our *Benchmarks Order*, we found that there is a danger of anticompetitive price squeeze behavior[174] by U.S. facilities-based carriers on affiliated routes and adopted a trigger to determine when market distortion has occurred as

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[171] *See* Omnipoint Comments at 2-4.

[172] Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 104-230, at 1 (1996).

[173] For the purposes of our regulation of international telecommunications in Part 63 of our rules, *affiliation* is defined to include (1) a greater than 25 percent ownership of capital stock, or controlling interest at any level, by the carrier, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier; or (2) a greater than 25 percent ownership of capital stock, or controlling interest at any level, in the carrier by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier; or by two or more foreign carriers investing in the carrier in the same manner in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of basic international telecommunications services in the United States. A U.S. carrier also is considered to be affiliated with a foreign carrier where the foreign carrier controls, is controlled by, or is under common control with a second foreign carrier that is affiliated with that U.S. carrier under this definition. *See* 47 C.F.R. § 63.18(h)(1)(i); *see also* 47 C.F.R. § 63.18(h)(1)(ii) (defining *foreign carrier*).

[174] A *price squeeze* refers to a particular, well-defined strategy of predation that would involve the foreign carrier setting "high" (above-cost) international settlement rates while its U.S. affiliate offers "low" prices for domestic international message telephone service ("IMTS") in competition with other carriers. Because the foreign carrier's international termination services are a necessary input for providing IMTS, the foreign carrier can create a situation where the relationship between its "high" international settlement rates and its affiliate's "low" prices for IMTS forces competing carriers either to lose money or to lose customers even if they are more efficient than the affiliate. *See Benchmarks Order*, 12 FCC Rcd. at 19901, ¶ 208.

a result of a carrier's provision of international service on an affiliated route. We established a rebuttable presumption that a U.S. facilities-based international carrier has engaged in anticompetitive price squeeze behavior when any of the carrier's tariffed collection rates on an affiliated route is less than the carrier's average variable costs on that route.[175] If tariffs were not available, we would need to rely on another mechanism for detecting, as well as deterring, price squeezes by facilities-based carriers on affiliated routes.[176] When we examined the potential for price squeeze behavior by affiliated switched resellers in the *Foreign Participation Order*, we did not find the same danger of anticompetitive price squeeze behavior as in the case of affiliated facilities-based carriers. We stated nonetheless that we would monitor the switched resale market carefully for evidence of anticompetitive behavior.[177] The record in this proceeding does not address the extent to which other sources of pricing information are sufficiently available to permit the Commission and interested parties to detect price squeeze behavior by foreign-affiliated carriers in a timely manner. Nevertheless, we anticipate examining this and other issues in a subsequent proceeding. We will also continue to review our rules as market conditions change in the international context to ensure that our regulations are no more burdensome than necessary.

61. Price squeeze behavior on affiliated routes can have anticompetitive effects that are inconsistent with competitive market conditions, and our enforcement of our rules and policies against such behavior currently depends on the availability of tariffed rates on affiliated routes. We therefore conclude that the third prong of the forbearance standard, that forbearance would be consistent with the public interest, is not met for any CMRS provider providing international service to a destination market in which it is affiliated with a foreign carrier that terminates U.S. international traffic and collects settlement payments from U.S. carriers. Because the third prong of the forbearance standard is not satisfied for affiliated routes, we cannot forbear in those circumstances, and we need not address the first two prongs.

62. We next address our decision to forbear from applying the international tariffing requirement on unaffiliated routes to all CMRS providers despite the fact that PCIA's petition seeks forbearance only for broadband PCS providers. No party in this proceeding argues that broadband PCS providers should be treated differently from other CMRS providers as a matter of sound policy. Many commenters argue that forbearance is warranted for all CMRS providers,[178] and several argue

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[175] *See id.* at 19908, ¶ 224. For purposes of that bright-line test, we defined a carrier's average variable costs on a route as its net settlement rate plus any originating access charges. *See id.*

[176] *See Foreign Participation Order*, 12 FCC Rcd. at 24000, ¶ 244 ("To the extent that a foreign-affiliated carrier has the ability to engage in a predatory price squeeze, we find that the existence of a tariff filing requirement . . . will serve to deter such behavior.").

[177] *See id.* at 23986, ¶ 214.

[178] *See, e.g.*, AMTA Comments at 5; CTIA Comments at 2-3; Nextel Comments at 4; RTG Comments at 5. PCIA acknowledges these comments and supports extending forbearance to all CMRS providers to the extent the Commission finds that the section 10 forbearance standard is satisfied. PCIA Reply Comments at 3-4.

that forbearance is appropriate for broadband PCS only if it applies to all CMRS providers.[179] We agree that the same considerations apply to all CMRS providers, regardless of whether they are broadband PCS licensees. We have previously described the need to regulate all CMRS providers similarly.[180] Forbearance from a tariffing requirement for broadband PCS licensees but not for other CMRS licensees would disturb this regulatory neutrality by giving broadband PCS licensees an unfair and unwarranted advantage over their competitors.

63. If we could not extend forbearance to all CMRS providers, we would not be able to grant the forbearance that PCIA seeks, because we would not find that the public interest would be served by granting forbearance that would create a disparity in regulatory treatment among like CMRS services. Because we find that the same considerations apply to all CMRS providers regardless of whether they are broadband PCS providers, further notice and comment on extending forbearance to all CMRS providers is unnecessary.[181] To the extent that we grant forbearance here, the issues have been fully explored in the record of this proceeding. Were we to seek additional comment on extending permissive forbearance to other CMRS providers, we believe no issues would be raised that could not have been raised in the comments on PCIA's petition. Therefore, we find that the forbearance we adopt here should be applied equally to all CMRS providers.

64. We conclude that we should not adopt complete detariffing, i.e., prohibiting the filing of tariffs, in this proceeding. Although we continue to believe, as we have discussed at length elsewhere,[182] that there are usually added benefits to complete detariffing, PCIA's petition did not request complete detariffing and there is no discussion of that option in this record.[183] Because we conclude that we must continue to require tariffs on affiliated routes, there could be complications to adopting complete detariffing on unaffiliated routes that are not present in the domestic context. For example, a carrier whose affiliation status changes or becomes uncertain might have difficulty timely amending or canceling its tariff. We conclude that it would be imprudent to prohibit the filing of tariffs on unaffiliated routes while continuing to require tariffs on affiliated routes without any discussion in the record of the consequences of such a policy. We therefore have confined our

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[179] *See* AMTA Reply Comments at 2 (stating that all parties that addressed the appropriate scope of forbearance agreed that any forbearance should apply to the entire CMRS industry); *e.g.*, AT&T Wireless Comments at 1-2; RTG Comments at 5.

[180] *See CMRS Second Report and Order*, 9 FCC Rcd. at 1418, ¶ 13 (finding that Congress intended to ensure that similar mobile services would be subject to consistent regulatory treatment).

[181] *See* 5 U.S.C. § 553(b)(B) (providing that notice-and-comment procedures are not required "when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

[182] *See CAP Forbearance Order*, 12 FCC Rcd. at 8607-08, ¶ 22; *see also IXC Forbearance Order*, 11 FCC Rcd. at 20760-68, ¶¶ 52-66.

[183] *Cf. CAP Forbearance Order*, 12 FCC Rcd. at 8607-08, ¶ 22 (finding that the option of complete detariffing was not available because the petitions had not requested complete detariffing and notice of a proposed change to complete detariffing had not been given). Only when complete detariffing has not been available have we found that permissive detariffing would serve the public interest. *See id.* at 8611-12, ¶¶ 30-33. We anticipate seeking comment on the possibility of complete detariffing of international services in the near future.

analysis under the forbearance standard to consideration of the options discussed in the record — continuing to require tariffs (mandatory tariffing) or forbearing from requiring tariffs (permissive detariffing) — and have concluded that permissive detariffing would better serve the public interest than mandatory tariffing for CMRS providers serving unaffiliated routes. As discussed above, permissive detariffing would reduce administrative burdens on carriers and on the Commission, promote competitive market conditions, facilitate provision of new service offerings, and promote market entry.[184]

65. We therefore grant PCIA's request for forbearance from the international tariffing requirement to the extent described above. As a result, a CMRS carrier offering international service directly to its customers[185] need not file tariffs for its service to international points where it is not affiliated with a carrier that terminates U.S. international traffic. We amend section 20.15(d) of our rules to provide for this exception to our international tariff filing requirement. If the CMRS carrier acquires an affiliation with a foreign carrier that collects settlement payments from U.S. carriers, it must file a tariff in order to continue to provide service to any market where the foreign carrier terminates U.S. international traffic. We note that, when any authorized international carrier, including a CMRS provider with international section 214 authority, acquires an affiliation with a foreign carrier, it must notify the Commission as required by section 63.11 of the Commission's rules.

E. Section 226: Telephone Operator Consumer Services Improvement Act

66. Background. In 1990, Congress passed and the President signed TOCSIA to "protect consumers who make interstate operator service calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices."[186] TOCSIA regulates two classes of telecommunications service providers: (1) "aggregators," which are defined as persons or entities that make telephones available to the public or to transient users of their facilities for interstate telephone calls using a provider of operator services,[187] and (2) "providers of operator services" (OSPs), which are defined as common carriers that provide operator services, or any other persons determined by the Commission to be providing operator services.[188] "Operator services" have been defined as any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than: (1) automatic completion with

[184] *Cf. id.* at 8610-12, ¶¶ 27-32 (finding that permissive detariffing for competitive access providers better serves the public interest than mandatory tariffing).

[185] We are not detariffing the international services of CMRS companies that offer international service on a stand-alone basis, i.e., international service used by customers other than with a mobile radio telephone.

[186] S. Rep. No. 101-439 at 1 (1990), *reprinted in* 1990 U.S.C.C.A.N. 1577.

[187] 47 U.S.C. § 226(a)(2); 47 C.F.R. § 64.708(b).

[188] 47 U.S.C. § 226(a)(9); 47 C.F.R. § 64.708(i).

billing to the telephone from which the call originated; or (2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.[189]

67. TOCSIA and our regulations impose several requirements upon aggregators. Aggregators must post the following information on or near the telephone instrument, in plain view of consumers: (a) the name, address, and toll-free telephone number of the OSP presubscribed to the telephone;[190] (b) a written disclosure that rates for service are available on request, and that consumers have a right to obtain access to the OSP of their choice and may contact their preferred OSP for information on accessing its service using that telephone;[191] (c) in the case of a pay telephone, the local coin rate for the pay telephone location;[192] and (d) the name and address of the Enforcement Division of the Common Carrier Bureau of the Commission.[193] Aggregators must also ensure that each of their telephones presubscribed to an OSP allows consumers to use "800," "900" or "10XXX" access codes to reach the OSP of their choice,[194] and ensure that consumers are not charged higher rates for calls placed using these access codes.[195]

68. TOCSIA and our regulations also impose a number of requirements upon OSPs. OSPs must identify themselves, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call.[196] They must also disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of their rates or charges for the call, the methods by which such rates or charges will be collected, and the method by which complaints concerning such rates, charges, or collection practices will be resolved.[197] OSPs must also permit the consumer to terminate a telephone call at no charge before the call is connected;[198] not bill

[189] 47 U.S.C. § 226(a)(7); 47 C.F.R. § 64.708(g). An access code is a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence. 47 U.S.C. § 226(a)(1); 47 C.F.R. § 708(a).

[190] 47 U.S.C. § 226(c)(1)(A)(i); 47 C.F.R. § 64.703(b)(1). A "presubscribed OSP" is the OSP to which the consumer is connected when the consumer places a call using a public telephone without dialing an access code. *See* 47 U.S.C. § 226(a)(8); 47 C.F.R. § 64.708(h). In the landline context, aggregators contract with an OSP and often receive a commission from the OSP for the arrangement

[191] 47 U.S.C. § 226(c)(1)(A)(ii); 47 C.F.R. § 64.703(b)(2).

[192] 47 C.F.R. § 64.703(b)(3).

[193] 47 U.S.C. § 226(c)(1)(A)(iii); 47 C.F.R. § 64.703(b)(4).

[194] This is also known as "dial around" access. *See* 47 U.S.C. § 226(c)(1)(B); 47 C.F.R. § 64.703(b).

[195] 47 U.S.C. § 226(c)(1)(C); 47 C.F.R. § 64.705(b).

[196] 47 U.S.C. § 226(b)(1)(A); 47 C.F.R. § 64.703(a)(1).

[197] 47 U.S.C. § 226(b)(1)(C); 47 C.F.R. § 64.703(a)(3).

[198] 47 U.S.C. § 226(b)(1)(B); 47 C.F.R. § 64.703(a)(2).

for unanswered telephone calls;[199] not
engage in "call splashing"[200] unless the consumer requests to be transferred to another OSP after being informed, prior to such a transfer, and prior to incurring any charges, that the rates for the call may not reflect the rates from the actual originating location of the call; and not bill for a call that does not reflect the location of the origination of the call.[201] The Commission recently added an additional requirement: OSPs must now audibly disclose to consumers how to obtain the price of a call before it is connected.[202]

69. The regulatory scheme of TOCSIA also affirmatively charges OSPs with overseeing aggregator compliance with both the statute's posting requirement and its prohibitions on restricting consumers' access to the OSP of their choice.[203] Finally, TOCSIA requires OSPs to file informational tariffs with the Commission,[204] the Commission requires OSPs to regularly publish and make available at no cost to inquiring customers written materials that describe any recent changes in operator services and in the choices available to consumers in that market,[205] and the Commission requires OSPs and aggregators to ensure immediate connection of emergency telephone calls to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.[206]

70. The Commission has previously considered the issue of TOCSIA's application to wireless service. In 1993, the Common Carrier Bureau denied a Petition for Declaratory Ruling filed by GTE that sought a ruling that TOCSIA did not apply to certain activities of GTE's mobile affiliates. The Common Carrier Bureau held that TOCSIA required the Commission to regulate as an aggregator any entity that makes telephones available to the public or transient users of its premises, and to regulate as an OSP any entity that provides interstate telecommunications service initiated from an aggregator location that includes automatic or live assistance to arrange for billing or call completion. The Common Carrier Bureau found that certain GTE affiliates provided services which made them aggregators and that commercial air-to-ground carriers provided services which made them OSPs.[207]

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[199] 47 U.S.C. § 226(b)(1)(F-G); 47 C.F.R. § 64.705(a)(1-2).

[200] "Call splashing" means the transfer of a telephone call from one OSP to another in such a manner that the subsequent OSP is unable or unwilling to determine the location or the origination of the call and because of such inability or unwillingness, is prevented from billing the call on the basis of such location. 47 U.S.C. § 226(a)(3); 47 C.F.R. § 64.708(c).

[201] 47 U.S.C. § 226(b)(1)(H-I); 47 C.F.R. § 64.705(a)(3-4).

[202] 47 C.F.R. § 64.703(a)(4); *see Billed Party Preference Order*, 13 FCC Rcd. 6122.

[203] 47 U.S.C. § 226(b)(1)(D-E); 47 C.F.R. §§ 64.703(e), 64.704(b), 64.705(a)(5).

[204] *See* 47 U.S.C. § 226(h).

[205] 47 C.F.R. § 64.707. *See also* 47 U.S.C. § 226(d)(3)(B).

[206] 47 C.F.R. § 64.706. *See also* 47 U.S.C. § 226(d)(3)(A).

[207] *GTE Declaratory Ruling*, 8 FCC Rcd. at 6176, ¶ 31.

GTE subsequently requested reconsideration or waiver of this decision, arguing that it could not be reconciled with the language, legislative history, and purposes of TOCSIA or sound public policy.[208] We resolve this pending matter below.

71. In the *CMRS Second Report and Order*, adopted in 1994, the Commission concluded, based on the record before it at that time, that forbearance from TOCSIA was not warranted for CMRS providers in general.[209] However, in the *Further Forbearance NPRM* issued later that year, the Commission sought comment on whether there were particular classes of CMRS providers that warranted forbearance from certain regulations. We primarily sought comment on how to define small businesses in CMRS markets and whether certain regulatory provisions were much more of a burden to small carriers than to large carriers.[210] Although we are now terminating the *Further Forbearance NPRM,* we incorporate the comments received in that proceeding that relate to TOCSIA into the record of this proceeding. Since we are resolving GTE's *Reconsideration Petition* with this Order, we also incorporate the record of both the *GTE Declaratory Ruling* and the *GTE Reconsideration Petition* into this proceeding.

72. Discussion. The requirements of TOCSIA and our implementing regulations apply only to entities functioning as aggregators or OSPs.[211] Thus, only a small subset of CMRS activities is affected by TOCSIA. For example, the Common Carrier Bureau has previously held that TOCSIA applies to commercial air-to-ground telephone service and GTE's Railfone service.[212] Other examples of affected services referenced in the record include phones leased with rental cars, mobile phone booths at special events, and mobile phones rented by hotels and shopping malls.[213]

73. Although PCIA requests that we forbear from applying the requirements of TOCSIA to broadband PCS providers only,[214] we believe that we should consider the merits of forbearance from TOCSIA in relation to all CMRS services. One of our primary missions since the passage of the Omnibus Budget Reconciliation Act of 1993 has been to establish regulatory symmetry among similar CMRS services.[215] Broadband PCS providers compete with cellular radiotelephone and SMR providers to provide commercial mobile telephone service, and we see no reason to treat licensees in these

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[208] *See generally GTE Reconsideration Petition.*

[209] *CMRS Second Report and Order*, 9 FCC Rcd. at 1490, ¶ 211.

[210] *Further Forbearance NPRM*, 9 FCC Rcd. at 2169, ¶ 23.

[211] *See* 47 U.S.C. § 226(a)(2),(a)(9); 47 C.F.R. § 64.708(b),(i).

[212] *GTE Declaratory Ruling*, 8 FCC Rcd. 6171. We affirm this holding below. *See* para. 89, *infra.*

[213] *See* Colorado Springs Gazette Telegraph, "Colorado Dreamin'" (Nov. 9, 1997); Charleston Gazette and Daily Mail, "Offerings Range From Tires to Tuna" (Oct. 28, 1997); Minneapolis Star Tribune, "Surfing on the Edge; Music Festival Draws People and Dollars by the Thousands" (May 25, 1997).

[214] PCIA Petition at 43.

[215] *See* para. 30, *supra.*

services differently with respect to the requirements of TOCSIA. Moreover, it is likely that other categories of CMRS licensees will compete with broadband PCS in the future. In light of our goal of regulatory symmetry, we believe that any decisions we make with respect to forbearance from TOCSIA should apply to all CMRS providers. We note also that commenters in both this and earlier proceedings have argued for forbearance from TOCSIA for CMRS providers generally.[216] More specifically, several commenters argue that failure to extend relief to all CMRS providers would put certain service providers at a competitive disadvantage.[217] Under these circumstances, we find that further notice and comment on extending forbearance to all providers and aggregators of CMRS would be unnecessary.[218] We therefore will apply our decision to forbear from certain requirements of TOCSIA to all providers and aggregators of CMRS.

74. The provisions of TOCSIA ensure that transient users of public telephones enjoy the same benefits they would have if they were using private telephones. Thus, for example, subscribers to wireline telecommunications services have the ability to presubscribe to the interexchange carrier of their choice,[219] and TOCSIA ensures that they can access this or any other carrier of their choice when using a pay phone. Subscribers to mobile telephone service do not, however, require all of the same legal protections as wireline subscribers. As part of the Telecommunications Act of 1996, Congress amended the Communications Act by adding section 332(c)(8), which exempts CMRS from the obligation of providing equal access to common carriers for the provision of telephone toll services.[220] The Commission then determined that it no longer had the authority to require CMRS providers to offer equal access to common carriers for the provision of telephone toll services. The Commission further found that, although it was authorized in certain circumstances to prescribe regulations to ensure subscribers unblocked access to the telephone toll services of their choice, no demonstrated

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[216] *See, e.g.*, BANM Comments on *Further Forbearance NPRM* at 8; GTE Comments on *Further Forbearance NPRM* at 6; CTIA Comments at 6.

[217] *See, e.g.*, AT&T Comments at 1-2; BANM Comments at 2; BellSouth Comments at 3-9; CONXUS Comments at 3 (arguing that broadband and narrowband PCS should be treated similarly); PrimeCo Comments at 2-3.

[218] *See* 5 U.S.C. § 553(b)(B).

[219] Presubscription is the process by which each customer selects one or more primary interexchange carriers (IXCs) from among several available carriers for the customer's phone line(s). *See* Investigation of Access and Divestiture Related Tariffs, *Memorandum Opinion and Order*, 101 FCC 2d 911, 928, Appendix B, ¶ 4 (1985) (*LEC Equal Access Order*); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd. 19392, 19418-20, ¶¶ 46-50 (1996) rev'd in part *sub nom.* People of the State of California v. FCC, 124 F.3d 934 (1997). Thus, when a customer dials "1," the customer accesses only the relevant primary IXC's services. An end user can also access other IXCs by dialing either a five or seven-digit access code. *LEC Equal Access Order*, 101 FCC 2d at 911, ¶ 1; Administration of the North American Numbering Plan Carrier Identification Codes, *Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 17876 (1997).

[220] 47 U.S.C. § 332(c)(8).

need for such regulation existed at that time.[221] Thus, both Congress and the Commission have previously decided that certain legal protections needed by users of wireline phones in both private and public contexts are not necessary or appropriate for CMRS subscribers. We believe that these decisions reflect not only an effort on the part of Congress and the Commission to ensure that unwarranted regulatory burdens are not imposed on CMRS, but also a recognition that there may be differences between wireline telephone service and CMRS that justify differences in their regulatory treatment, including differences in treatment when functioning as OSPs.

75. As explained more fully below, we will forbear from applying to CMRS providers those provisions of TOCSIA that impose requirements that are identical or similar to requirements that Congress or the Commission have previously found unnecessary. Thus, we will forbear from enforcing the provisions of TOCSIA related to unblocked access against CMRS aggregators and OSPs, and we will forbear from requiring CMRS OSPs to file informational tariffs. As we discuss below, the three-pronged test under section 10 is satisfied as to these provisions. Although the current factual record is insufficient to support forbearance from other provisions of TOCSIA, we explore in the Notice of Proposed Rulemaking the possibility of further forbearance from TOCSIA and propose to modify our rules in a manner tailored to the mobile phone environment.

76. *Unblocked Access.* TOCSIA and its implementing rules contain several provisions based on the premise that consumers should be allowed access to the OSP of their choice. Aggregators are required to ensure that their telephones presubscribed to a particular OSP allow consumers to use 800 and 950 access codes to reach their preferred OSP.[222] Aggregators also must not charge consumers more for using an access code than the amount the aggregator charges for calls placed using the presubscribed OSP,[223] and they must post a written disclosure that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carrier for information on accessing that carrier's service using that telephone.[224] OSPs must ensure, by contract or tariff, that aggregators allow consumers to use 800 and 950 access codes to reach the OSP of their choice and must withhold payment of any compensation due to aggregators if the OSP reasonably believes that the aggregator is blocking such access.[225]

77. We believe that we should forbear from enforcing these provisions with respect to CMRS. In order to do so, the first prong of the section 10 forbearance test requires that we find that enforcement of these provisions is not necessary to ensure that the charges, practices, classifications, or regulations of CMRS providers acting as OSPs are just and reasonable and are not unjustly or

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[221] *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Order*, 11 FCC Rcd. 12456 (1996) (*CMRS Equal Access Order*).

[222] 47 U.S.C. § 226(c)(1)(B); 47 C.F.R. § 64.704(a).

[223] 47 U.S.C. § 226(c)(1)(C); 47 C.F.R. § 64.705(b).

[224] 47 U.S.C. § 226(c)(1)(A)(ii); 47 C.F.R. § 64.703(b)(2).

[225] 47 U.S.C. § 226(b)(1)(D-E); 47 C.F.R. § 64.704(b).

unreasonably discriminatory.[226] Discussing the requirements of TOCSIA in general, PCIA asserts that the most persuasive support for such a finding is the "complete lack of complaints" about mobile public phone services, which have been offered since before TOCSIA was enacted.[227] According to PCIA, there is also no evidence that blocking or discriminatory charges have been a problem in the mobile context.[228] We believe that the absence of complaints filed with the Commission about access blocking or discriminatory charges for access by CMRS aggregators, standing alone, may not be enough to support forbearance, particularly since the public mobile phone industry is relatively young. Nonetheless, nothing in the record contradicts PCIA's assertion that blocking of access is not a problem in this context. We note that the principal purpose of TOCSIA, as suggested by its name, is to protect consumers. This function is addressed under the second prong of the forbearance test. In this context, in the absence of some evidence suggesting that without the unblocked access rules CMRS aggregators would engage in unjust, unreasonable, or discriminatory practices, we conclude that the first prong of the forbearance test is satisfied.

78. The second prong of the section 10 forbearance test requires that we find that enforcement of the provisions at issue is not necessary for the protection of consumers.[229] PCIA contends that requiring CMRS providers to comply with the statutory and regulatory requirements of TOCSIA is not necessary to protect consumers because none of the abuses that led to the enactment of TOCSIA, including call blocking, have occurred in the mobile context.[230] With respect to the obligation of OSPs to ensure that aggregators comply with the unblocking requirement of TOCSIA and its prohibition against charging higher rates for using access codes to reach a preferred OSP, PCIA states that, because of the resale obligation, CMRS providers may not know that their services are being resold for mobile public phone purposes and therefore have no contract with the aggregator.[231] Finally, PCIA asserts that the TOCSIA unblocking requirements have been superseded by the limitation that section 332(c)(8) places on the Commission's ability to order unblocking.[232]

79. We do not have a factual record that would support a finding that CMRS providers are unable to comply with the requirement that they ensure aggregators' compliance with unblocking because they do not have contracts with aggregators. However, we do believe that it would be inconsistent with section 332(c)(8) to fail to forbear from enforcing the unblocking requirements in question here. As discussed above, under section 332(c)(8), CMRS providers are not required to provide equal access to common carriers for the provision of telephone toll services. Section 332(c)(8)

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[226] 47 U.S.C. § 160(a)(1).

[227] PCIA Petition at 43.

[228] *Id.* at 44-45.

[229] 47 U.S.C. § 160(a)(2).

[230] PCIA Petition at 38, 40, 45. "Call blocking" occurs when an aggregator does not allow consumers to use 800, 900, or 10XXX numbers to access alternative OSPs.

[231] PCIA *Ex Parte*, Attachment at 2.

[232] PCIA Petition at 46.

authorizes the Commission to prescribe regulations that afford consumers unblocked access to the provider of telephone toll services of their choice if the Commission determines that consumers are denied access to the provider of their choice and finds that such denial is contrary to the public interest, convenience, and necessity.[233] We believe that this provision reflects a determination on the part of Congress that equal access and unblocking regulations are generally unnecessary to protect consumers of CMRS. Moreover in the absence of any evidence that consumers of CMRS have been denied access to their provider of choice, we have not employed our authority under section 332(c)(8) to prescribe unblocking regulations with respect to ordinary subscribers. In light of these circumstances, we see no need to provide transient users of CMRS with consumer protections that neither Congress nor the Commission has provided for ordinary subscribers. In sum, we conclude that enforcement of the equal access and unblocking provisions of TOCSIA is unnecessary for the protection of consumers.

80. The third prong of the section 10 forbearance test requires that we find that forbearance from applying the provisions in question is consistent with the public interest.[234] In determining whether forbearing from certain regulations meets the public interest prong of the section 10 test, we attempt to balance the costs carriers must incur to comply with regulations and the effects of these costs upon competition with the benefits that these regulations bestow on the public.[235] As we discussed under the second prong, section 332(c)(8) exempts CMRS providers from providing equal access to common carriers for the provision of telephone toll services and unblocked access to the provider of telephone toll services of the subscriber's choice through the use of a carrier identification code.[236] Congress enacted section 332(c)(8) in part because it felt that the imposition of equal access requirements on wireless services would inflate the cost of service.[237] As discussed above, the Commission has endeavored, consistent with its statutory mandate, to avoid imposing unnecessary regulations on CMRS and to allow competition to produce benefits for the consumer. We believe that this approach to forbearance promotes competitive market conditions and enhances competition among CMRS providers. In light of Congressional concerns that equal and unblocked access requirements would increase the cost of service, and the fact that we have no evidence that such requirements would produce any identifiable benefits, we conclude that forbearance from the unblocking provisions of TOCSIA with respect to CMRS is consistent with the public interest.

81. *Informational Tariffs.* Under TOCSIA, OSPs are required to file tariffs specifying rates, terms, and conditions, and including commissions, surcharges, any fees which are collected from consumers, and reasonable estimates of the amount of traffic priced at each rate, with respect to calls for which operator services are provided.[238] We have considered forbearing from this requirement in

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[233] 47 U.S.C. § 332(c)(8).

[234] 47 U.S.C. § 160(a)(3).

[235] *See* 47 U.S.C. § 160(b).

[236] 47 U.S.C. § 332(c)(8). *See also CMRS Equal Access Order*, 11 FCC Rcd. 12456.

[237] H.R. Rep. No. 204(I), 104th Cong., 1st Sess. (1995).

[238] 47 U.S.C. § 226(h)(1)(A).

the past and have declined to do so. In the *CMRS Second Report and Order,* we decided not to forbear from enforcing the section 226 tariff requirement for CMRS, even though we forbore from requiring other tariff filings under section 203, because the required filings are less detailed than those required pursuant to section 203.[239] More recently, in the *Billed Party Preference Order,* we again indicated that we were not prepared to conclude that Section 226 informational tariffs are no longer necessary as applied to all OSPs to protect consumers.[240]

82. Having further considered this issue, we now believe that we should forbear from applying the informational tariff requirement to CMRS OSPs. The first prong of section 10 requires us to find that enforcement of the tariff filing requirement is not necessary to ensure that the charges and practices of OSPs are just and reasonable and are not unjustly or unreasonably discriminatory. The rates and related surcharges or fees in OSPs' informational tariffs may be changed without prior notice to consumers or to this Commission.[241] Moreover, we are encouraged by the fact that the CMRS marketplace is becoming increasingly competitive and will continue to promote rates and practices that are just and reasonable. When we decided to forbear from enforcing section 203 with respect to CMRS, we found that even though the cellular services marketplace was not fully competitive, there was sufficient competition to justify forbearance from tariffing requirements, and we noted in particular that the strength of competition would increase in the near future.[242] We believe that the same can be said today of the public CMRS marketplace. In addition to cellular providers, broadband PCS and SMR providers are entering the market and promise to increase competition in the near future. In light of this growing competition and our earlier findings regarding the usefulness of detariffing as a spur to competition, as well as the continued applicability of sections 201 and 202, we do not believe that it is necessary for CMRS providers to file informational tariffs. In the event isolated abuses do occur, they can be dealt with under sections 201 and 202 through our complaint procedures. We therefore conclude that the tariff filings required under section 226 are not necessary to ensure just and reasonable rates and practices.

83. The second prong of section 10 requires us to find that enforcement of the section 226 tariff filing requirement is not necessary for the protection of consumers. For the same reasons stated under the first prong, we believe that the tariff requirement is not necessary to protect consumers. We note also that there is no record evidence that indicates a need for these informational tariffs to protect consumers.

84. Under the third prong of section 10, we must find that forbearance from applying the section 226 tariffing requirement is consistent with the public interest. With respect to this prong of the section 10 test, PCIA claims that forbearance from TOCSIA is in the public interest because the statute undermines the benefits derived from detariffing CMRS providers. PCIA states that the Commission forbore from requiring tariffs from broadband PCS providers because tariffs could impede providers' flexibility, remove incentives for price discounting and the introduction of new offerings,

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[239] *CMRS Second Report and Order*, 9 FCC Rcd. at 1490, ¶ 211.

[240] *Billed Party Preference Order*, 13 FCC Rcd. at 6146-47, ¶ 43.

[241] *See id.*

[242] *CMRS Second Report and Order*, 9 FCC Rcd. at 1479, ¶ 177.

and generally limit competition.[243] According to PCIA, forbearance from the requirement to file informational tariffs is necessary to realize the pro-competitive benefits the Commission intended to achieve in the *CMRS Second Report and Order*.[244]

85. We agree with PCIA with respect to these arguments. When we decided to forbear from applying section 203 to CMRS, we reasoned that tariffing imposes administrative costs and can be a barrier to competition.[245] We indicated our belief that tariff filings can remove carriers' ability to make rapid, efficient responses to changes in demand and cost, as well as remove incentives for the introduction of new offerings, impede and remove incentives for competitive price discounting, and impose costs on carriers that attempt to make new offerings. Finally, we said that forbearance would foster competition, which would expand the consumer benefits of a competitive marketplace.[246] Indeed, we found that even permissive tariff filings for CMRS providers entailed too great a risk of fostering anticompetitive practices, and might allow service providers to use their tariffs to avoid reducing their rates.[247] We therefore instituted mandatory detariffing for CMRS.[248] Even though the tariff filing requirements of section 226 are less burdensome and therefore less costly than the requirements of section 203, we nonetheless agree with PCIA that enforcement of the section 226 requirements is inconsistent with our decision to require detariffing for CMRS. We also believe that the cost of filing informational tariffs is not outweighed by any benefits these tariffs might produce, and we conclude that forbearance from enforcing this filing requirement is consistent with the public interest. Consistent with our previous mandatory detariffing decision for CMRS, we therefore forbid CMRS OSPs from filing informational tariffs under section 226, and we require CMRS OSPs with tariffs currently on file to cancel those tariffs within 90 days of publication of this Memorandum Opinion and Order in the Federal Register.[249]

86. *Other Requirements.* PCIA claims in its Petition that other OSP requirements of TOCSIA are irrelevant to CMRS, unduly burdensome, or impossible for broadband PCS providers to meet. Thus, for example, PCIA states that the requirement that OSPs disclose their rates immediately to the consumer is irrelevant in the CMRS context because charges are determined by the aggregator.[250] PCIA also asserts that other requirements would be very costly, and produce little benefit, because

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[243] PCIA Petition at 47 (citing *CMRS Second Report and Order*).

[244] *Id.* at 47-48.

[245] *CMRS Second Report and Order*, 9 FCC Rcd. at 1478-79, ¶ 175.

[246] *Id.* at 1479, ¶ 177.

[247] *Id.* at 1479-80, ¶ 178.

[248] *Id.*

[249] Our decision to institute mandatory detariffing for CMRS OSPs is not inconsistent with our adoption of permissive detariffing for CMRS international services on unaffiliated routes. Unlike in the international context, there is no reason to believe that requiring the withdrawal of OSP tariffs could lead to complications. *See* para. 64, *supra*.

[250] PCIA Petition at 48.

CMRS providers cannot generally distinguish calls from public mobile phones from calls placed by subscribers using their own phones.[251] However, neither PCIA nor any of the commenters has supplied sufficient specific factual material in support of these claims. Thus, we believe that we do not have an adequate record at this time to forbear from any of the OSP provisions of TOCSIA other than those already discussed. We similarly lack a record to forbear from enforcing any additional aggregator disclosure provisions, which may provide important information to consumers. As we have stated previously, one of our major goals with respect to CMRS is to refrain from imposing any unnecessary regulations, in the belief that robust competition will produce benefits for the consumer, and we will therefore consider forbearing from other provisions of TOCSIA. We therefore solicit factual information through the Notice of Proposed Rule Making that will provide us with a basis for deciding whether we may forbear under section 10 from enforcement of the remaining provisions of TOCSIA.

87. *GTE Petition for Reconsideration.* With respect to its petition for reconsideration, GTE contends that Congress did not intend TOCSIA to apply to mobile telecommunications service providers.[252] We disagree. As the Common Carrier Bureau stated in the *GTE Declaratory Ruling*, we believe that the statutory language and legislative history indicate that Congress intended TOCSIA to apply to all phones made available to the public in situations where the consumer, not the telephone provider, pays for the cost of the call, regardless of whether the phone is a mobile phone or not.[253] Furthermore, although numerous commenters on the *Further Forbearance NPRM* contend that the "captive customer" problem Congress passed TOCSIA to remedy is uniquely a landline telephone service problem,[254] we believe that, as AT&T correctly noted, customers who need to place a call from a public telephone located on an airplane or a train are as "captive," if not more "captive," than customers making a landline OSP call from a hotel or hospital.[255] We believe that Congress imposed TOCSIA's aggregator regulations to protect "captive" customers, and therefore these provisions should apply to commercial air-ground telephone service and Railfone service.

88. Upon review of the record, we find GTE offers no new facts or legal arguments in support of its position that TOCSIA does not apply to the actions of certain of its mobile affiliates,

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[251] PCIA *Ex Parte* at 4-6; see also CTIA *Ex Parte* at 2.

[252] *GTE Reconsideration Petition* at 9-11. This argument is also raised by PCIA and Nextel. *See* PCIA Petition at 40; Nextel Comments at 8.

[253] *GTE Declaratory Ruling*, 8 FCC Rcd. at 6174 ("The telephones provided by the GTE subsidiaries are not courtesy telephones because the consumer, not the telephone provider, pays for the cost of the call."). *See* 47 C.F.R. § 64.708(b); 47 U.S.C. § 226(2); S. Rep. No. 439, 101st Cong., 2d Sess. at 2, 5 (1990), *reprinted in* 1990 U.S.C.C.A.N. 1577, 1579, 1582.

[254] Dial Page Comments on *Further Forbearance NPRM* at 7-8; BellSouth Reply Comments on *Further Forbearance NPRM* at 4; Nextel Reply Comments on *Further Forbearance NPRM* at 7-8.

[255] AT&T Reply Comments on *Further Forbearance NPRM* at 12-13. In addition to being unable to walk to competitor's telephone while on an airplane or a train, airline passengers are also forbidden to even turn on their personal cellular phones while airborne. *See* 47 C.F.R. §22.925 (cellular telephones on board an aircraft must be turned off when the aircraft leaves the ground).

other than to allege that the decision failed to consider the policy and practical implications of classifying cellular carriers as OSPs in the Railfone and rental cellular phone contexts. Upon consideration of the entire record, we find no reason to overturn the Common Carrier Bureau's decision. We therefore affirm the decision in the *GTE Declaratory Ruling* that TOCSIA applies to the actions of certain GTE affiliates, and deny the *GTE Reconsideration Petition.* However, our order today provides relief from certain of the provisions of TOCSIA for CMRS providers and will grant GTE some of the relief it sought in its petition. We also note that we are exploring other issues concerning TOCSIA's application to mobile service in the Notice of Proposed Rulemaking.

V. NOTICE OF PROPOSED RULEMAKING

A. Application of TOCSIA to CMRS Aggregators and OSPs

89. In the Memorandum Opinion and Order, we determined that, except for the provisions relating to unblocked access and the filing of informational tariffs, the present record is inadequate to support forbearance from applying the provisions of TOCSIA and our implementing regulations to CMRS OSPs and aggregators. PCIA has, however, made several arguments that could, if adequately supported, may establish grounds for forbearing from enforcing some or all of those provisions.[256] Consistent with the deregulatory intent of the 1996 Act, and with the more specific forbearance directive of section 10 and biennial review requirement of section 11, we believe that PCIA's arguments merit further inquiry. Accordingly, in this Notice of Proposed Rulemaking we ask questions designed to elicit specific information relevant to determining whether, and in what respects, we should forbear from applying additional provisions of TOCSIA to CMRS providers and aggregators, continue applying these provisions to those parties, or modify or eliminate our rules implementing TOCSIA to address the different circumstances faced by CMRS providers.

90. As discussed above, a principal function of TOCSIA is to ensure that transient users of publicly available telephones and telecommunications services enjoy the same consumer protection as subscribers to the equivalent services.[257] We will consider this attribute of the statute prominently in deciding whether to forbear from applying any portion of TOCSIA, or eliminate or modify any of our implementing regulations, with respect to CMRS providers and aggregators. Thus, for purposes of the section 10(a) forbearance analysis, the maintenance of equivalent protection for all CMRS users will be relevant to determining whether continued enforcement of a provision is unnecessary to ensure that carriers' practices are just, reasonable, and not unjustly or unreasonably discriminatory; whether the provision is unnecessary for the protection of consumers; and whether forbearance is consistent with the public interest.[258] We will also consider the protection of consumers who obtain CMRS through aggregators, as compared with other CMRS consumers, as a principal factor in determining whether to make any changes to our forbearance regulations outside of section 10, including in determining whether a regulation is no longer necessary in the public interest as the result of meaningful economic

[256] *See generally* PCIA *Ex Parte.*

[257] *See* para. *73, supra.*

[258] *See* 47 U.S.C. § 160(a).

competition between providers of service under section 11.[259] We encourage commenters to focus their remarks on the context of equivalent protection for all consumers of CMRS.

91. CMRS networks and service offerings differ from those of wireline service providers in several respects. These differences may include, among other things, differences in equipment inherent in the nature of mobile service; differences in prevailing rate structures such as larger local calling areas for CMRS, roaming charges, and charges for incoming calls; differences in the governing regulatory regimes; and differences in the relationships between OSPs and aggregators and between OSPs and end users. In addition to possibly supporting forbearance from applying some provisions of TOCSIA to CMRS providers and aggregators, these differences may mean that different regulations implementing TOCSIA are appropriate in the CMRS context. Accordingly, in this Notice we propose to consider applying modified TOCSIA regulations to CMRS providers and aggregators as well as eliminating the application of certain regulations and statutory provisions. Our adoption of any appropriate modifications to the regulations implementing the statute should promote the public interest both by relieving CMRS providers and aggregators of regulatory burdens that are ill-suited to the CMRS context and by providing consumers with targeted measures for their protection.

92. In the Memorandum Opinion and Order above, we forbear from enforcing certain provisions of TOCSIA against all providers and aggregators of CMRS.[260] We determined to extend forbearance to all CMRS, even though PCIA requested forbearance only as to providers of broadband PCS, because providers holding different categories of licenses within CMRS compete with each other and there did not appear to be any compelling reasons for distinguishing among them. Under these circumstances, we concluded that maintaining regulatory symmetry would promote the public interest by avoiding distortion of competition in the markets for CMRS.[261] For the same reasons, we tentatively conclude that any decision to forbear arising out of this Notice of Proposed Rulemaking will apply to providers and aggregators of all services classified as CMRS. We seek comment on this tentative conclusion.

93. Before addressing the provisions of TOCSIA and our implementing rules individually, we also seek comment on a few matters that underlie our consideration of many of these provisions. PCIA argues that many of the provisions of TOCSIA are unduly burdensome as applied to broadband PCS providers because these providers may not be able to distinguish users that obtain service through an aggregator from other users of their services.[262] We seek comment as to whether all broadband PCS providers, and other CMRS providers, are in fact currently unable to identify calls that are placed or received through aggregators. If some aggregator calls can in fact be identified, we request specific

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[259] We note that to the extent our regulations implementing TOCSIA are not required by the statutory text, we need not satisfy the section 10 forbearance standard in order to exempt a class of providers from those regulations or modify the regulations applicable to certain providers, if such a change is warranted by the language and purposes of TOCSIA. Commenters may, however, frame their comments regarding any of our TOCSIA regulations in terms of the section 10, section 11, or section 332(c) criteria.

[260] *See* para. 74, *supra.*

[261] *Id.*

[262] *See* PCIA Petition at 44; PCIA *Ex Parte* at 4-5; CTIA *Ex Parte* at 2.

information as to what factors, including the type of CMRS involved, technical attributes of the underlying provider's network, or the type of aggregator arrangement, permit such identification. We also seek clarification as to whether calls made through aggregators cannot be distinguished from all other CMRS calls, or only from certain types of calls (*e.g.*, roaming calls).[263] To the extent that some aggregator calls cannot be identified, we further seek comment regarding whether it would be feasible for providers to introduce the capability to identify these calls and, if so, at what cost.

94. We also seek comment on the different contexts in which CMRS is now or could in the future be offered through aggregators. The record includes evidence of a variety of different transient uses of mobile telephone service, including air-to-ground telephone service on commercial airlines, the leasing of phones along with rental cars, mobile phone booths at special events, and the rental of phones by hotels and shopping malls.[264] We seek further information on the distinguishing characteristics of each of these arrangements, and on any other contexts in which CMRS is aggregated. In particular, when addressing particular provisions of TOCSIA, commenters should consider whether the statutory provisions and our regulations have different impacts depending on the type of aggregator arrangement in question. Commenters should also consider the potential future evolution of CMRS aggregation. In particular, we seek comment regarding how proposed billing schemes under which the calling party pays for airtime might affect the arrangements between CMRS providers and aggregators and the impact of TOCSIA and our implementing rules.[265]

95. Aggregator Disclosure and OSP Oversight of Aggregators. Even before the enactment of TOCSIA, we proposed rules "that pertain to a subject that is vital to the operation of an open and competitive operator services marketplace: customer information and notification."[266] After TOCSIA was enacted, we adopted rules requiring aggregators to post "on or near the telephone instrument, in plain view of consumers" information designed to aid consumers. This information includes (1) the name, address, and toll-free telephone number of the provider of operator services; (2) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carrier for information on accessing that carrier's service using that telephone; (3) for pay telephones, the local coin rate for the pay telephone location; and (4) the name and address of the Commission's Common Carrier Bureau enforcement division.[267] We require all aggregators to

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[263] *See* PCIA Petition at 46; PCIA *Ex Parte* at 4-6 (stating that application of section 64.703(a) to broadband PCS effectively requires providers to brand all roamer calls).

[264] *See* n.211, *supra.*

[265] *See* Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Inquiry*, 12 FCC Rcd. 17693 (1997).

[266] Policies and Rules Concerning Operator Service Providers, *Notice of Proposed Rule Making*, 5 FCC Rcd. 4630, 4631-32, ¶ 14 (1990) (*TOCSIA NPRM).*

[267] 47 C.F.R. § 64.703(b). *See also* 47 U.S.C. § 226(c)(1) (requiring posting of items 1, 2, and 4 above). We note that section 226(c)(1)(A)(iii) requires aggregators to post the name and address of the Common Carrier Bureau's enforcement division. We tentatively conclude that, for purposes of public wireless phones, the Wireless Telecommunications Bureau's enforcement division should be substituted. We believe we have authority to make

comply with this posting requirement, including aggregators in non-equal access areas.[268] Responsibility for enforcement of the aggregator posting requirement is, in part, placed upon the OSP used by the aggregator. The OSP is obligated to ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the posting requirements.[269]

96. We have declined in most respects to forbear from enforcing these provisions with respect to CMRS at this time because of the vital information that disclosure provides to consumers of public telecommunications services, and because there is no record evidence that these requirements impose an undue burden on aggregators.[270] For the same reasons, we tentatively conclude that we should continue in the future to require some form of disclosure by CMRS aggregators similar to that mandated by section 226(b)(1)(D) of the Act. In particular, we believe customers of CMRS aggregators will benefit from access to the same information that is available to direct customers of CMRS providers, including the identity of and how to contact the underlying service provider, how to obtain information about rates, and how to lodge complaints about service. We seek comment on this tentative conclusion. In particular, we are interested in any unusual burdens that the disclosure requirement generally might impose on aggregators. For example, if certain aggregators are prone to frequently changing their underlying service provider, might it be costly for them to continuously update the disclosure information? Are there circumstances where an aggregator might not know the identity of its underlying service provider? If so, how do these conditions differ from those encountered by wireline aggregators? We also welcome comment on the benefits of disclosure to consumers.

97. Although we tentatively conclude that we should retain some form of disclosure requirement for CMRS aggregators, we recognize that the appropriate form of disclosure may be different in the CMRS and wireline contexts. In particular, we note that wireless public phones are not always attached to a particular stationary geographic location, and, indeed, may not be attached to anything at all. This fact could impede compliance with the statutory and regulatory requirement that aggregators post information "on or near the telephone instrument."[271] Due to the increasing diminution in size of CMRS telephone devices, it may be impossible to post all of the required information, in a legible fashion, on the telephone instrument itself. We also recognize that because certain mobile public phones are not fixed to a particular location, it may not be possible to post

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this substitution pursuant to our forbearance power and our authority under section 4(i) of the Act to perform any and all acts as may be necessary in the execution of our functions. *See* 47 U.S.C. § 154(i). We seek comment on this tentative conclusion.

[268] *See* Policies and Rules Concerning Operator Service Providers, *Report and Order*, 6 FCC Rcd. 2744, 2759, ¶ 36 (1991) (*TOCSIA Implementing Order*).

[269] 47 U.S.C. § 226(b)(1)(D); 47 C.F.R. § 64.703(e).

[270] *See* para. 86, *supra*. We are, however, forbearing from enforcing the disclosure requirements relating to the right to access the interstate common carrier of the consumer's choice, consistent with our decision that CMRS aggregators need not offer consumers that choice. *See* paras. 76-80, *supra*.

[271] 47 U.S.C. § 226(c)(1)(A); 47 C.F.R. § 64.703(b).

notices in every place where a consumer can initiate a call. We therefore tentatively conclude that we should forbear from requiring CMRS aggregators to post disclosure information "on or near the telephone instrument," and instead should permit some or all CMRS aggregators to use some other reasonable means of disclosure. For example, we might permit CMRS aggregators to provide the required information to the consumer at the point of establishing a contractual relationship, *e.g.*, at the car rental counter or concierge desk.[272] We seek comment regarding this tentative conclusion and how it should be implemented. For example, we seek comment on whether the point of establishing a contractual relationship is an appropriate alternative time for disclosure, or whether this point may be nonexistent or difficult to identify under some circumstances. We also seek comment as to the means by which disclosure should be effected at the time the relationship is established; *e.g.*, by posting information in the aggregator's office or by handing a leaflet to the customer. Commenters should also consider alternatives to disclosure at the time of contracting, such as placing information in the glove compartment of a rental car. In addition, we are interested in whether alternative means of disclosure should be available to all CMRS aggregators, or only to aggregators that will have difficulty complying with the literal statutory requirement.

98. We also seek comment on whether certain disclosures should be required of CMRS aggregators in addition to those mandated under section 226(c) of the Act and section 64.703(b) of our rules. Specifically, CMRS providers typically impose a number of charges on end users that are not commonly encountered in the wireline context, including roaming charges, charges for airtime, and charges for incoming calls. We believe that CMRS subscribers are typically aware of these charges, but that transient users of CMRS may not be. We therefore seek comment on whether CMRS aggregators should be required to disclose the existence of these or other charges. If so, we further seek comment regarding the precise nature of the required disclosure. For example, should the aggregator provide information regarding the boundaries of the home calling area? Alternatively, where the CMRS device provides notice that a customer will incur roaming charges (*e.g.*, a light on the device is illuminated), should this fact be disclosed? Should the aggregator be required to disclose the phenomenon of "call capture?"[273] We welcome comment on these and other relevant questions.

99. Section 64.703(b)(3) of our rules requires that in the case of a pay telephone, an aggregator must disclose the local coin rate for the location.[274] We seek comment on whether this

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[272] We note that before TOCSIA was enacted, we proposed to afford aggregators the option of meeting their disclosure obligations by giving printed documentation to the customer in person. We provided as examples that a customer at a hotel or a patient at a hospital could be given the required information while checking in. *TOCSIA NPRM*, 5 FCC Rcd. at 4632, ¶ 17.

[273] "Call capture" or "capture of subscriber traffic" occurs when a mobile radio user is unable to initiate a call through a carrier's system from a location within that system's service area, because the control channel signal from an adjacent system is stronger at that location. Capture occurs because CMRS devices are designed to seek service, when initiating a call, from the system with the strongest control channel signal on the preferred channel block. In such a situation, the user's radio automatically registers in and initiates calls through the adjacent system, potentially triggering roaming charges. *See* Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, *Further Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 2109, 2124 n.81 (1997).

[274] *See* 47 C.F.R. § 64.703(b)(3). We note that this requirement is not imposed by statute.

requirement is appropriately applied to CMRS aggregators. In particular, we request information regarding whether coin-operated CMRS phones exist. If not, should we forbear from applying this disclosure requirement, or should we retain it to apply to coin-operated applications that may be developed in the future? If coin-operated phones do currently exist, is there any reason aggregators should not be required to disclose the coin rate? For example, are rate structures too complicated to be conveniently posted? If so, is there any compromise proposal that could effectively protect consumers without unduly burdening aggregators? Commenters should specifically address any relevant differences between CMRS and wireline coin-operated phones.

100. We also tentatively conclude that we should retain the requirement that CMRS OSPs ensure by contract or tariff that aggregators will comply with the disclosure requirements.[275] Congress believed that OSP oversight is important to ensuring aggregator compliance with TOCSIA, and we agree with Congress' judgment.[276] We also are not convinced on the present record that OSP oversight is unduly burdensome. PCIA argues, however, that compliance with the oversight requirement is problematic for CMRS OSPs because, unlike wireline OSPs, they typically do not have contracts with aggregators, and indeed may not know who aggregators of their services are.[277] We seek comment regarding the prevalence of contractual arrangements between CMRS aggregators and OSPs, and how this compares with the wireline context. To the extent such contracts do not exist, we seek comment on the costs and benefits of requiring CMRS aggregators and OSPs to enter into contracts. We also seek comment on practical alternatives to contractual provisions as a means of effecting OSP oversight, and on whether OSPs that do not have contracts with their aggregators, or do not know who their aggregators are, should be exempt from the oversight requirement. In addition, we welcome comments on the benefits of oversight by CMRS OSPs.

101. OSP Identification, Disclosure, and Termination at No Charge. TOCSIA requires that every OSP audibly and distinctly identify itself to every person who uses its operator services before any charge is incurred by the consumer, permit the consumer to terminate the telephone call at no charge before the call is connected, and disclose to the consumer upon request, at no charge, a quotation of its rates or charges for the call, the methods by which such rates or charges will be collected, and the methods by which complaints concerning such rates, charges, or collection practices will be resolved.[278] Our regulations reiterate these requirements, and in addition we require that the OSP disclose audibly to the customer how to obtain the price of a call before the call is connected.[279]

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[275] *See* 47 U.S.C. § 226(b)(1)(D); 47 C.F.R. § 64.703(e).

[276] *See* S. Rep. No. 439, 101st Cong., 2d Sess. at 13 (1990). *See also TOCSIA Implementing Order*, 6 FCC Rcd. at 2747-48, ¶ 4.

[277] See PCIA Petition at 46-49; Sprint/APC Comments at 15; PCIA *Ex Parte*, Attachment at 2.

[278] 47 U.S.C. § 226(b)(1)(A-C).

[279] 47 C.F.R. § 64.703(a).

102. In the Memorandum Opinion and Order, we have concluded that on the present record, the criteria for forbearance from applying these requirements to CMRS OSPs are not satisfied.[280] We seek additional comment on this issue. In particular, we seek comment on PCIA's arguments in favor of forbearance. First, PCIA and commenters supporting its position argue that the OSP disclosure and call termination requirements are unnecessary to protect consumers because CMRS providers' rates and practices are reasonable, competitive market forces motivate CMRS providers to offer services at reasonable rates, and CMRS providers generally disclose rate information as a matter of sound business practice.[281] We have already found, based on the existing record, that current market conditions may not ensure that CMRS providers will refrain from unjust, unreasonable, or unreasonably discriminatory practices.[282] We seek comment as to whether this analysis is any different when CMRS providers are acting as OSPs. We also seek comment on the disclosure practices of CMRS OSPs, and in particular whether they make relevant information available to consumers on each call and inform consumers before each call how to obtain such information. In addition, assuming providers typically do act reasonably and disclose their rates and practices, we seek comment on whether these circumstances are sufficient grounds for forbearing from regulation. For example, even if CMRS providers' rates and practices are reasonable, consumers may have an independent interest in knowing what those rates and practices are before they incur charges. Similarly, even if most CMRS providers disclose their rates and practices as a matter of business practice, regulation may be important to ensure disclosure by all providers. We seek comment on these theories. We also seek comment on whether continuing to apply disclosure requirements to CMRS OSPs on each call is consistent with our decision to forbear from requiring these providers to file informational tariffs.[283]

103. Second, PCIA argues that enforcement of these requirements is not in the public interest because compliance with these requirements is unduly costly and burdensome for CMRS OSPs. In particular, PCIA contends that broadband PCS providers have no way of distinguishing a rental phone from a private phone, and therefore must make the required announcements, at a minimum, at the beginning of all roamer calls that are not billed to the originating number.[284] PCIA also states that the financial costs of complying with the OSP identification and disclosure requirements are substantial, arguing in particular that compliance with the new requirement to audibly disclose how to obtain the price of a call would entail replacement or modification of network equipment, design and installation

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[280] *See* para. 86, *supra.*

[281] *See* PCIA Petition at 43-45; AT&T Comments at 7-8; GTE Comments at 10; Sprint/APC Comments at 13-15; ALLTEL Comments on the *Further Forbearance NPRM* at 3; Bell Atlantic Comments on the *Further Forbearance NPRM* at 9; CTIA Comments on the *Further Forbearance NPRM* at 7; GTE Comments on the *Further Forbearance NPRM* at 6-8; In-Flight Comments on the *Further Forbearance NPRM* at 5; McCaw Comments on the *Further Forbearance NPRM* at 5-6; Nextel Comments on the *Further Forbearance NPRM* at 15; SBMS Comments on the *Further Forbearance NPRM* at 11-16; AMTA Reply Comments on the *Further Forbearance NPRM* at 4-5; BellSouth Reply Comments on the *Further Forbearance NPRM* at 3-4; McCaw Reply Comments on the *Further Forbearance NPRM* at 5; PCIA *Ex Parte* at 1-2, Attachment at 1.

[282] *See* paras. 19-24, *supra* (discussing decision not to forbear from enforcing sections 201 and 202).

[283] *See* para. 85, *supra.*

[284] PCIA Petition at 46; PCIA *Ex Parte* at 4-6 and Attachment at 1.