

Before  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
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	)	
Forbearance from Applying	)	WT Docket No. 98-100
Provisions of the Communications	)	
Act to Wireless Telecommunications	)	
Carriers	)	
	)	

COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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## SUMMARY

The Section 10 mandate is clear. The Commission must forbear from applying those statutory provisions or Commission regulations that are no longer necessary to ensure just and reasonable rates or protect consumers, and whose elimination would serve the public interest. The Commission most recently exercised its forbearance authority when it granted partial forbearance to CMRS providers from enforcement of certain provisions of the Telephone Operator Consumer Services Improvement Act (“TOCSIA”) and the regulations promulgated thereunder. However, PCIA believes that the Commission erred in adopting only limited forbearance relief. In doing so, the Commission unreasonably discounted substantial record evidence supporting a grant of broad forbearance, such as the complete absence of consumer complaints, the presence of vigorous competition, and the impracticality of applying these obligations in the CMRS context.

Accordingly, PCIA urges the Commission to create a regulatory scheme that is less burdensome and more appropriate for the competitive wireless industry. Specifically, the Commission should forbear from imposing the remaining TOCSIA obligations on CMRS carriers acting as operator service providers (“OSPs”). Application of these obligations to CMRS OSPs is neither necessary to ensure that rates and practices are just or to protect consumers. In fact, continued application of these requirements to CMRS OSPs disserves the public interest by creating consumer confusion, generating substantial compliance costs with little or no offsetting benefits, and endorsing bad precedent by continuing to apply rules that make no sense in the CMRS environment.

PCIA also urges the Commission to further its goal of “regulatory symmetry” and extend forbearance relief to other wireless carriers. In light of the Section 10 standard, the Commission should re-examine the regulatory obligations imposed on new wireless operators, such as Local Multipoint Distribution Services (“LMDS”) licensees, and determine which burdens may be lifted under its forbearance authority.

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PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association (“PCIA”)<sup>1</sup> hereby submits its comments in response to the *Notice of Proposed Rulemaking* (“*Notice*”) in the above-captioned proceeding.<sup>2</sup> The *Notice* stems in large part from the Commission’s decision not to forbear from applying to PCS carriers many of the requirements of the Telephone

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<sup>1</sup> 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 Messaging Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications 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.

<sup>2</sup> *Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, WT Docket No. 98-100, FCC 98-134 (rel. July 2, 1998) (*Notice of Proposed Rulemaking*) (“*Notice*”).

Operator Consumer Services Improvement Act (“TOCSIA”)<sup>3</sup>, notwithstanding the robust competition in the CMRS market and the utter absence of consumer complaints.

PCIA respectfully submits that the Commission erred in adopting only limited forbearance from TOCSIA and unreasonably discounted the substantial record evidence supporting broad forbearance. Nonetheless, rather than seeking reconsideration of the TOCSIA-related aspects of the *Memorandum Opinion and Order* (“MO&O”),<sup>4</sup> PCIA will renew herein its request that the Commission exercise its authority under Section 10<sup>5</sup> to forbear from applying the remaining statutory obligations of TOCSIA and the regulations promulgated thereunder<sup>6</sup> to all CMRS carriers acting as Operator Service Providers (“OSPs”).<sup>7</sup> In addition, in responding to the Commission’s request for comment on forbearance from other statutory and regulatory provisions,<sup>8</sup> PCIA urges the Commission

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<sup>3</sup> See 47 U.S.C. § 226.

<sup>4</sup> PCIA intends to seek reconsideration of other aspects of the Commission’s *Memorandum Opinion and Order. Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance for Broadband Personal Communications Services*, WT Docket No. 98-100; GN Docket No. 94-33, MSD-92-14, FCC 98-134 (rel. July 2, 1998) (*Memorandum Opinion and Order*) (“MO&O”).

<sup>5</sup> See 47 U.S.C. § 160.

<sup>6</sup> See 47 C.F.R. §§ 64.703 - 64.708.

<sup>7</sup> In its *MO&O*, the Commission held that TOCSIA applies to mobile service providers. See *MO&O*, ¶¶ 72-73. Although PCIA continues to dispute this conclusion, we will address those obligations imposed on CMRS providers acting as OSPs. PCIA limits its present request to forbearance relief for CMRS OSPs. PCIA does not object to retaining or modifying obligations on the end-provider (*i.e.*, the aggregator).

<sup>8</sup> In addition to the request for comment on issues related to TOCSIA, the *Notice* seeks comment on the criteria for applying the Section 10 forbearance standard. See *Notice*, ¶ 114. Because PCIA believes that the standards articulated by the Commission in the *MO&O* portion of the document incorrectly interpret the statutory forbearance

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to re-examine the regulatory obligations imposed on new wireless operators, such as Local Multipoint Distribution Services (“LMDS”) licensees, and to determine which burdens may be lifted under the statutory forbearance standards.

## I. INTRODUCTION

In 1990, Congress passed TOCSIA to “protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices.”<sup>9</sup> TOCSIA was passed in response to the thousands of customer complaints about the practices of certain providers of *landline* operator services, including excessive toll charges, blocking of access to the customer’s preferred interexchange carrier, and call “splashing.”<sup>10</sup> Despite the consumer outcry that led to the passage of TOCSIA, PCIA is unaware of any complaints (either before or since passage) regarding the practices of a mobile service provider.

TOCSIA imposes several requirements on two classes of telecommunications service providers: (1) aggregators and (2) operator service providers.<sup>11</sup> Aggregators must,

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provisions, PCIA will be filing a petition for reconsideration. That petition will articulate PCIA’s views concerning the nature of the standards to be applied by the Commission in evaluating requests for forbearance under Section 10, and accordingly PCIA is not separately addressing those issues at this time.

<sup>9</sup> S. Rep. No. 101-439, at 1 (1990), *reprinted in* 1990 U.S.C.C.A.N. 1577, 1577. TOCSIA is codified at 47 U.S.C. § 226.

<sup>10</sup> Splashing occurs when a call is transferred from one OSP to another, the second OSP cannot determine the origination point of the call, and the customer’s bill reflects a different origination point (and possibly, different charges). *See* 47 C.F.R. § 64.708(c).

<sup>11</sup> An “aggregator” is “any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.” *Id.* § 64.708(b). A “provider of  
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among other things, post the name, address and toll-free telephone number of the provider of operator services presubscribed to the telephone; disclose in writing that the presubscribed OSP's rates are available on request and the customer may obtain access to the OSP of its choice; provide the name and address of the FCC's Enforcement Division; ensure that each telephone presubscribed to an OSP permits customers to use 800, 950, and 10XXX numbers to access their preferred OSP; and ensure that consumers are not charged higher rates for calls placed using access codes.<sup>12</sup> OSPs must, among other things, brand calls; permit the consumer to terminate the call at no charge before the call is connected; immediately disclose rate information upon the consumer's request; ensure through tariff or contract that each aggregator complies with the information disclosure and unblocking requirements; transfer calls to the calling party's preferred OSP; and not bill for unanswered calls or engage in call splashing; and file informational tariffs.<sup>13</sup>

On May 22, 1997, the Broadband Personal Communications Services Alliance ("BPA") of PCIA filed a petition seeking Section 10 forbearance relief from a number of

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operator services" is "any common carrier that provides operator services or any other person determined by the Commission to be providing operator services." *Id.*

§ 64.708(i). "Operator services" are 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" billing to the telephone from which the call was originated or completion through an access code with billing to a previously established account. *Id.* § 64.708(g).

<sup>12</sup> 47 U.S.C. § 226(c); 47 C.F.R. §§ 64.703(b), 64.704(a), (c), 64.705(b).

<sup>13</sup> 47 U.S.C. §§ 226(b), (h); 47 C.F.R. §§ 64.703(a), (e), 64.704(b), 64.705(a).

statutory and Commission obligations imposed on broadband PCS providers.<sup>14</sup> As part of that Petition, BPA sought forbearance from applying the TOCSIA requirements to broadband PCS providers.<sup>15</sup>

In its *MO&O*, the Commission granted partial forbearance from enforcing certain TOCSIA requirements. Specifically, the Commission decided to forbear from: (1) applying the unblocked access requirements to CMRS aggregators and OSPs;<sup>16</sup> and (2) requiring CMRS OSPs to file informational tariffs.<sup>17</sup> Although the Commission concluded that the three-pronged test under Section 10 was satisfied as to these provisions, it sought comment on whether the Commission should forbear, continue to apply, modify, or eliminate the remaining rules implementing TOCSIA.<sup>18</sup>

As PCIA demonstrates herein, the Commission is compelled to forbear from applying the remaining TOCSIA requirements to CMRS OSPs under the three-pronged test of Section 10. First, application of these requirements is unnecessary to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory. Second, enforcement is not necessary to protect consumers. Finally, elimination of the requirements will serve the public interest. Should the Commission decide not to forbear

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<sup>14</sup> PCIA Petition for Forbearance for Broadband Personal Communications Services (filed May 22, 1997) (“PCIA Petition”). The Petition requested forbearance from the continued application of Sections 201 and 202, the mandatory resale obligation, Section 226 (TOCSIA), international Section 214 authorization and tariffing requirements, and the Section 310(d) prior approval requirement for *pro forma* transfers and assignments.

<sup>15</sup> PCIA Petition at 38-49.

<sup>16</sup> *MO&O*, ¶¶ 75-80.

<sup>17</sup> *Id.*, ¶¶ 75, 81-85.

<sup>18</sup> *Notice*, ¶ 89.

from imposing the remaining TOCSIA obligations on CMRS OSPs, at a minimum, the agency should craft its rules in a manner that provides CMRS carriers with maximum regulatory flexibility and recognizes the practical difficulties of applying such rules in the CMRS context.

**II. THE COMMISSION'S GRANT OF FORBEARANCE RELIEF FROM THE TOCSIA PROVISIONS GOVERNING UNBLOCKED ACCESS AND THE FILING OF INFORMATIONAL TARIFFS IS A STEP IN THE RIGHT DIRECTION.**

PCIA fully endorses the Commission's efforts to simplify the regulatory framework governing CMRS providers by granting the limited forbearance relief detailed in the *MO&O*. Forbearance from the unblocked access and informational tariff requirements is certainly a step in the right direction. However, the Commission's actions do not go far enough. Section 10 compels the elimination of certain remaining TOCSIA requirements. Specifically, Section 10 requires the Commission to forbear from imposing the remaining TOCSIA obligations on CMRS carriers acting as OSPs. Application of these obligations to CMRS OSPs is neither necessary to ensure that rates and practices are just or to protect consumers. In fact, continued application of these requirements to CMRS OSPs disserves the public interest by creating consumer confusion, generating substantial compliance costs with little or no offsetting benefits, and endorsing bad precedent by continuing to apply rules that make no sense in the CMRS environment.

If, however, the Commission should find that the forbearance test is not satisfied with respect to the remaining CMRS OSP obligations, at a minimum, the agency should modify its rules to reflect the realities of the wireless marketplace. It is simply bad public policy to mandate requirements with which carriers cannot comply. Furthermore, it is

bad policy to overlook or minimize the absence of consumer complaints regarding the provision of mobile public phone services. Accordingly, PCIA urges the Commission to take its own advice and “forbear from enforcing provisions of [its] rules that inhibit or distort competition in the marketplace, represent unnecessary regulatory costs, or stand as obstacles to lower prices, greater service options, and higher quality services for American telecommunications consumers.”<sup>19</sup>

PCIA has done its best to provide the information requested by the Commission; however, there are additional difficulties and constraints associated with obtaining such information. Given the lack of adverse consumer effects in the mobile services context, the highly competitive nature of the CMRS market, and the protections offered by other existing regulatory requirements, the Commission should forbear from applying the remaining TOCSIA obligations to CMRS OSPs.

### **III. THE COMMISSION SHOULD FURTHER FORBEAR FROM APPLYING THE REMAINING OPERATOR SERVICE PROVIDER REQUIREMENTS TO CMRS PROVIDERS.**

PCIA believes that forbearance from imposing the remaining TOCSIA requirements on CMRS providers acting as OSPs is fully in step with the 1996 Act’s goal of a deregulatory framework. First, the Section 10 test is satisfied with respect to the remaining TOCSIA obligations. Second, the elimination of these requirements will meet the Commission’s goal of “promot[ing] the public interest by relieving CMRS providers

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<sup>19</sup> *MO&O*, ¶ 2.

. . . of regulatory burdens that are ill-suited to the CMRS context and by providing consumers with targeted measures for their protection.”<sup>20</sup> Third, the Commission’s consumer protection concerns are already being addressed by the marketplace. Forbearance relief in the instant case would allow the Commission to create a regulatory scheme that is leaner and more appropriate for the competitive wireless industry.

**A. OSP Oversight of Aggregators**

OSPs are required to ensure, by contract or tariff, that aggregators comply with the disclosure requirements of TOCSIA (*e.g.*, the posting of information regarding rates).<sup>21</sup> In the *Notice*, the Commission tentatively concludes that it should retain this requirement, because it is “not convinced on the present record that OSP oversight is unduly burdensome.”<sup>22</sup> The crux of the forbearance test, however, is not whether the requirement is unduly burdensome (although the Commission should, of course, strive to make its rules as minimally burdensome as possible). Rather, the statute limits the Commission to considering whether a specific rule is needed to ensure just and reasonable rates, prevent harm to consumers, and serves the public interest. Here, the Section 10 test has been satisfied.

*Just and Reasonable Rates and Practices.* Enforcement of the OSP oversight requirement to CMRS providers is not necessary to ensure that rates and practices are just and reasonable and are not unjustly or unreasonably discriminatory. The truth of the matter is that the realities of the wireless industry often make OSP oversight impossible.

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<sup>20</sup> *Notice*, ¶ 91.

<sup>21</sup> 47 U.S.C. § 226(b)(1)(D); 47 C.F.R. § 64.703(e).

<sup>22</sup> *Notice*, ¶ 100.

Typically, CMRS OSPs do not have contracts with aggregators. The Commission's resale obligation creates a situation where a CMRS carrier may be completely unaware that its services are being resold for mobile public phone purposes. For example, a CMRS provider may have no idea that its services are being used by a rental car company to provide mobile phone service to that company's customers. Even where CMRS providers do market to a rental car firm or similar entity, their economic interest lies in maximizing usage and encouraging repeat business, which is best accomplished through reasonable rates.

Roaming further illustrates the inappropriateness of this requirement in the CMRS context. Again, a CMRS provider serving mobile public phone roamers cannot enforce compliance by the owner of the mobile public phone because it will have no contractual or tariff relationship with that entity.

In the *Notice*, the Commission asks whether OSPs that do not have contracts with aggregators, or do not know who their aggregators are, should be exempt from the oversight requirement. PCIA submits that *all* CMRS OSPs should be exempt. The Commission's order is filled with references to its efforts to ensure regulatory parity.<sup>23</sup> There is no reason to impose regulatory burdens on some carriers but not others, especially when the existing requirement is unnecessary. These enforcement mechanisms are simply unwarranted.

*Consumer Protection.* Application of the oversight requirement to CMRS OSPs is not necessary to protect consumers. The disclosure obligations imposed on aggregators

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<sup>23</sup> See *MO&O*, ¶¶ 30, 73

by Congress and the Commission are sufficient safeguards.<sup>24</sup> There is no reason to burden CMRS OSPs with additional enforcement mechanisms in the absence of a real need. Here, there is no need. As PCIA and others have explained time and time again, there has been no evidence of unjust or unreasonable rates and practices.<sup>25</sup> The absence of consumer abuse is a compelling reason to support the elimination of unwarranted regulations. Thus, the second prong of the forbearance test is satisfied.

*Public Interest.* Forbearance from enforcing the OSP oversight requirement will advance the public interest. For the reasons stated above, the oversight requirement is quite problematic in the wireless context. Forbearance is necessary because additional oversight by CMRS OSPs is both unwarranted and a waste of resources.

**B. OSP Identification, Disclosure, and Termination At No Charge**

TOCSIA requires every OSP to: (1) identify itself to every caller using its operator services before any charge is incurred; (2) permit the consumer to terminate the call at no charge before the call is connected; (3) 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 can be resolved.<sup>26</sup> The Commission's rules repeat these obligations and further require the OSP to disclose

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<sup>24</sup> See 47 U.S.C. § 226(c)(1); 47 C.F.R. § 64.703(b).

<sup>25</sup> See, e.g., PCIA Petition at 43-44, Comments of AT&T Wireless Services, Inc. DA 97-1155, at 7-8 (filed July 2, 1998); Comments of BellSouth, DA 97-1155, at 13 (filed July 2, 1997); Comments of Sprint PCS and American Personal Communications, at 15 (filed July 2, 1997).

<sup>26</sup> 47 U.S.C. § 226(b)(1)(A-C).

audibly to the consumer how to obtain the price of a call before the call is connected.<sup>27</sup>

The Commission should forbear from imposing these requirements on CMRS OSPs because the Section 10 test is satisfied.

*Just and Reasonable Rates and Practices.* The Commission asks whether the fact that providers typically act reasonably and disclose their rates is a sufficient basis for forbearing from regulation.<sup>28</sup> PCIA contends that it is. This type of smart business practice is rewarded in a competitive marketplace such as the wireless industry. Competitive market forces incent CMRS providers to offer service at reasonable rates and to engage in best business practices to increase market share. Moreover, PCIA is unaware of any consumer complaints of overcharging or any other evidence that the rates and practices for mobile services are unjust or unreasonable.

*Consumer Protection.* Enforcement is clearly unnecessary to protect consumers. The Commission suggests that, even if CMRS providers' rates and practices are reasonable, consumers may have an independent interest in knowing what those rates are before they incur any charges.<sup>29</sup> This may be true, but aggregators, not CMRS OSPs, set the rates. Thus, requiring the underlying CMRS carrier to quote its rates makes little, if any, sense for a number of reasons.

First, requiring rate disclosure by the wireless OSP is pointless because the rates disclosed will differ from those rates the aggregator ultimately charges the consumer. Second, mandating that the OSP quote the aggregator surcharge is nothing more than a

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<sup>27</sup> See 47 C.F.R. § 64.703(a).

<sup>28</sup> Notice, ¶102.

<sup>29</sup> *Id.*

guessing game. The OSP does not know whether an aggregator surcharge even exists, and, if so, what the amount is. Finally, in the mobile context, it is impossible to provide the consumer with the total cost of the call because the CMRS OSP will not have access to the rates incurred when a call roams on to other networks.

Thus, the Commission's rules will increase the burden on CMRS carriers without offering significant additional protection to consumers. In fact, such a requirement lends itself to customer confusion, because the rates quoted by the CMRS provider will not match the rates ultimately charged by the aggregator. Given the substantial costs of compliance and the lack of commensurate public interest benefits, the Commission should not require CMRS OSPs to disclose rate information.

*Public Interest.* For all of the reasons stated above, it is clear that forbearance from imposing these requirements on CMRS OSPs will serve the public interest. For example, elimination of the requirement that a CMRS OSP identify itself at the beginning of each call is warranted. First, the deployment of branding capabilities is an expensive undertaking. Second, branding could also cause customer confusion because CMRS providers cannot always distinguish between calls from mobile public phones and other calls. In the roaming context, the visited system cannot distinguish mobile public phone roamer calls from other roamer calls. It is very probable that a roamer could experience a series of branding announcements from different underlying service providers as that roamer traveled from one service area to another. Even if mobile public phone calls could be separated out from other roamer calls, confusion and annoyance would still affect all users of rental car phones and similar service arrangements.

At a minimum, CMRS OSPs would have to brand all roamer calls that are not billed to the originating number (*e.g.*, all calls paid for by credit card). In reality, many carriers may be unable to differentiate such calls from other roamer calls, and therefore may be required to brand all roamer calls. In its Petition, PCIA noted that GTE had previously estimated the costs of complying with this requirement for the cellular industry to be \$20 million; and AT&T Wireless Services (then McCaw) estimated that the compliance costs for the entire broadband CMRS industry were \$100 million.<sup>30</sup> These costs are far from insignificant, especially in the absence of offsetting consumer benefits.

It is completely counterproductive as well as unnecessary to impose these costs on the CMRS industry. Given the significant costs of compliance and the lack of commensurate public interest benefits, the FCC should not require CMRS OSPs to disclose rate information.

### **C. Billing for Unanswered Calls**

TOCSIA and the Commission's rules forbid OSPs from billing for unanswered calls in areas where equal access is available and from knowingly billing for unanswered

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<sup>30</sup> PCIA Petition at 47 (citing GTE Petition for Reconsideration or Waiver, MSD-92-14, at 17; Comments of McCaw Cellular Communications, Inc., GN Docket No. 94-33, at 5 (filed June 27, 1994)).

calls in areas where equal access is unavailable.<sup>31</sup> Section 10 requires the removal of this obligation for CMRS providers acting as OSPs.

*Just and Reasonable Rates and Practices.* Enforcement of this requirement is not necessary to ensure that rates and practices are just and reasonable and are not unjustly or unreasonably discriminatory. There has been no evidence that billing for unanswered calls has been a problem in the CMRS industry. There is no reason to continue to burden CMRS OSPs with unwarranted regulations in the absence of evidence of abuse to consumers or unreasonable rates.

*Consumer Protection/Public Interest.* For the reasons stated above, application of this requirement to CMRS OSPs is unnecessary to protect consumers. In addition, the removal of yet another unnecessary regulation will further the public interest by creating more flexibility for wireless carriers. In the end, the consumer benefits from lower prices and more attractive and innovative service offerings.

#### **D. Call Splashing**

TOCSIA and the Commission's rules forbid OSPs from engaging in "call splashing" or billing for a call that does not reflect the originating location of the call without the consumer's informed consent.<sup>32</sup> Section 10 requires the Commission to forbear from applying this requirement to CMRS OSPs.

*Just and Reasonable Rates and Practices.* Enforcement of the call splashing prohibition is unnecessary to ensure that rates and practices are just and reasonable. Because of flat toll pricing, splashing would not adversely affect charges to consumers

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<sup>31</sup> 47 U.S.C. § 226(b)(1)(F-G); 47 C.F.R. § 64.705(a)(1-2).

<sup>32</sup> 47 U.S.C. § 226(b)(1)(H-I); 47 C.F.R. § 64.705(a)(3-4).

even it occurred. Moreover, there is no evidence that splashing has been a problem in the CMRS context.

*Consumer Protection.* Enforcement is not necessary for consumer protection. The call splashing prohibition is unnecessary as applied to CMRS OSPs because these providers have not engaged in call splashing to the detriment of consumers, as evidenced by the lack of complaints. Furthermore, CMRS providers cannot feasibly target users of aggregated services for call splashing because they have no way of distinguishing a rental phone call from a call from a private phone. And in the mobile context, the point of origin is of little consequence since the location of the caller changes frequently and the calling party may have no idea where he or she was when the call was originated.

*Public Interest.* For all of the forgoing reasons, forbearance from applying the call splashing prohibition to CMRS OSPs is consistent with the public interest.

#### **E. OSP Publication of Changes in Services**

The Commission should forbear from requiring CMRS OSPs to publish regularly and to make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and the choices available to consumers in that market.<sup>33</sup> Forbearance is warranted under Section 10.

*Just and Reasonable Rates and Practices.* Enforcement is not necessary to ensure that rates and practices are just and reasonable. As PCIA has shown throughout this proceeding, there has been no evidence of adverse consumer effects or unjust rates in the CMRS context. The significance of this fact should not be overlooked. The

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<sup>33</sup> See 47 C.F.R. § 64.707.

Commission's publication requirement is an unnecessary obligation whose elimination is warranted.

*Consumer Protection.* Enforcement is not necessary to protect consumers. In a competitive environment, providers have an incentive to advertise their services. Moreover, if consumers are interested in obtaining such information, a CMRS carrier will do so as a matter of sound business practice. To do otherwise could jeopardize business for CMRS providers. Thus, this requirement is unnecessary as a consumer protection safeguard.

*Public Interest.* Forbearance from applying the publication requirement to CMRS OSPs will promote the public interest. Because most CMRS providers are OSPs, if at all, only incidentally and involuntarily, they have no basis for issuing such reports. The OSP publication requirement is simply irrelevant in the CMRS context and should be eliminated for CMRS providers acting as OSPs. Forbearance would also reduce compliance costs (*i.e.*, those costs associated with the creation of these reports (databases, personnel training, mailing). Forbearance will serve the public interest by reducing costs to carriers, which, in turn, can be translated into lower prices and better services for consumers.

#### **F. Routing of Emergency Calls**

The Commission should use its Section 10 authority to forbear from imposing TOCSIA's emergency call routing requirement on CMRS OSPs. Section 64.706 of the Commission's rules requires OSPs to ensure the immediate connection of emergency

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.<sup>34</sup>

*Just and Reasonable Rates and Practices.* Enforcement is not necessary to ensure that rates and practices are just and reasonable. The emergency call routing requirement is irrelevant to rates. As such, this obligation is not necessary to ensure just and reasonable rates.

*Consumer Protection.* Enforcement is not necessary to protect consumers. Not long ago, the Commission established new rules governing the 911 obligations of CMRS carriers.<sup>35</sup> To the extent that the general TOCSIA obligations conflict with the new E911 requirements, the E911 rules should preempt. There is no need for duplicative rules. Thus, the Commission should use this opportunity to eliminate unnecessary regulatory burdens by forbearing from applying this requirement to CMRS OSPs. Existing E911 obligations are sufficient.

*Public Interest.* The public interest will best be served by forbearance in this instance. As discussed above, there is no reason to impose redundant obligations on CMRS providers. In light of the new E911 rules, the emergency call routing requirement stemming from TOCSIA is no longer necessary and should be eliminated.

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<sup>34</sup> 47 C.F.R. § 64.706.

<sup>35</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676 (1996) (*Report and Order*); *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 12 FCC Rcd 22665 (1997) (*Memorandum Opinion and Order*).

As demonstrated above, application of the remaining TOCSIA requirements to CMRS providers acting as OSPs is not necessary to ensure just, reasonable, and nondiscriminatory rates and practices for mobile public phone services or to protect consumers. Moreover, forbearance from applying Section 226 in the mobile context will advance the public interest by promoting competition, avoiding the imposition of substantial and unwarranted costs, assuring the Commission does not hold the industry to impossible requirements, and eliminating a source of confusion for consumers. Accordingly, grant of this forbearance request is compelled by Section 10 of the Act.

**IV. THE COMMISSION SHOULD EXTEND FORBEARANCE TO OTHER WIRELESS CARRIERS.**

The Commission requests comment “regarding forbearance from applying any regulation or provision of the Act to wireless telecommunications carriers licensed by the Commission,” including “wireless carriers other than those classified as CMRS.”<sup>36</sup> On July 31, 1998, PCIA submitted a long list of rules and regulations to the Commercial Wireless Division that cover the wide range of wireless services and that should be streamlined or eliminated pursuant to the Commission’s Section 11 Biennial Review authority.<sup>37</sup> Further, PCIA urges the Commission, in pursuit of its pro-competitive goals, to apply a light regulatory hand to new wireless entrants. It thus would be appropriate for

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<sup>36</sup> Notice, ¶¶ 112, 114.

<sup>37</sup> See PCIA Letter to Mr. Daniel B. Phythyon, “Section 11 Wireless Telecommunications Bureau Biennial Review – Removal or Streamlining of Regulations” (filed July 31, 1998). This letter was also submitted as an *ex parte* filing in the Universal Licensing System proceeding (*Biennial Regulatory Review – Amendment of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20*).

the Commission, in light of the Section 10 standards, to re-examine the regulatory obligations imposed on LMDS licensees and similarly situated fixed wireless providers, and determine which burdens may be lifted under the statutory forbearance standards.

In PCIA's view, LMDS is a new service largely populated by small companies and new entrants. These start up companies are engaged in building new networks, which will increase the available options to consumers and create significant, new facilities-based competition for established voice, data, and video networks. As such, the broadband, fixed wireless segment thus warrants a streamlining of as many regulatory burdens as possible in order to help "foster vigorous and fair competition"<sup>38</sup> in that marketplace. In light of the nascency of the LMDS industry, PCIA urges the Commission to forbear from a number of regulatory requirements, including mandatory resale obligations, TOCSIA obligations, and international 214 requirements (which is already being considered in a separate proceeding).<sup>39</sup>

This is not an exhaustive list of the regulations where forbearance for LMDS licensees is consistent with the statutory standards as well as the Commission's competitive goals, but merely a suggested starting point for the Commission's elimination of unnecessary regulations governing LMDS and similarly situated operators. PCIA accordingly urges the Commission to act promptly to review the regulatory burdens imposed on LMDS and eliminate or forbear from those requirements that impede the development of competition and hinder the provision of service to the public.

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<sup>38</sup> Notice, ¶ 113.

<sup>39</sup> *1998 Biennial Regulatory Review — Review of International Common Carrier Regulations*, IB Docket No. 98-118, FCC 98-149 (rel. July 14, 1998) (*Notice of Proposed Rulemaking*).

**V. CONCLUSION**

For all of the foregoing reasons, PCIA urges the Commission to take the action requested herein and, pursuant to its Section 10 authority, forbear from imposing the aforementioned regulatory requirements on wireless providers.

Respectfully submitted,

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August 3, 1998

CERTIFICATE OF SERVICE

I, Gina M. Stuart, hereby certify that a copy of the foregoing "Comments of The Personal Communications Industry Association" was served upon the following via hand delivery on this 3<sup>rd</sup> day of August, 1998:

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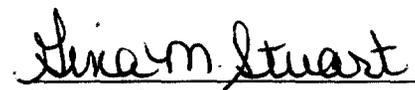
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