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

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
)  
Inquiry Concerning the Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable )  
and Timely Fashion, and Possible Steps )  
To Accelerate Such Deployment )  
Pursuant to Section 706 of the )  
Telecommunications Act of 1996 )

CC Docket No. 98-146

**REPLY COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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October 8, 1998

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REPLY COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")<sup>1</sup> hereby submits this reply to the comments filed in response to the Notice of Inquiry ("NOI") in the above-captioned proceeding.<sup>2</sup> As described in greater detail below, the record in this proceeding demonstrates

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<sup>1</sup> PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz 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 FCC licensees.

<sup>2</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, FCC 98-187 (rel. Aug. 7, 1998) (Notice of Inquiry) ("NOI").

that a combination of deregulatory initiatives and regulatory structures carefully tailored to the competitive circumstances under which each group of providers operates will best encourage the provision of advanced telecommunications capabilities to the American public.

## **I. INTRODUCTION AND SUMMARY**

This proceeding is of great significance to the telecommunications industry because the Commission and the industry are looking to the future and asking how they can best foster the development of advanced technologies and services. In particular, the Commission has sought and received comment on what type of regulatory model will “aid the deployment of advanced telecommunications capability.”<sup>3</sup> Thus, if the Commission draws the proper lessons from the record in this proceeding, it will be able to develop a regulatory regime that will encourage the provision of the next generation of telecommunications services to all sectors of the American public.

In looking for a reliable regulatory compass in this area, the Commission would be well served by studying Commissioner Powell’s thoughts on when regulation is appropriate, and when it is inappropriate. To this end, in his remarks at PCS ‘98, Commissioner Powell counseled that, “before imposing too many regulatory conditions,” the Commission should first “diagnose the market to see if it is functioning well without government intervention.”<sup>4</sup> In making this market diagnosis, the Commission should ask the following questions: (1) is there a monopolist in the market; (2) are prices competitive; (3) can consumers find substitutes for

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<sup>3</sup> *NOI*, ¶ 69.

<sup>4</sup> Remarks by Commissioner Michael K. Powell before PCIA’s annual trade show, PCS ‘98 (Sept. 23, 1998).

service; (4) is there evidence of product and service innovation; (5) are there new market entrants; and (6) is there market growth. When the answer to most of these questions is “yes,” as it is in the wireless industry, Commissioner Powell cautioned against excessive government regulation, arguing that it would distort the “market dynamic” that so successfully matches consumer demand for products and services with the supply of these products and services.

Against this philosophical background, the Commission should draw the following conclusions from this proceeding. First, wireless technologies are currently capable of providing advanced telecommunications capabilities, and are providing a greater range of advanced services with each passing year. The Commission should define “advanced telecommunications capabilities” in a flexible and technologically neutral fashion to encompass wireless services, including mobile, fixed, one-way, and two-way services. The Commission should also ensure that it does not confound its definition of “broadband” CMRS with its definition of “broadband” (*i.e.*, advanced) services, because both narrowband and broadband CMRS providers are capable of offering advanced services.

Second, the Commission must avoid a “one size fits all” regulatory paradigm for advanced telecommunications capabilities. In particular, entities offering these advanced services should be regulated according to their competitive circumstances, thereby precluding the use of monopoly-style regulation for the highly competitive wireless market. Similarly, “regulatory parity” is an inappropriate concept for the regulation of advanced capabilities because concentration on regulatory parity will ultimately force the same regulatory scheme on dissimilar entities. Equally important, “regulatory parity” often has the effect of perpetuating outdated regulatory frameworks that impede the offering of innovative services and get in the way of meeting changing customer needs.

Third, the Commission must address the fact that an ever increasing number of federal, state, and local taxes, fees, assessments, and regulatory mandates is making it more difficult for wireless providers to offer advanced services. These obligations artificially increase the price of such services and, as a result, distort the level of investment in new capabilities by depressing demand below the true market level. Further, many of these burdens are unjustified in the wireless context. While the wireless industry recognizes that some regulatory mandates and their attendant costs are necessary, the Commission must constantly strive to ensure the benefits justify the costs—and to impose only necessary mandates in the most cost-effective way.

Fourth, the Commission should recognize that it has jurisdiction over both fixed and mobile wireless services used to provide advanced telecommunications capabilities. By recognizing that it has such jurisdiction, the Commission will prevent states from retarding the development of advanced wireless services through inappropriate regulation.

Fifth and finally, the Commission must take a number of regulatory actions in order to facilitate the provision of advanced wireless capabilities to the American public. These actions include: (1) forbearing from the enforcement of a variety of regulations against wireless providers, including those related to the Telephone Operator Consumer Services Improvement Act (“TOCSIA”), Section 214, resale, customer proprietary network information (“CPNI”), and rate integration; (2) ensuring that wireless providers have access to essential sites needed to construct personal wireless facilities, as well as access to building rooftops, conduits, and inside wiring on reasonable and non-discriminatory terms and conditions; (3) ensuring that wireless carriers have reasonable and non-discriminatory interconnection rights; and (4) allocating spectrum in an efficient manner.

**II. MANY COMMENTERS AGREE THAT WIRELESS TECHNOLOGIES ARE CAPABLE OF OFFERING “ADVANCED SERVICES” TO THE AMERICAN PUBLIC, AND THE COMMISSION’S DEFINITIONS SHOULD REFLECT THIS FACT**

In its opening round comments, PCIA noted that mobility itself is an advanced telecommunications capability, and wireless technologies are the only services that offer the user such mobility. In particular, wireless services, unlike their landline counterparts, do not tether the user to a telephone cord. Therefore, wireless customers have anytime, anywhere access to voice conversations, electronic mail, electronic messages, the content of the Internet, and data from proprietary databases. Americans accordingly can use wireless mobile services to conduct business transactions, keep in touch with friends and family, and provide a data link for business, educational, industrial, scientific, and medical applications. For many Americans, wireless services have gone from a luxury to a necessity.

In addition, PCIA’s opening comments describe how CMRS, private wireless services, and fixed wireless services all offer advanced telecommunications capabilities. In the case of CMRS offerings, these capabilities include digital voice services, e-mail, and Internet access, while private wireless services used by businesses and government agencies currently include voice and data communications and will involve mobile transmission of text, images, and video in the near future.

Fixed wireless services, including Local Multipoint Distribution Service (“LMDS”) offerings, also give users access to advanced telecommunications capabilities through the provision of high-speed, switched, broadband service. LMDS provides users with a full range of voice and high bandwidth data applications, including video conferencing and high-speed Internet access. Fixed wireless services thus have emerged as one of the very few likely

candidates to provide “last mile” connectivity.<sup>5</sup> Because access to the last mile is one of the greatest roadblocks to full and fair competition in the market for advanced telecommunications capabilities, the Commission should take the regulatory action, including facilitating interconnection arrangements and ensuring building access, necessary to encourage the use of fixed wireless services for this last mile connectivity.

PCIA further added that digital technologies have made wireless services more capable, while competition and technological advances have made wireless services more affordable. Specifically, digital transmission technologies, faster and more sophisticated computer chips, and more efficient data compression and decompression algorithms have combined to make it possible to send more data over the airwaves in less time. Thus, wireless services are continually growing more capable of providing advanced telecommunications capabilities. Further, the vigorous competition in the wireless industry continues to drive the price of these services down, thereby making them affordable by greater numbers of Americans every year.

As capable as the current generation of wireless products and services is of providing advanced telecommunications services, the next wave of Third Generation (“3G”) mobile systems will have even more possibilities. 3G systems will not only provide users with high-quality voice services, but they will also allow access to local area networks, high-speed Internet access, video conferencing, and the ability to send and retrieve high-quality pictures. Even

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<sup>5</sup> AT&T Comments at 7-17 (the other three candidates are xDSL services, cable access networks, and satellite networks); BellSouth Comments at 28-30 (LMDS and CMRS can be used to provide advanced services); Bell Atlantic Comments at 7 (wireless technologies can be used to provide advanced services).

better, customers can access all of these capabilities without the need to install an expensive wireline infrastructure.

Against this background of rapid technological change, PCIA endorses AT&T's request that "advanced telecommunications capability" be defined in a flexible, technology-neutral fashion.<sup>6</sup> As pointed out by Paging Network, Inc. ("PageNet"), such flexibility and technological neutrality will ensure that CMRS providers are given the same rights to offer advanced capabilities as carriers using other technologies.<sup>7</sup>

PCIA further endorses PageNet's and Intermedia Communications Inc.'s ("Intermedia") contention that the Commission should not exclude one-way communications from the definition of advanced services. Excluding one-way technologies would contravene the plain language of Section 706, which defines "advanced telecommunications capability" expressly "without regard to any transmission media or technology." Moreover, many currently one-way technologies can be used or will in the future have capability to support two-way communications.<sup>8</sup>

Finally, PCIA agrees with PageNet that, although the Commission has traditionally used the terms "broadband" and "narrowband" to distinguish between wireless carrier spectrum categories, it is clear that the term "broadband" as used in Section 706 is not related to the use of the term in the wireless arena. Thus, the Commission should not assume that wireless

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<sup>6</sup> AT&T Comments at 3-4.

<sup>7</sup> PageNet Comments at 4-6.

<sup>8</sup> PageNet Comments at 4-6; Intermedia Comments at 4-5. *See also* SBC Comments at 16 (the phrase "originate and receive" should be interpreted to mean "originate *or* receive" because such a conclusion was reached with respect to other provisions of the 1996 Act and is warranted here).

“narrowband” services should be excluded from the term “broadband” in the statute. The definition of “broadband” must relate to what is considered an advanced service. If a carrier provides an advanced service, the carrier’s network has “broadband” capabilities regardless of how much or how little spectrum is being utilized.<sup>9</sup>

### **III. THE COMMISSION MUST RECOGNIZE THE NEED FOR REGULATORY MODELS THAT ADDRESS THE IMPEDIMENTS AND COMPETITIVE CHARACTERISTICS UNIQUE TO EACH MARKET SEGMENT**

In its *NOI*, the Commission sought comment on “the basic legal and regulatory model that will best foster the deployment of advanced telecommunications capability.”<sup>10</sup> As described in its opening round comments, PCIA believes that a “one size fits all” regulatory model is ill-suited to the market for advanced telecommunications capabilities. Such a monolithic regulatory paradigm is inappropriate because each industry segment and service is faced with different regulatory and economic barriers to the provision of advanced capabilities.

The wireless industry, for example, is vigorously competitive, as there are many service providers in every major market, and none of these providers exerts control over bottleneck facilities. Therefore, a monopoly-based regulatory scheme is incompatible with the structure of the wireless marketplace. Rather, the provision of advanced wireless telecommunications capabilities will be facilitated by a largely deregulatory model that encourages the investment in, and the construction of, more fixed and mobile wireless infrastructure designed to meet the needs of the American public.

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<sup>9</sup> PageNet Comments at 6.

<sup>10</sup> *NOI*, ¶ 77.

Further, in competitive markets, such as the wireless industry, the elimination of entry and rate regulations is often the regulatory model that best serves the public interest. This has been demonstrated to be true in the CMRS market, where the federally mandated elimination of state and local rate and market entry regulation has facilitated robust competition. On the other hand and by way of example, because access to tower sites is essential to the provision of advanced wireless services on a nationwide basis, the FCC must promote policies that ensure an ability to use such sites. Thus, the combination of de-regulatory and regulatory measures that govern each service should be custom tailored to the unique circumstances of that service.

Bearing this in mind, the Commission should not be guided in its regulation of the market for advanced telecommunications capabilities by the concept of “regulatory parity.” Regulatory parity is an inappropriate paradigm because it is a “one size fits all” philosophy that subjects all providers to the same regulations, regardless of the different ways they provide service and the different market conditions under which they operate. For example, it might be appropriate for states and localities to assess a right-of-way usage fee when a landline carrier plows up highways and bridges in order to install fiber optic cable as a means of providing advanced capabilities. On the other hand, because wireless carriers can provide advanced capabilities without physically disturbing state and local infrastructure, it would be manifestly unfair to charge them a right-of-way fee. Yet, a model based on regulatory parity might produce just such a result.

Another example of the damage done by force-fitting outdated and inappropriate regulatory structures on an evolving industry is the continued reliance on multiple, small rate centers, particularly for the assignment of numbering resources. Wireless carriers, competitive LECs, and, very likely, new advanced service providers are often required to take NXX codes in

*each* of multiple rate centers in a single local calling area, needlessly complicating service operations and, even more seriously, causing the rapid exhaust of area codes.

Finally, imposing monopoly regulatory models on competitive markets prevents competitive carriers from creating innovative services and dampens investment incentives. The Commission must recognize that in competitive markets, market forces will control rates and force carriers to provide the mix of innovative services that meets consumer demand. In contrast, in monopoly markets, the Commission must use regulatory means to achieve these same results. Thus, this is another area where “regulatory parity” can have the disastrous consequence of stifling competitive services with monopoly-style regulation.

#### **IV. THE INCREASING NUMBER OF FEDERAL, STATE, AND LOCAL TAXES AND FEES IMPOSE BARRIERS TO THE PROVISION OF ADVANCED WIRELESS CAPABILITIES**

In its initial comments, PCIA noted that wireless carriers confront ever-increasing costs due to property taxes, sales taxes, franchise fees, corporate income taxes, and regulatory fund fees. For example, at the federal level, wireless carriers must contribute to the universal service, North American Numbering Plan Administrator (“NANPA”), local number portability, and telecommunications relay services (“TRS”) funds. In addition, the Commission has imposed regulatory requirements—including number portability, pay telephone compensation, TTY/TDD fees, CPNI, CALEA, and annual regulatory fees—that increase the financial burdens borne by the wireless industry. Similar financial obligations are placed on wireless carriers by state and local governments that seem to envision the wireless and telecommunications industry as a ready source of government funds. Moreover, these burdens are expected to continue to increase as

states begin, for example, the process of implementing their own universal service funds to collect the revenues they will need to fund the intrastate portions of these programs.

Many of these obligations have a unique impact on the wireless industry. Some of these burdens, such as state and local franchise fees, were initially imposed on wire-based services to compensate governmental entities for benefits they transferred to the business entity. These fees are, however, unjustified in the wireless context and therefore impose a baseless cost on consumers of wireless services. For example, the franchise fee was a means for the government to recover some of the monopoly profits earned by a wire-based communications provider (*i.e.*, local phone company or cable television franchise) when it was awarded an exclusive franchise to provide service in a locality or state. Wireless carriers, as the Commission is fully aware, do not enjoy such a monopoly position in their markets and do not enjoy a monopolist's windfall. Thus, to require a wireless carrier to pay a fee for the privilege of monopoly status has no justification.

Another example is the public rights-of-way fee. Many of these fees were assessed to compensate the local government for the grants of public rights-of-way given to wire-based utilities to lay wire or erect poles. Unlike wire-based communications providers, however, wireless carriers do not inflict the same level of wear and tear on public rights-of-way. Thus, to impose rights-of-way fees upon them at the same level would be, as in the case of franchise fees, without basis in fact.

These taxes, fees, and regulatory funding burdens have direct effects on the ability of wireless carriers to provide advanced services to their customers. These obligations raise the price of the service offered to consumers above the level ordinarily determined by the market. Higher wireless prices, in turn, reduce demand for wireless services by making them more

expensive. Importantly, the level of demand for a particular type of offering is a critical factor used by rational economic actors to make investment decisions. By artificially deflating demand, these burdens distort the signals companies require to make sound investment decisions. In the case of depressed demand, the rational reaction is to reduce investment. This in turn impedes the availability of advanced telecommunications to all Americans, undercutting achievement of Congress's Section 706 objectives.

**V. THE FCC SHOULD RECOGNIZE THAT IT HAS JURISDICTION OVER FIXED AND MOBILE WIRELESS SERVICES—INCLUDING SERVICES USED TO PROVIDE “ADVANCED TELECOMMUNICATIONS CAPABILITIES”**

The Rural Telecommunications Group (“RTG”)<sup>11</sup> joined PCIA in requesting that the Commission recognize that it has jurisdiction over the fixed and mobile wireless services used to provide advanced telecommunications capabilities, including fixed CMRS and LMDS. As described by PCIA in its opening comments, and echoed by RTG, the FCC’s jurisdiction stems from three sources: Section 332(c) of the Communications Act,<sup>12</sup> the inseparability doctrine of *Louisiana PSC v. FCC*,<sup>13</sup> and Section 253 of the Communications Act.<sup>14</sup>

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<sup>11</sup> RTG Comments at 14-17.

<sup>12</sup> 47 U.S.C. § 332(c)(3) (“no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . .”).

<sup>13</sup> 476 U.S. 355, 376 n.4 (1986) (because “it is not possible to separate the interstate and intrastate components” of wireless regulation, federal regulation of fixed and mobile wireless services must preempt state law).

<sup>14</sup> 47 U.S.C. § 253(a) (forbidding the promulgation of state or local legal requirements that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service”).

It is essential that the Commission recognize that it has this jurisdiction, even if it declines to exercise such jurisdiction at this time, in order to discourage states from enacting a patchwork of possibly inconsistent regulations governing the offering of fixed wireless services. In this regard, the Commission should follow the example it set in implementing Section 332(c), where it vigorously enforced federal preemption of state rate and entry regulation in the CMRS market.<sup>15</sup> Such straightforward Commission action has helped lead to a mobile wireless marketplace that is, by all measures, extremely competitive.<sup>16</sup>

If the Commission applies these same preemptive policies to the fixed wireless marketplace, it can help to promote a similarly competitive marketplace. Such policies in addition will be consistent with the generally pro-competitive, deregulatory goals of the 1996 Act, and the particular goals of Section 253, which prohibits states and localities from erecting “barriers to entry” into the telecommunications market.<sup>17</sup> Consistent with these statutory mandates, a clear Commission determination of its jurisdiction will make it possible for providers of fixed wireless services to offer advanced telecommunications capabilities to the American public.

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<sup>15</sup> See, e.g., *Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana*, 10 FCC Rcd 7898 (1995) (denying Louisiana the authority to regulate CMRS rates).

<sup>16</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 98-91, at 2 (rel. June 11, 1998) (Third Report) (“*Third Annual CMRS Competition Report*”) (“In the year since the release of the *Second Report*, competition in a number of segments of the CMRS industry has grown more than it has ever before).

<sup>17</sup> 47 U.S.C. § 253.

## **VI. THE RECORD REFLECTS THAT A NUMBER OF REGULATORY ACTIONS WILL INCREASE THE ABILITY OF WIRELESS PROVIDERS TO OFFER ADVANCED TELECOMMUNICATIONS CAPABILITIES**

In its opening comments, PCIA requested that the Commission either forbear from enforcing, eliminate, or streamline a number of regulations in order to facilitate the provision of advanced capabilities by wireless providers. These regulations and statutes include: (1) the 71 regulations identified in PCIA's July 31 *ex parte* filing that should be eliminated or streamlined pursuant to Section 11 of the Communications Act;<sup>18</sup> (2) the TOCSIA obligations imposed on CMRS operator service providers;<sup>19</sup> (3) the international and domestic Section 214 requirements as applied to CMRS providers;<sup>20</sup> (4) the CMRS resale rule;<sup>20</sup> (5) critical portions of the Commission's CPNI rules;<sup>21</sup> and (6) the rate integration rules as applied to CMRS providers.<sup>22</sup>

The Wireless Communications Association International, Inc. ("WCA") echoed PCIA's sentiments that the Section 10 grounds for forbearance have been met with respect to virtually all fixed wireless broadband providers. WCA therefore concluded that, at minimum, the

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<sup>18</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).

<sup>19</sup> 47 U.S.C. § 226.

<sup>20</sup> 47 C.F.R. § 20.12(b).

<sup>21</sup> See *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 13 FCC Rcd 8061 (1998) (Second Report and Order and Further Notice of Proposed Rule Making), *recon. pending*. PCIA would like the Commission to lift the restrictions on the use of CPNI by CMRS carriers to: (1) market the customer premises equipment required for advanced wireless offerings; (2) win back customers who have terminated service; and (3) market the information services that form an integral part of advanced wireless capabilities.

<sup>22</sup> See 47 C.F.R. § 64.1801.

Commission should extend to fixed wireless providers any decisions forbearing from the enforcement of provisions as applied to CMRS providers, including petitions involving the CPNI rules and requests for forbearance from the rate integration requirements.<sup>23</sup>

Regarding access to essential sites, PCIA demonstrated that, despite the Commission's best efforts to date—including the Local State and Government Advisory Committee's ("LSGAC") Consensus Agreement<sup>24</sup>—the tower siting process is still too unpredictable and prone to unreasonable delays by state and local authorities. PCIA therefore requested that the Commission, pursuant to its authority under Sections 332(c)(7) and 253 of the Communications Act, work in concert with the wireless industry and state and local governments to formulate policies that allow carriers to develop the infrastructure necessary to provide seamless, nationwide wireless service. WCA seconded PCIA's suggestion, noting that the Commission should preempt undue restrictions on the siting of local wireless service facilities that prohibit or have the effect of prohibiting telecommunications service in a particular geographic market.<sup>25</sup>

In addition, in its opening comments, PCIA requested that the Commission promote policies that allow all carriers equal access to building rooftops, conduits, and inside wiring on reasonable and non-discriminatory terms and conditions. There was strong record support for this proposal, as other carriers joined PCIA in calling for free and fair access to these essential "last hundred feet" facilities. Teligent, for example stated that the Commission should eliminate

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<sup>23</sup> WCA Comments at 9-10 and n.30.

<sup>24</sup> See *FCC News Release*, "Chairman William E. Kennard Announces Historic Agreement by Local and State Governments and Wireless Industries on Facilities Siting Issues" (Aug. 5, 1998).

<sup>25</sup> WCA Comments at 21-23 and n.53.

discriminatory and unreasonable multi-tenant environment access restrictions so that telecommunications carriers may install and use equipment to provide building tenants with advanced telecommunications services.<sup>26</sup> WinStar added that, pursuant to Sections 704(c) (requiring non-discriminatory access to rights-of-way), 332(c)(7) (preempting state and local restrictions on the siting of personal wireless service facilities), and Section 207 (preempting state and local restrictions on the use of over the air reception devices), the Commission has the authority and the obligation to mandate building access to competitive carriers.<sup>27</sup>

Similarly, PCIA stated that the Commission should ensure that co-carriers are permitted to interconnect with LEC facilities subject to reasonable and non-discriminatory rates, terms, and conditions. Such interconnection rights are essential in order for non-ILECs to provide advanced telecommunications capabilities to the American people.

Finally, PCIA cautioned that a misguided spectrum allocation policy could pose barriers to the provision of advanced capabilities by wireless carriers. In particular, PCIA noted that an allocation policy that simply encourages flexibility, without considering efficiency, makes new spectrum less likely to be used for advanced purposes because of the increased possibility of interference, and the uncertainty created in the minds of carriers and equipment manufacturers about the most economically viable uses for the spectrum. Such uncertainty retards the equipment development process and carrier investment in infrastructure, thereby lessening the possibility that any service, including advanced services, will be offered to the public.

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<sup>26</sup> Teligent Comments at 6-7.

<sup>27</sup> WinStar Comments at 7-11. *See also* AT&T Comments at 49-52 (the FCC should require ILECs to make all intra-building facilities available to their competitors on reasonable prices, terms, and conditions pursuant to the Act).

## VII. CONCLUSION

In this proceeding, the Commission is presented with the rare opportunity to design a new regulatory scheme that will encourage the provision of the next generation of advanced telecommunications capabilities to the American public. In so doing, the Commission should avoid disturbing competitive markets that are already functioning well without regulation, should de-regulate whenever market conditions permit, and should use its preemptive powers to prevent states and localities from hindering the ability of wireless carriers to offer advanced capabilities. Such a balance between de-regulation and appropriate, narrowly tailored regulation will best serve the policies underlying Section 706 and the needs of the American public.

Respectfully submitted,

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October 8, 1998