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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Policy and Rules Concerning the)
Interstate Interexchange Marketplace)
)
Implementation of Section 254(g))
of the Communications Act of 1934,)
as Amended)
)
Petitions for Forbearance)

CC Docket No. 96-61

MEMORANDUM OPINION AND ORDER

Adopted: December 31, 1998

Released: December 31, 1998

By the Commission: Commissioner Furchtgott-Roth approving in part, concurring in part and issuing a separate statement at a later date; Commissioner Powell dissenting and issuing a separate statement at a later date.

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I. INTRODUCTION

1. In this order, we address seven petitions for reconsideration or, in the alternative, petitions for forbearance,¹ of the Commission's *Rate Integration Reconsideration Order*,² in which we found that the rate integration requirements of section 254(g) of the Communications Act of 1934, as amended ("Act"),³ apply to the interstate, interexchange services of Commercial Mobile Radio Service ("CMRS") providers. The petitioners request that we reconsider that determination. In the alternative, if we find that section 254(g) applies to CMRS providers, the petitioners request that we forbear from applying section 254(g) to the interstate, interexchange services offered by CMRS providers pursuant to section 10 of the Act.⁴

2. In this order, we reaffirm our earlier determination that, based on the plain language of the statute, the rate integration requirements of section 254(g) apply to interstate, interexchange services offered by CMRS providers, and therefore deny the petitions for reconsideration of this determination. We clarify, however, that CMRS traffic within a major trading area (MTA)(intra-MTA traffic) is not "interexchange" traffic and thus not subject to the rate integration requirements of section 254(g). We deny the petitions seeking forbearance from the application of rate integration to separately-billed toll charges. On the basis of the record before us, we find that forbearance from rate integration of separately-billed toll charges is not

¹ The petitioning parties, and parties filing oppositions to or comments in support of the petitions, are listed in Appendix A.

² Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 11,812 (1997) ("*Rate Integration Reconsideration Order*").

³ 47 U.S.C. § 254(g).

⁴ 47 U.S.C. § 160(a).

consistent with the public interest prong of the three-part forbearance test.⁵ We also deny the other requests for forbearance relief from rate integration. With respect to these issues, we determine that we have insufficient information on which to determine whether the test for the grant of forbearance under section 10 of the Act is satisfied.

3. We also here state our intent to issue a Further Notice seeking comment on issues relating to airtime and roaming charges associated with interstate, interexchange calls for which a separate charge is stated; wide-area CMRS calling plans; and the affiliation requirements that should be applicable to services subject to the rate integration requirement. Pending further rulemaking, we keep in place the Order adopted by the Commission on October 2, 1997, in which the Commission stayed the application of the requirement that providers of interstate, interexchange services integrate rates across affiliates, as well as application of rate integration requirements with respect to wide area rate plans offered by CMRS providers.⁶

II. BACKGROUND

4. CMRS providers serve customers using mobile phone units that may originate or receive calls at locations within range of a compatible cell transmitter site. CMRS customers generally pay a flat monthly fee and an airtime charge for service within a defined local calling area. Some of these plans may include a specified number of local airtime minutes as part of the flat monthly charge. If a customer makes a long-distance call from within its local calling area, the customer may also pay a long-distance charge. When roaming, the customer also will generally pay a roaming charge for originating a call, or receiving a call, outside its plan's service area. If making a call when roaming, a customer will generally pay a long-distance charge for terminating a call outside the local calling area in which the call was originated. Conversely, if a customer receives a call from outside the local calling area of the roamed upon carrier, a customer may be assessed a toll charge for transmitting the call from the customer's home switch to the switch of the roamed upon carrier. Many CMRS providers offer wide-area calling plans that permit customers to make calls without roaming or long-distance charges over a calling area wider than the local calling area. These wide-area calling plans may be regional, or they may offer national coverage. Prior to the 1996 Act, the Commission had not applied any rate integration obligations to CMRS providers and had forbore from, *inter alia*, applying sections 203-205⁷ to CMRS services.⁸

⁵ 47 U.S.C. § 160(a)(3).

⁶ Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, *Order*, 12 FCC Rcd 15,739 (1997) ("*Rate Integration Stay Order*").

⁷ 47 U.S.C. §§ 203-205.

5. In the 1996 Act,⁹ Congress enacted section 254(g), which, as relevant to this order, requires that a "provider of interstate, interexchange service shall provide such services to its subscribers in each state at rates no higher than the rates charged to its subscribers in any other state."¹⁰ In March 1996, we released a notice of proposed rulemaking seeking comment on, *inter alia*, proposed rules to implement the rate integration provision of section 254(g).¹¹

6. On August 7, 1996, in the *Rate Integration Order*,¹² the Commission adopted a rate integration rule that reiterated the language of section 254(g). The Commission stated that this rule would incorporate its existing rate integration policy, and would apply to all interstate, interexchange services, as defined in the Act, and to all providers of these services.¹³ We interpreted the term "provider," as used in section 254(g), "to include parent companies that, through affiliates, provide service in more than one state."¹⁴ Although we did not expressly address application of rate integration to CMRS providers, we did determine, *inter alia*, that American Mobile Satellite Carriers Subsidiary Corp. ("AMSC") is required to integrate rates charged for its offshore services into the rate structure offered for its mainland services because its services appear to fall within the definition of interstate, interexchange telecommunications services subject to section 254(g).¹⁵

7. On July 30, 1997, the Commission denied several petitions for reconsideration of the *Rate Integration Order*.¹⁶ The Commission clarified that the rules implementing section 254(g) require carriers to integrate their rates across affiliates, but do not require a carrier to integrate an interstate, interexchange CMRS service with other interstate, interexchange service

⁸ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("*CMRS Forbearance Order*").

⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁰ 47 U.S.C. § 254(g).

¹¹ See generally Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Notice of Proposed Rulemaking*, CC Docket No. 96-61, 11 FCC Rcd 7141 (1996) ("*Rate Averaging and Rate Integration NPRM*").

¹² Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, *Report and Order*, 11 FCC Rcd 9564 (1996) ("*Rate Integration Order*"); see 47 C.F.R. § 64.1801.

¹³ *Id.* at 9586-99.

¹⁴ *Id.* at 9598, para. 69.

¹⁵ *Id.* at 9589, para. 54.

¹⁶ *Rate Integration Reconsideration Order*, 12 FCC Rcd 11,812.

offerings.¹⁷ The Commission stated that its rate integration rules require CMRS providers to provide interstate, interexchange CMRS services on an integrated basis in all states in which they provide services.¹⁸

8. On October 2, 1997, the Commission stayed application of the requirement that CMRS providers of interstate, interexchange services integrate rates across affiliates pending further reconsideration.¹⁹ The Commission also stayed, pending reconsideration, the application of rate integration requirements with respect to wide-area rate plans offered by CMRS providers.²⁰

II. PETITIONS FOR RECONSIDERATION

A. Applicability of Section 254(g) to Interstate, Interexchange Services of CMRS Providers

9. Initially, we address the claims of the petitioners that we erred in the *Rate Integration Reconsideration Order* in clarifying that the rate integration provision of section 254(g) applies to interstate, interexchange services offered by CMRS providers. The petitioners argue that the Commission has never applied rate integration to CMRS services,²¹ and contend that Congress did not intend to extend rate integration to interstate, interexchange services offered by CMRS providers.²² The petitioners claim that Congress intended only to codify the Commission's then-current policy of requiring wireline carriers to integrate the rates of their interstate, interexchange services.²³ As support, the petitioners cite to language in the legislative history stating that "[t]he conferees intend the Commission's rules to require geographic rate averaging and rate integration, and to incorporate the policies contained in the Commission's proceeding entitled "Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands (61 FCC 2d 380 (1976))."²⁴ According to the petitioners, because of the differences between wireline and wireless services and the difficulties

¹⁷ *Id.* at 11,818-22.

¹⁸ *Id.* at 11821, para. 18.

¹⁹ *Rate Integration Stay Order*, 12 FCC Rcd 15,739.

²⁰ *Id.*

²¹ *See, e.g.*, AirTouch Petition at 6.

²² *See, e.g.*, CTIA Petition at 2.

²³ *See, e.g.*, Bell Atlantic Mobile Petition at 7.

²⁴ *See, e.g.*, Bell Atlantic Mobile Petition at 7.

of applying rate integration to wireless services, Congress could not have intended to take away the customer benefits of competitive response and pricing flexibility that exist in the competitive CMRS market.²⁵ In addition, some of the petitioners point to language of the *Rate Integration Order* itself, where the Commission stated that it was adopting its existing policies on rate integration as further evidence that the Commission did not intend rate integration to apply to CMRS providers.²⁶

10. We decline to reconsider our determination that the rate integration requirement of section 254(g) applies to CMRS providers. Section 254(g) requires that "[a] provider of interstate interexchange services shall provide its services to subscribers in a state at rates no higher than provided to subscribers in any other state."²⁷ The language of section 254(g), as Alaska and Hawaii note,²⁸ on its face unambiguously applies to all providers of interstate, interexchange services. Thus, section 254 (g) applies to the interstate, interexchange services offered by CMRS providers. If Congress had intended to exempt CMRS providers, it presumably would have done so expressly as it did in other sections of the Act.²⁹ Thus, we reaffirm our earlier determinations that the rate integration language of section 254(g) applies to all providers of interstate, interexchange services, including CMRS providers. We conclude that any reference to the existing rate integration policy by Congress or by this Commission merely identified the overarching policy under consideration, and was not intended to exempt from application of that policy any carrier or class of carriers, as the petitioning parties suggest.

11. Because the language of the statute is unambiguous and plainly applies to CMRS providers, we need not examine the legislative history of section 254(g).³⁰ Assuming, arguendo, some ambiguity in the statutory language, thus requiring an examination of the legislative history, we find nothing in that legislative history that unambiguously indicates that CMRS providers are exempted from section 254(g). The language referenced by the CMRS providers could readily be read as identifying the policy to be applied to all providers of interstate, interexchange services

²⁵ See, e.g., PCIA Petition at 6.

²⁶ BellSouth Reply at 5.

²⁷ 47 U.S.C. § 254(g).

²⁸ Hawaii Opposition at 2; Alaska Opposition at 2.

²⁹ See, e.g., 47 U.S.C. § 153(26) (excluding CMRS providers from the definition of local exchange carrier, except to the extent the Commission decides otherwise); 47 U.S.C. § 271(g)(3) (classifying interLATA CMRS services as one of the incidental interLATA services that the Bell companies could offer without prior Commission approval); and 47 U.S.C. § 274(i)(2)(b) (exempting CMRS services from the definition of basic telephone services).

³⁰ *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) (if the court, after "employing traditional tools of statutory construction," determines that the intent of Congress is clear, "that is the end of the matter.").

as reasonably as it could be read to suggest the codification of rate integration as applied to the wireline industry.³¹

12. Similarly, we reject the argument raised by AirTouch that Congress did not intend rate integration to apply to CMRS providers because rate integration is unnecessary to achieve the policy goals underlying section 254(g).³² AirTouch states that rate integration is designed to enable subscribers in rural and offshore areas to obtain some of the benefits of rate decreases created by competitive pressures on access charges and long-distance rates in more urban areas, and to protect customers in those areas from bearing the full burden of higher local exchange costs.³³ AirTouch appears to conflate rate integration with rate averaging. Rate averaging, which is also required by section 254(g), does have the described effect of protecting customers in high cost local exchange areas from bearing the full burden of those costs. Rate integration, on the other hand, generally focuses on the distance-sensitive aspects of the rate structures for interexchange services. It protects noncontiguous parts of the United States, such as Alaska and Hawaii, from being discriminated against because they are not part of the contiguous 48 states. AirTouch's focus on exchange cost differences is, therefore, misplaced and we disagree with its interpretation of the statute.

13. Next, AirTouch contends that CMRS providers are not deemed to be interexchange carriers as that term is understood by Congress, the Commission, and the industry; rather, CMRS providers are considered to be a different class of carrier and an economic interest group separate from providers of interstate, interexchange services.³⁴ In support of this position, AirTouch observes that CMRS providers do not pay access charges, are not listed as interexchange carriers on LEC equal access ballots, and were not discussed when the Commission considered detariffing for nondominant interexchange carriers.³⁵ Several CMRS providers assert that CMRS services do not readily fit into the exchange/interexchange mold.³⁶ Primeco argues that CMRS providers can be excluded from rate integration obligations as a class based on the unique characteristics of the industry.³⁷

³¹ See Alaska Opposition at 4 (contending that the use of a comma after rate integration, followed by "and to incorporate" indicates that Congress intended rate integration to apply to all providers of interstate, interexchange services).

³² AirTouch Petition at 3; *accord*, BellSouth Petition at 5-6.

³³ AirTouch Petition at 3.

³⁴ See, e.g., AirTouch Petition at 8.

³⁵ *Id.*

³⁶ See, e.g., Primeco Petition at 20.

³⁷ Primeco Petition at 21.

14. Although CMRS providers may be characterized as providers of exchange and exchange access services, that characterization does not preclude a finding that some of a CMRS provider's service offerings are interstate, interexchange services. While CMRS providers do not pay access charges for originating or terminating local exchange calls, CMRS providers do pay access charges when an interexchange call originates or terminates on landline facilities. Similarly, that, in some instances, CMRS providers are regulated in a manner different from other carriers, does not compel a conclusion that the interstate, interexchange services of CMRS providers are not subject to the rate integration requirements of section 254(g).

15. We also reject the argument that applying section 254(g) to CMRS providers is inconsistent with section 332 of the Act³⁸ because it allegedly undermines the distinct deregulatory paradigm applicable to CMRS providers.³⁹ Bell Atlantic Mobile asserts that the price regulation required by section 254(g) is precisely that which the Commission and Congress have deemed unnecessary and harmful to the public interest in the CMRS context.⁴⁰ Section 332(c), however, expressly provides that sections 201 and 202 of the Act shall continue to apply to CMRS providers.⁴¹ Section 201(b) requires just and reasonable rates and 202(a) prohibits rates that are unreasonably discriminatory. These requirements necessarily imply some degree of regulatory concern with prices; section 332 cannot, therefore, be read to bar every form of oversight over CMRS rates. Furthermore, the rate integration policy codified in section 254(g) derived from section 202(a) the requirement that rates not be unreasonably discriminatory. Finally, we note that other provisions of Title II of the Act apply to CMRS providers. For example, the interconnection requirements of section 251(a) clearly apply to CMRS providers;⁴² CMRS providers are as capable as any other carrier of invoking the protections of section 253;⁴³ and, CMRS providers are among the providers of interstate services who are required to make universal service contributions pursuant to section 254(d).⁴⁴ Thus, we conclude that the application of section 254(g) to CMRS providers is not inconsistent with section 332.

16. We find unpersuasive the argument that, because we held that CMRS rates did not have to be integrated with the rates of affiliated long-distance providers, we did not intend rate

³⁸ 47 U.S.C. § 332. See Bell Atlantic Mobile Petition at 19.

³⁹ Bell Atlantic Mobile Petition at 19 (distinguishing the regulatory scheme applicable to CMRS providers from that applicable to landline carriers); *accord*, TDS Petition at 2.

⁴⁰ *Id.*

⁴¹ 47 U.S.C. § 332(c).

⁴² 47 U.S.C. § 251(a).

⁴³ 47 U.S.C. § 253.

⁴⁴ 47 U.S.C. § 254(d).

integration to apply to CMRS providers.⁴⁵ Rather, that decision addresses the issue of how rate integration should be applied to different interstate, interexchange services, and was consistent with the long-standing Commission practice of applying rate integration on a service-by-service basis.⁴⁶ That decision does not address the question of whether rate integration should apply to CMRS providers at all. Similarly, CMRS providers' exemption from the equal access requirements applicable to incumbent LECs does not, as some CMRS providers suggest,⁴⁷ address whether CMRS providers provide interstate, interexchange services and thus whether rate integration should apply to CMRS providers.

17. Several CMRS providers allege that the Commission gave inadequate notice to permit application of section 254(g) to CMRS providers.⁴⁸ They state that CMRS providers were only mentioned in a footnote, noting that similar notice was found to be inadequate in *McElroy Electronics Corp. v. FCC*.⁴⁹ These parties assert that adequate notice required specific mention of the applicability of rate integration to CMRS providers because applying rate integration to CMRS providers goes beyond the existing policy.⁵⁰ AirTouch states that only one cellular party filed comments in response to the notice,⁵¹ and BellSouth states that no party addressed the issue of extending rate integration to CMRS providers.⁵² Several CMRS providers note that the initial discussion of applying rate integration to CMRS providers occurred in the *Rate Integration Reconsideration Order*.⁵³ BellSouth asserts that, because of the significant differences between CMRS and wireline carriers, the lack of discussion of how rate integration would be implemented in the CMRS context establishes that the Commission did not address the link between the facts and the policy choice in applying section 254(g) to the CMRS industry.⁵⁴

⁴⁵ Primeco Petition at 22; BellSouth Reply at 8-9.

⁴⁶ *Id.*

⁴⁷ *See, e.g.*, Primeco Petition at 22.

⁴⁸ BellSouth Petition at 12; Bell Atlantic Mobile Petition at 4; PCIA Petition at 3.

⁴⁹ *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351 (D.C. Cir. 1993). *See* Bell Atlantic Mobile Petition at 6.

⁵⁰ *See, e.g.*, Bell Atlantic Mobile Petition at 2; BellSouth Petition at 6-11.

⁵¹ AirTouch Petition at 8.

⁵² BellSouth Petition at 12.

⁵³ *See, e.g.*, BellSouth Petition at 11.

⁵⁴ BellSouth Petition at 13-14.

18. As we stated in the *Rate Integration Stay Order*, we do not agree that inadequate notice was given to hold that the rate integration requirements of section 254(g) apply to CMRS providers. The language of section 254(g) applies to providers of interexchange telecommunications services with no exceptions enumerated. Elsewhere in the Act, as we noted above, when Congress wanted to exempt CMRS providers from a requirement of the Act, it did so expressly. The words of the statute clearly encompass CMRS providers and legally obligate them to integrate their interstate, interexchange services. Our rule, implementing section 254(g), merely reiterated the precise terms of the statute. Further, we note that the *Rate Averaging and Rate Integration NPRM* stated that an interexchange call includes all means of connecting two points, "wireline or wireless."⁵⁵ Specific notice of our intent to apply the plain language of the statute was not required. We, therefore, find no relevant lack of notice regarding the application of rate integration requirements to providers of CMRS services.

19. Our conclusion that adequate notice was given of the application of section 254(g) to CMRS providers is not altered by the fact that no party commented on the application of rate integration to CMRS providers. As noted above, section 254(g), by its own terms, applies to providers of interexchange services. CMRS providers, therefore, should have been on notice that the rulemaking proceeding could affect their interests. Although rate integration had not previously been applied to CMRS providers, the CMRS industry had been subject to the rate regulation of section 202(a) of the Act and, thus, the industry should have been alert to the broad scope of section 254(g), which has its origins in section 202(a). Moreover, section 254(g) was enacted as part of the 1996 Act; therefore, the application of that section to the CMRS industry does not represent a change in Commission policy requiring more specific notice. Finally, we conclude that because we only codified the language of section 254(g), we find no issue concerning the adequacy of the record to support adoption of the rule.

20. In any event, we find that the present reconsideration record supports the conclusion that section 254(g) applies to CMRS providers. We note that we stayed application of the affiliation requirement and application of rate integration to wide-area plans, the two cases in which we believe we would benefit from a fuller record. We continue to believe a fuller record on these two issues would be beneficial and, therefore, will seek further comment on those issues to develop a better record in a separate proceeding.

21. AirTouch notes that CMRS carriers are not mentioned in the regulatory flexibility analysis assessing the administrative burden of regulations on industry, and asserts that this reflects a lack of intent that section 254(g) be applied to CMRS providers.⁵⁶ While the Final Regulatory Flexibility Act analysis in the *Rate Integration Order* did not assess the administrative burden of regulations on CMRS providers, as AirTouch indicates, the omission does not evidence

⁵⁵ *Rate Averaging and Rate Integration NPRM*, 11 FCC Rcd at 7169, n.118.

⁵⁶ AirTouch Petition at 7, n.18.

a lack of intent to apply section 254(g) to CMRS providers. We have prepared a Supplemental Final Regulatory Flexibility Act analysis to redress our inadvertent oversight.⁵⁷ No party has claimed that the omission caused material harm. Indeed, in the Rate Integration Stay Order, we stayed application of the rate integration requirement to wide-area plans and across affiliates. Accordingly, those requirements had no impact on small entities.

B. Intra-MTA Calls

22. In their petitions for reconsideration, the petitioners request that we clarify the treatment of traffic that originates and terminates within an MTA. CMRS providers oppose applying rate integration to calls within the MTA in which the CMRS provider is licensed, although, in many cases, the licensed area will not correspond to a telephone company exchange area, or to state boundaries.⁵⁸ Alaska and Hawaii do not oppose excluding all calls that originate and terminate in the same MTA from the rate integration requirement.⁵⁹

23. We conclude that treating intra-MTA calls as not being subject to rate integration is consistent with the definition of "telephone exchange service." The Act defines "telephone exchange service" as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area . . . and which is covered by the exchange service charge, or . . . comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."⁶⁰ In the *Local Competition Order*,⁶¹ we concluded that cellular, broadband PCS, and covered SMR providers fall within at least the second part of this definition because they provide "comparable service" to telephone exchange service.⁶² Our determination was based on the finding that, as a general matter, CMRS carriers provide local, two-way switched voice service as a principal part of their business. Treating intra-MTA CMRS

⁵⁷ See Appendix B.

⁵⁸ See, e.g., PCIA Petition at 10; CTIA Petition at 3.

⁵⁹ See Letter from John W. Katz, Director of State/Federal Relations and Special Counsel to the Governor, State of Alaska, to William E. Kennard, Chairman, Federal Communications Commission, dated Nov. 25, 1998; Letter from Herbert Marks, Esq., Counsel for the State of Hawaii, to William E. Kennard, Chairman, Federal Communications Commission, dated Nov. 24, 1998 ("*Alaska Ex Parte Letter*").

⁶⁰ 47 U.S.C. § 153(47).

⁶¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, 15998-16000 (1996)(*Local Competition Order*), *Order on Reconsideration*, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996), *vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

⁶² Cellular and PCS providers, however, are not LECs, as that term is defined in the Act. 47 U.S.C. § 3(26).

calls as local also is consistent with our conclusion in the *Local Competition Order* that MTAs defined the area in which reciprocal compensation applies to interconnections between incumbent LECs and CMRS providers.⁶³ Because of the mobility of CMRS customers, the MTA, rather than a smaller area, such as the CMRS provider's license area or a wireline exchange area, reflects the minimum area in which customers may be expected to travel and within which they would expect not to pay toll charges. Pursuant to this approach, calls within an MTA that would be interstate will not be treated as interexchange.⁶⁴

24. We provide two further clarifications that follow from the finding that traffic that originates and terminates within an MTA does not constitute interexchange service. First, we clarify that when a customer is roaming, a call within the MTA of the roamed upon CMRS provider is not "interexchange." This clarification ensures that intra-MTA calls are not "interexchange" service, thus triggering rate integration, regardless of the location of the customer. Second, we clarify that when a CMRS provider performs only an exchange access function, and an unaffiliated interexchange carrier transports and bills for the call to a destination in a different state outside the MTA, that exchange access function is not "interstate, interexchange" for purposes of section 254(g). We conclude that this clarification is necessary to ensure that our treatment here is akin to our treatment of incumbent LEC access charges, which are not required to be integrated.

C. Other Reconsideration Issues

25. Several CMRS providers seek clarification or reconsideration of the application of rate integration to roaming and airtime charges. We plan to seek additional comment on these issues in a Further Notice. Two additional sets of issues remain: (1) the treatment of wide-area calling plans; and, (2) the affiliation requirements applicable to CMRS providers for purposes of determining compliance with rate integration. We will resolve these issues on the basis of the more complete record developed in response to the Further Notice.

⁶³ *Local Competition Order*, 11 FCC Rcd. 16014.

⁶⁴ See also 47 U.S.C. § 221(b) ("[s]ubject to the provisions of sections 225 and 301, nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.").

IV. PETITIONS FOR FORBEARANCE

A. Applicability of Section 254(g) to Interstate, Interexchange Services of CMRS Providers

26. The petitions for forbearance generally request that we forbear from applying the rate integration provisions of section 254(g) to interstate, interexchange services offered by CMRS providers, if the Commission concludes that section 254(g) applies to those services. Section 10(a) of the Act sets forth a three-part standard to be applied in addressing petitions for forbearance: a carrier may petition the Commission for forbearance from any statutory provision or regulation, and the Commission shall grant such petition if it determines that: (1) enforcement of the requirement is not necessary to ensure that rates are just and reasonable, and are not unjustly and unreasonably discriminatory; (2) the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.⁶⁵ Section 10 further provides that the Commission "shall consider whether forbearance from enforcing the regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."⁶⁶ As fully discussed below, we conclude that the petitioners have not met the standard for the grant of forbearance and, for this reason, we must deny their petitions.

27. The petitioners generally argue that the requirements of section 10 are satisfied because competitive conditions in the industry prevent CMRS providers from charging excessive rates, or rates that would discriminate.⁶⁷ PCIA, AT&T Wireless, and CTIA argue that the Commission has previously found that competitive forces exist in the CMRS market that are driving down the price of mobile services, and that those findings require the Commission to forbear in the present case.⁶⁸ CMRS rates have declined 64 percent since 1987, according to some CMRS providers.⁶⁹ CTIA asserts that CMRS providers lack the market power necessary to maintain interstate rates above market prices.⁷⁰ Primeco states that a 1996 Yankee Group study found that PCS rates are 15 to 30 percent lower than rates of incumbent cellular

⁶⁵ 47 U.S.C. § 160(a).

⁶⁶ 47 U.S.C. § 160(b).

⁶⁷ *See, e.g.*, PCIA Petition at 5; CTIA Petition at 9.

⁶⁸ PCIA Petition at 5-6; AT&T Wireless Comments at 5-6; CTIA Petition at 10.

⁶⁹ Primeco Petition at 2-3; Primeco Reply at 7.

⁷⁰ CTIA Petition at 11.

providers.⁷¹ Several petitioners argue that regulation will increase prices, reduce consumer choice, and lessen competition.⁷²

28. Hawaii and Alaska, on the other hand, oppose granting forbearance. They argue, that, if the Commission forbears from applying the rate integration policy to CMRS providers, offshore points would pay high, discriminatory CMRS rates, in violation of section 254(g). Hawaii argues that competition cannot be the only factor to be considered in determining whether forbearance is appropriate.⁷³ Alaska argues that by codifying geographic rate averaging and rate integration, Congress recognized that rate integration is a fundamentally important national telecommunications policy necessary to provide consumers in rural and high-cost areas access to interexchange services at affordable and nondiscriminatory rates.⁷⁴ Alaska and Hawaii assert that the public interest would not be served by a ruling contrary to the clear language of section 254(g).

29. We conclude that the petitioners have not met their burden with respect to the first and second prongs of the forbearance standard. We are concerned that, without rate integration, CMRS providers would, when consistent with their economic interests, discriminate against the offshore points. Our concerns are not eliminated by the CMRS providers' claims that CMRS rates are falling, or that PCS rates are lower than cellular rates. Similarly, CMRS providers' few cited anecdotal instances of the offering of rates that comply with the rate integration requirement of section 254(g) do not ensure that such rates will be offered by all CMRS providers in the future.⁷⁵ Moreover, although CMRS providers contend generally that rate integration would interfere with competition, resulting in less consumer choice, we find no specific persuasive arguments on this record to support those contentions.

30. Specifically, we find that the petitioners have not shown that, in the absence of rate integration, CMRS rates will be just and reasonable and not unjustly or unreasonably discriminatory. Indeed, we conclude that rate integration is necessary to ensure that nondiscriminatory charges and practices are offered with respect to CMRS services to and from the offshore points.⁷⁶ Moreover, as noted by Alaska, even if rate integrated service plans are

⁷¹ Primeco Reply at 7.

⁷² See, e.g., BellSouth Petition at 15.

⁷³ Hawaii Opposition at 10.

⁷⁴ Alaska Opposition at 12.

⁷⁵ See Letter from S. Mark Tuller, Vice President - Legal and External Affairs, General Counsel and Secretary, Bell Atlantic Mobile, to William E. Kennard, Chairman, FCC, dated Nov. 10, 1998.

⁷⁶ See also Letter from Senators Ted Stevens and Daniel Inouye, United States Senate, to William E. Kennard, Chairman, FCC, dated Dec. 14, 1998 ("*Sens. Stevens and Inouye Ex Parte Letter*").

available in all parts of the United States, nothing in the record suggests that the existence of the rate integration requirement is not a significant cause of that condition.⁷⁷ We also agree that there is no evidence to show that rate integration is not necessary for the protection of consumers.⁷⁸ Alaska notes, for example, that Bell Atlantic Mobile's argument that consumers benefit from its plan offering one long-distance rate is misplaced because Bell Atlantic Mobile does not offer service to subscribers in Alaska and Hawaii.⁷⁹ Thus, although the cost to a Bell Atlantic Mobile customer calling Alaska or Hawaii might be the same as the cost of a call elsewhere in the continental United States, that fact does not protect the interests of consumers in Alaska or Hawaii because they generally would not be paying the long distance charges.⁸⁰

31. We also agree with Hawaii and Alaska that a broad grant of forbearance would not be consistent with the public interest, as required by the third prong of the forbearance standard. The public interest here, as reflected by the inclusion of CMRS providers in section 254(g), is the integration of offshore points into the interexchange rate patterns of CMRS services to prevent discrimination against those locations. Therefore, in order to satisfy the public interest, CMRS providers must explain how the benefits of section 254(g) can be attained if we forbear from applying the rate integration requirement of section 254(g) to the interstate, interexchange services of CMRS providers. We conclude that the petitioners have not made the required demonstration.

32. The argument against forbearance is particularly compelling with respect to separately-stated long distance charges. Many CMRS providers offer service plans that include a toll charge assessed for a long-distance call that is separate from the airtime charge. When the CMRS provider provides the link to the distant location, either through its own facilities or through the resale of a long-distance provider's service, and bills separately for that service, we find that the CMRS provider is providing an interexchange service. If that call terminates in a state different from the state in which the call originates, the service is an interstate, interexchange service covered by the rate integration requirement of section 254(g).⁸¹

33. We conclude that it would not be consistent with just and reasonable rates, the protection of consumers, and the public interest to forbear from applying the rate integration requirement of section 254(g) to separately-stated toll charges for interstate, interexchange

⁷⁷ See *Alaska Ex Parte Letter* at 5.

⁷⁸ See *Sens. Stevens and Inouye Ex Parte Letter* at 1.

⁷⁹ See *Alaska Ex Parte Letter* at 5.

⁸⁰ See *Alaska Ex Parte Letter* at 5-6.

⁸¹ See, e.g., Hawaii Opposition at 20 (*citing* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d (P&F) 1275 at App.B n.3 (1986) (Commission determined in 1986 that a cellular carrier would be an interexchange carrier if it provides interstate interexchange service)); Alaska Opposition at 17.

services provided by CMRS providers. For separately stated CMRS toll charges, we do not see how the policy considerations regarding rate integration differ materially from those in the non-CMRS context. Applying rate integration of separately-stated toll charges appears to be at the heart of the congressional policy of section 254(g)), which was enacted despite the existence of multiple interexchange carriers.

34. Pursuant to section 160(b),⁸² we also have considered whether forbearance from enforcing the rate integration requirement of section 254(g) will promote competitive market conditions. Although CMRS providers contend that rate integration would interfere with competition, we find no persuasive record evidence to support that contention or, conversely, that competitive conditions will be promoted in the absence of rate integration. Moreover, we agree that forbearance from rate integration cannot be justified on competitive conditions alone.⁸³ Hawaii correctly notes we have previously rejected this argument.⁸⁴ Prior to the enactment of section 254(g), we already had determined that all IXCs were non-dominant in the domestic market and had found that most major segments of the interexchange market were subject to substantial competition.⁸⁵ Nothing suggests that Congress was unaware of the state of competition in the interexchange market in enacting section 254(g). Indeed, we find that Congress's enactment of section 254(g), even after the Commission's determination that major segments of the interexchange market were subject to substantial competition, establishes the importance Congress placed on a nationwide policy of rate integration that was applicable to all providers of interstate, interexchange services.⁸⁶

35. Contrary to the assertions of several CMRS providers,⁸⁷ our finding in the *CMRS Forbearance Order*⁸⁸, that there was sufficient competition in the CMRS market to justify forbearance from, *inter alia*, the tariffing requirements of section 203-205, do not require forbearance with respect to section 254(g). The *CMRS Forbearance Order*, adopted pursuant to section 332, primarily addressed the tariff filing requirement and its competitive implications.

⁸² 47 U.S.C. § 160(b).

⁸³ Hawaii Opposition at 10-12.

⁸⁴ *Rate Integration Order*, 11 FCC Rcd at 9588-89.

⁸⁵ See, e.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3288 (1995).

⁸⁶ See *Sens. Stevens and Inouye Ex Parte Letter* at 1 (forbearance from applying section 254(g)'s rate integration requirement to CMRS would "send the wrong signal about the importance of the statutory rate integration requirement established by Congress").

⁸⁷ See, e.g., Bell Atlantic Petition at 17; Primeco Petition at 15; Primeco Reply at 8.

⁸⁸ *CMRS Forbearance Order*, 9 FCC Rcd 1411.

The rate integration requirement of section 254(g) creates a substantive pricing requirement which raises different competitive considerations than do tariff requirements. Moreover, section 332(c), by its terms, prohibits forbearance from application of section 202(a) to the CMRS industry. We note that 254(g) has its origins in section 202(a). Accordingly, we find that our forbearance in the tariffing context has no relevance to the question of forbearance here.

36. In sum, we conclude that the petitioners have not demonstrated that forbearance from applying the rate integration requirements of section 254(g) is consistent with just and reasonable or not unjustly or unreasonably discriminatory rates in the CMRS context, the protection of consumers, and the public interest. Similarly, we have not found that forbearance from enforcing the rate integration requirement of section 254(g) would promote competitive market conditions. Accordingly, we cannot grant the forbearance requests. In a separate proceeding, we will seek further comment on ways in which the rate integration requirement of section 254(g) should be applied to CMRS offerings. The expanded record evidence about the nature of CMRS services and the ownership arrangements within the industry will permit us to more fully evaluate rate integration in the CMRS context, develop rules specific to CMRS services, or, if appropriate, forbear in some instances.

B. Other Forbearance Issues

37. The forbearance petitions generally sought forbearance from the application of rate integration to all interstate, interexchange services offered by CMRS providers. In addition, several CMRS providers argue that, if we do not forbear totally from applying rate integration to interstate, interexchange offerings of CMRS providers, we should apply rate integration only to services for which the long-distance charges are separately billed.⁸⁹ We conclude that the present record does not establish that the forbearance standard of section 10 of the Act has been met with respect to this matter. For example, the record does not establish that forbearance would be consistent with the public interest. In addition, the record does not provide sufficient information to determine whether certain types of airtime or roaming charges, or some wide-area calling plans, fall within the definition of interexchange services to which rate integration would apply; and, how different affiliation requirements would affect the CMRS industry. We seek comment on these issues in a separate rulemaking proceeding that will permit us to develop rules specific to CMRS services. Accordingly, we deny the remaining requests of the petitions for forbearance as inconsistent with just and reasonable rates or not unjustly or reasonably discriminatory rates; the protection of consumers; and the public interest.

V. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED, that the Petitions for Reconsideration filed by AirTouch Communications, Cellular Telecommunications Industry Association, PrimeCo Personal

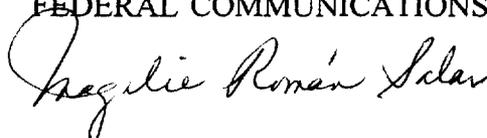
⁸⁹ AirTouch Petition at 12.

Communications, L.P., Personal Communications Industry Association, Telephone and Data Systems, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc. ARE DENIED TO THE EXTENT INDICATED HEREIN.

39. IT IS FURTHER ORDERED that the Petitions for Forbearance filed by AirTouch Communications, Cellular Telecommunications Industry Association, PrimeCo Personal Communications, L.P., Personal Communications Industry Association, Telephone and Data Systems, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc. ARE DENIED.

40. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Memorandum Opinion and Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A**Petitions for Reconsideration, or,
In the Alternative, Petitions for Forbearance**

AirTouch Communications ("AirTouch")
Bell Atlantic Mobile, Inc. ("Bell Atlantic Mobile")
BellSouth Corporation ("BellSouth")
Cellular Telecommunications Industry Association ("CTIA")
PrimeCo Personal Communications, L.P. ("Primeco")
Personal Communications Industry Association ("PCIA")
Telephone and Data Systems, Inc. ("TDS")

Comments/Oppositions

AT&T Wireless Services, Inc. ("AT&T Wireless")
Comcast Cellular Communications, Inc. ("Comcast")
State of Alaska ("Alaska")
State of Hawaii ("Hawaii")
U S West, Inc. ("U S West")

Reply Comments

AirTouch
BellSouth
CTIA
Centennial Cellular Corp. ("Centennial")
Commonwealth of the Northern Mariana Islands ("Commonwealth")
PrimeCo
Southwestern Bell Mobile Systems, Inc.
U S West

APPENDIX B

Supplemental Final Regulatory Flexibility Act Analysis

41. As required by the Regulatory Flexibility Act (RFA),⁹⁰ the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Further Notice* in this docket.⁹¹ The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. The Commission prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact the *Rate Integration Order* might have on small entities.⁹² The FRFA did not, however, analyze the possible significant economic impact the *Rate Integration Order* might have on CMRS providers that were small entities.⁹³ The Commission has prepared this supplemental FRFA of the possible significant economic impact the *Rate Integration Order* might have on CMRS providers that are small entities, in conformance with the RFA.⁹⁴

A. *Need for and Objectives of Rules*

42. In the 1996 Act, Congress directed the Commission to develop rules implementing the provisions of section 254(g) within six months of its enactment. The Commission adopted rules implementing the provisions of section 254(g) in the *Rate Integration Order*. The objective of these rules is to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.

B. *Summary of Significant Issues Raised by the Public Comments to the IRFA*

43. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFA. We have, however, kept small

⁹⁰ See 5 U.S.C. § 603. The Contract With America Advancement Act of 1996, Pub. L. No. 104- 121, 110 Stat. 847 (1996) (CWAAA), amended the RFA. Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁹¹ See *Further Notice*, 11 FCC Rcd at 7192-93.

⁹² See 5 U.S.C. § 604.

⁹³ See, para. 21, *supra*.

⁹⁴ See 5 U.S.C. § 604.

entities in mind as we considered the more general comments filed in this proceeding, as discussed below.

C. *Description and Estimate of Number of Small Entities to Which the Rules Will Apply*

44. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁹⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹⁸

(a) Cellular Radio Telephone Service

45. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁹⁹ According to the 1992 census, which is the most recent information available, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹⁰⁰ Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in this Supplemental FRFA, all of the current cellular licensees are small entities,

⁹⁵ 5 U.S.C. § 603(b)(3).

⁹⁶ *Id.* § 601(6).

⁹⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁹⁸ Small Business Act, 15 U.S.C. § 632 (1996).

⁹⁹ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

¹⁰⁰ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

(b) Broadband Personal Communications Service

46. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to Section 24.720(b) of the Commission's Rules,¹⁰¹ the Commission has defined "small entity" for Block C and Block F licensees as firms that had average gross revenues of less than \$40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.¹⁰²

47. The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, we conclude that the number of broadband PCS licensees that would be affected by the evaluations and conclusions in this Supplemental FRFA includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

(c) Specialized Mobile Radio

48. Pursuant to Section 90.814(b)(1) of the Commission's Rules,¹⁰³ the Commission has defined "small entity" for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of no more than \$15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.¹⁰⁴

¹⁰¹ 47 C.F.R. § 24.720(b).

¹⁰² See Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

¹⁰³ 47 C.F.R. § 90.814(b)(1).

¹⁰⁴ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act — Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

49. The section 254(g) requirements apply to SMR providers in the 800 MHz and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues no more than \$15 million.

50. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by section 254(g) includes these 60 small entities.

51. A total of 525 licenses were auctioned for the upper 200 channels in the 800 MHz geographic area SMR auction. There were 62 qualifying bidders, of which 52 were small businesses. The Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these lower channel licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz SMR licensees can be made, we assume, for purposes of our evaluations and conclusions in this Supplemental FRFA, that all of the licenses for the lower 230 channels will be awarded to small entities, as that term is defined by the SBA.

(d) 220 MHz Service

52. The Commission has classified providers of 220 MHz service into Phase I and Phase II licensees. There are approximately 2,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission recently conducted the Phase II auction. There were 54 qualified bidders, of which 47 were small businesses.

53. At this time, however, there is no basis upon which to estimate definitively the number of phase I 220 MHz service licensees that are small businesses. To estimate the number of such entities that are small businesses, we apply the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹⁰⁵ According to the 1992 Census, which is the most recent information available, only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees — and these may or may not be small entities, depending on whether they employed more or less than 1,500

¹⁰⁵ 13 C.F.R. § 121.201, SIC Code 4812.

employees.¹⁰⁶ But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, we do not know how many of these 1,166 firms are likely to be involved in the phase I 220 MHz service.

(e) Mobile Satellite Services (MSS)

54. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.¹⁰⁷ According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.¹⁰⁸

55. Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under Section 20.7(c) of the Commission's Rules¹⁰⁹ as mobile services within the meaning of Sections 3(27) and 332 of the Communications Act.¹¹⁰ Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of Section 332. Facilities provided through a transportable platform that cannot move when the communications service is offered are excluded from Section 20.7(c).¹¹¹

56. The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees.

¹⁰⁶ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

¹⁰⁷ 13 C.F.R. § 120.121, SIC Code 4899.

¹⁰⁸ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

¹⁰⁹ 47 C.F.R. § 20.7(c).

¹¹⁰ 47 U.S.C. §§ 153(27), 332.

¹¹¹ 47 C.F.R. § 20.7(c).

(f) Paging Service

57. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the paging service. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The SBA has approved this definition for paging companies.

58. The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area (EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that no reliable estimate of the number of paging licensees can be made, we assume, for purposes of this Supplemental FRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

(g) Narrowband PCS

59. The Commission has auctioned nationwide and regional licenses for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the MTA and Basic Trading Area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licensees and 2,958 BTA licensees will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, that all of the licensees will be awarded to small entities, as that term is defined by the SBA.¹¹²

(h) Air-Ground Radiotelephone Service

60. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's rules.¹¹³ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an

¹¹² See *id.*

¹¹³ 47 C.F.R. § 22.99.

entity employing no more than 1,500 persons.¹¹⁴ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

61. In the *Rate Integration Order*, and the Rate Integration Reconsideration Order, we determined that section 254(g) applied to interstate, interexchange services offered by CMRS providers. We expect that those orders impose no significant new reporting or recordkeeping requirements on CMRS providers. Those orders, however, require CMRS providers to comply with the rate averaging and rate integration requirement of section 254(g) in their service offerings. CMRS providers, however, do not file tariffs except on some international routes.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

62. Section 254(g) reflects a congressional determination that the country's higher-cost, lower-volume markets should share in the technological advances and increased competition characteristic of the nation's telecommunications industry as a whole, and that interexchange rates should be provided throughout the nation on a geographically averaged and rate-integrated basis. We have decided that the statutory objectives of section 254(g) require us to apply our rules to all providers of interexchange service, including small ones. We have chosen, however, to allow carriers to offer private line service and temporary promotions on a de-averaged basis. In so doing, we have minimized the impact our rules might otherwise have had, and enable carriers to use such devices to enter new markets.

63. In addition, the Commission considered reducing the burdens on small carriers by exempting them from compliance through forbearance. However, we do not believe that forbearing at this time would be consistent with the Congressional goals that underlie Section 254(g). We could also have reduced burdens on small carriers by establishing cost-support mechanisms. However, the present record does not justify any such cost-support mechanisms. Accordingly, we decline to adopt these alternative measures for small carriers.

F. Report to Congress

64. The Commission will send a copy of this order, including the supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement

¹¹⁴ 13 C.F.R. § 121.201, SIC 4812.

Fairness Act of 1996.¹¹⁵ A summary of this Memorandum Opinion and Order and this Supplemental FRFA will also be published in the Federal Register,¹¹⁶ and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

¹¹⁵ See 5 U.S.C. § 801 (a)(1)(A).

¹¹⁶ See 5 U.S.C. § 604(b).