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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA"),^{1/} hereby submits its comments in support of Nextel Communications, Inc.'s petition for reconsideration^{2/} of the Commission's December 31, 1998 Memorandum Opinion and Order in the above-captioned proceeding.^{3/} CTIA agrees with Nextel that rate integration cannot and should not apply to CMRS, and that the Commission should reconsider its decision to impose rate integration requirements on CMRS providers.

^{1/} CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, and includes 48 of the 50 largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

^{2/} Petition for Reconsideration of Nextel Communications Inc., filed March 4, 1999 ("Nextel Petition").

^{3/} 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, Memorandum Opinion and Order, FCC 98-347 (rel. Dec. 31, 1998)("CMRS Reconsideration Order").

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Discussion

While the rate integration requirements described in Section 254(g) may not explicitly exempt CMRS providers, it is clearly not the case that the statute is “unambiguous and plainly applies to CMRS.”^{4/} To the contrary, the legislative history indicates that this provision was intended only to codify existing rate integration and averaging policies,^{5/} and it is “undisputed that CMRS providers were not subject to the Commission’s pre-1996 Act rate integration policy.”^{6/}

Because the statutory language of Section 254(g) does not address the precise issue of whether Congress’s use of the term “provider of interstate interexchange services” was intended to include CMRS providers, the Commission must use other tools of statutory construction to determine Congress’s intent. National Resources Defense Council, Inc. v. Browner, 57 F.3d 1122, 1125 (D.C. Cir. 1995) (quoting Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 843 n.9 (1984)). Traditional tools include an examination of the statute’s legislative history. See Southern California Edison Co. v. F.E.R.C., 116 F.3d 507, 515 (D.C. Cir. 1997). In view of the legislative history of Section 254(g), it was unreasonable for the Commission to expand the scope of its rate integration regime to apply to CMRS providers.

^{4/} CMRS Reconsideration Order at ¶ 11.

^{5/} See H.R. Conf. Rep. No. 104-458, at 132 (“The 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)).”).

^{6/} Dissenting Statement of Commission Michael K. Powell regarding the CMRS Reconsideration Order at 2 (rel. Jan. 29, 1999) (“Powell Statement”).

The unreasonableness of the Commission's decision to apply rate integration requirements to CMRS providers is underscored by the substantial practical problems that have arisen as a result. Many of these problems -- such as the application of rate integration requirements to CMRS affiliates, roaming and airtime charges, and wide area calling plans -- have been deferred by the Commission itself because of their intractable nature.

Nextel describes additional difficulties that will be faced by entities that are not licensed by major trading areas ("MTAs") but will be required to use MTAs in order to determine whether particular calls are "interexchange" for rate integration purposes.⁷¹ Nextel, which has both site specific licenses and licenses based on Economic Areas, would have to reconfigure its network to treat calls between MTAs as interexchange calls. According to Nextel, this in turn would restrict the company's ability to establish efficient routing among its switches and increase costs.

Nextel notes that cellular providers, which are licensed by metropolitan statistical areas ("MSAs") and FCC-created Rural Service Areas ("RSAs"), may have similar problems. The appropriate solution is not to impose smaller exchange territories on these carriers for rate integration purposes -- which would result in disparate treatment of functionally equivalent providers of CMRS -- instead, the Commission should avoid this needless complexity entirely by exempting wireless carriers from Section 254(g) as Congress intended.

⁷¹ Nextel Petition at 8-9.

Conclusion

For the foregoing reasons and as set forth in Nextel's petition for reconsideration, the Commission should reverse its decision to impose rate integration requirements on CMRS providers. There is no statutory or policy basis for imposing a regulatory regime intended for conventional interstate carriers on the competitive CMRS market.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jill K. Brunt, hereby certify that on this 16th day of April 1999, I caused copies of the foregoing "Comments of the Cellular Telecommunications Industry Association" to be sent to the following by either first class mail, postage prepaid, or hand delivery (*):

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