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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-61

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)

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**COMMENTS OF
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PRIMECO PERSONAL COMMUNICATIONS, L.P.

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SUMMARY

PrimeCo continues to oppose extending rate integration obligations to CMRS carriers. In PrimeCo's view, imposing rate integration upon CMRS carriers is *not* required by Section 254(g) of the Communications Act, is contrary to Commission precedent, and fails to serve the public interest.

Even if, however, the Court ultimately determines that Section 254(g) applies to CMRS carriers, PrimeCo submits that there remain substantial questions as to whether that provision should be enforced in the context of the most competitive, market driven, and dynamic segment of the telecommunications industry. Indeed, PrimeCo agrees with Commissioner Powell that the *Further Notice* should present "an opportunity to explore in earnest the broader issues surrounding the applicability and impact of Section 254(g) on CMRS carriers *and* consumers. To that end, PrimeCo submits its comments demonstrating that the Commission must forbear from applying Section 254(g) or its rate integration rules to CMRS providers.

In the event the Commission again refuses to forbear generally from requiring integration of CMRS rates, however, PrimeCo urges the Commission to exercise extreme caution in how rate integration is implemented in the CMRS context. The CMRS market is vigorously competitive and unnecessary regulatory intervention in the market could skew market forces with unintended, unforeseen and undesirable consequences.

As discussed below and in the comments previously submitted, imposing rate integration upon CMRS carriers will significantly disrupt the current vibrant and dynamic market for wireless services. (Caution is also warranted given the fact that the record contains no evidence showing that consumers in non-contiguous points have been harmed by the lack of CMRS rate integration, to date.) The Commission simply should not permit such disruption in the absence of any clearly articulated and demonstrable harm. Simply put, if CMRS rate integration is not necessary to remedy a specific harm, imposing rate integration upon CMRS carriers would be nothing more than regulation for regulation's sake and should not be tolerated.

PrimeCo urges the Commission to refrain from premising any rate integration requirement upon artificially applying wireline concepts such as "exchanges" and "toll service" to the wireless markets. The Commission should not define local calling areas for CMRS purposes.

Moreover, the Commission should adopt no affiliate integration requirement for CMRS carriers. Given the peculiar ownership structures in the CMRS industry, there is simply no way to craft an affiliate requirement without creating significant anticompetitive concerns and violating fundamental fiduciary duties owed between partners. In any event, the Commission should grandfather *existing* partnership and affiliations, which were set up for legitimate business purposes and with no intent to evade Commission requirements.

Finally, PrimeCo urges the Commission to refrain from requiring integration between different categories of CMRS, such as cellular and PCS. Such a requirement would have significant, negative competitive consequences in the wireless market.

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PrimeCo Personal Communications, L.P. ("PrimeCo"), an A and B Block broadband PCS licensee,¹ hereby submits its comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the captioned proceeding.²

I. BACKGROUND

The *Further Notice* is a follow-up to the FCC's December 31, 1998 *Memorandum Opinion and Order* ("MO&O"), affirming the *Reconsideration Order*.³ The *Reconsideration Order* held, for the first time and without discussion, that Section 254(g) of the Communications Act requires rate integration by CMRS providers, and requires rate integration "across affiliates," including a parent company and all affiliates which it controls.⁴ In response to numerous

¹ PrimeCo is the broadband PCS licensee or owns a majority ownership interest and is the sole general partner in the licensee in a number of MTA markets.

² *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, *Further Notice of Proposed Rulemaking*, FCC 99-43 (April 21, 1999) ("*Further Notice*").

³ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, *Memorandum Opinion and Order*, 1998 FCC LEXIS 6665¶11 (Dec. 31, 1998) ("*MO&O*").

⁴ *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket No. (continued...)

petitions for stay, and petitions for reconsideration and/or forbearance, the FCC stayed the *Reconsideration Order* to the extent it required rate integration across CMRS affiliates and to wide-area CMRS rate plans.⁵

The *MO&O* denied the petitions for reconsideration and/or forbearance of the *Reconsideration Order*.⁶ In the FCC's view, Section 254(g) requires rate integration as to interstate, interexchange services offered by CMRS providers. The FCC "clarified," however, that CMRS traffic within an MTA is not "interexchange" traffic and is not subject to the requirements of Section 254(g). Finally, the FCC stated its intent to issue the instant *Further Notice* to address issues relating to the implementation of rate integration in the CMRS context. Commissioner Powell filed a lengthy dissent to the *MO&O* challenging the FCC's decision to apply rate integration to CMRS carriers and the forbearance analysis applied by the FCC.⁷

⁴ (...continued)

96-61, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 11812 (1997) ("*Reconsideration Order*").

⁵ *See Policy and Rules Concerning Interstate, Interexchange Marketplace*, CC Docket No. 96-61, 12 FCC Rcd 15,739 (1997) ("*Stay Order*").

⁶ The *MO&O* is currently under appeal to the United States Court of Appeals for the District of Columbia Circuit. Petitions for review of the *MO&O* have been filed by GTE and CTIA, and the FCC has filed a motion to hold the matter in abeyance. *See GTE Serv. Corp. v. FCC*, petition docketed, No 99-1046 (Feb. 11, 1999); *Cellular Telecommunications Industry Assoc. v. FCC*, petition docketed, No. 99-1045 (Feb. 9, 1999). The Court has yet to rule on the motion for abeyance and has not set either appeal for oral argument. Further, on March 4, 1999, Nextel filed a Petition for Reconsideration of the *MO&O* which is pending before the FCC.

⁷ Pending resolution of the *Further Notice* the FCC also determined to keep in place the limited stay of the *Reconsideration Order*. Thus, application of the rule that requires CMRS carriers to integrate their rates continues to be stayed to the extent that carriers provide CMRS service through wide area rate plans (*i.e.*, plans in which local and long distance services are bundled in one rate and offered across state or MTA boundaries). Application of the affiliate rule to CMRS providers also remains stayed, so that these

(continued...)

As promised, the *Further Notice* focusses upon issues pertaining to the implementation of rate integration in the CMRS context. In particular, the *Further Notice* solicits comment on: (1) the appropriate treatment of airtime and roaming charges associated with interstate, interexchange calls for which a separate charge is stated; (2) wide-area CMRS calling plans; (3) the affiliation requirements applicable to services subject to the rate integration requirement; and (4) whether rates must be integrated between cellular and PCS services.⁸ Despite the fact that the *MO&O* rejected previous petitions for forbearance, the *Further Notice* also seeks comment on whether the Commission should exercise its authority under Section 10 to forbear from applying rate integration in the narrow context of wide-area calling plans, CMRS affiliates, rate plans involving separate local, roaming and toll charges, and to requiring integration of cellular and PCS services.⁹

II. THE COMMISSION SHOULD FORBEAR FROM APPLYING THE RATE INTEGRATION PROVISIONS OF SECTION 254(g) TO CMRS CARRIERS

A. Standard for Forbearance

As noted above, the *Further Notice* solicits comments on whether the Commission should forbear from applying rate integration to wide-area calling plans, CMRS affiliates, rate plans involving separate local, roaming and toll charges, and to requiring inte-

⁷ (...continued)
carriers do *not* have to integrate rates across affiliates, at least until the FCC acts upon the *Further Notice*.

⁸ *Further Notice* at 5.

⁹ *Id.* at ¶¶ 17, 24, 31.

gration of cellular and PCS services.¹⁰ Segregating forbearance issues in this way begs the fundamental question of whether CMRS rates should be integrated and places an almost insurmountable burden upon carriers.

The question of whether rate integration in general applies to CMRS carriers remains unsettled.¹¹ Further, the Commission has neither adopted nor proposed rules governing rate integration of wide-area calling plans, CMRS affiliates, rate plans involving separate local, roaming and toll charges, and requiring integration of cellular and PCS services. In fact, the Commission has yet to even consider the impact of rate integration in each of these circumstances. Given this level of uncertainty, it is virtually impossible for carriers to meet the evidentiary standard the Commission appears to apply in Section 10 forbearance cases.¹² Accordingly, PrimeCo accepts the invitation of Commissioner Powell to provide additional information regarding the question of whether the Commission should generally forbear from enforcing Section 254(g) in the CMRS industry.¹³

¹⁰ *Id.*

¹¹ *See, e.g.,* Petition for Reconsideration or Forbearance of PrimeCo Personal Communications, L.P.

¹² Indeed, Commissioner Powell has described this standard as “near-impossible” under the best of circumstances. *See MO&O* (Dissenting Statement of Powell, C.) at 3 (rel. Jan. 29, 1999). In Commissioner Powell’s view, the Commission tends to deny petitions for forbearance “based on speculative fears and outdated rationales that raise the bar so high that future and pending forbearance petitions — even in the most competitive segment of the telecommunications industry and in geographic markets that are fully competitive — do not seem to stand a chance.” *Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance for Broadband Personal Communications Services* (Separate Statement of Powell, C., Dissenting in Part), 13 FCC Rcd 16857, 16939 (1998). PrimeCo agrees with this assessment.

¹³ In this regard, Commissioner Powell would have preferred to allow — for the first time
(continued...)

Section 10(a) of the Communications Act *requires* the Commission to forbear from applying any regulation or provision of the Act to a class of telecommunications carriers in any of their geographic markets if:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.¹⁴

In determining whether forbearance is consistent with the public interest, the Commission must “consider whether forbearance from enforcing this provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”¹⁵

PrimeCo agrees with Commissioner Powell that this statutory language effectively imposes upon the *Commission* a burden to justify continued regulation where a carrier makes a *prima facie* showing that “the relevant product, service, and geographic markets for which it is seeking regulatory relief is or is becoming competitive or that forbearance would

¹³ (...continued)
in this proceeding — “the development of a record on whether we should generally forbear from applying this provision or our rules to this class of telecommunications carriers or services in any or some of their geographic markets.” See *Further Notice* at Separate Statement of Commissioner Powell at 1.

¹⁴ 47 U.S.C. § 160(a)(1)-(3).

¹⁵ *Id.* at § 160(b).

promote competition.”¹⁶ Unfortunately, here, the Commission appears to have shifted the burden to *carriers* to demonstrate that various requirements — that have yet to be promulgated as rules — should *not* be applied. This is improper and figuratively stands Section 10 “on its head.”

As described below, PrimeCo believes that the relevant CMRS markets are and continue to become competitive. Indeed, Chairman Kennard has described CMRS as “the exemplar of fierce competition.”¹⁷ Consequently, Section 10 compels the Commission to forbear from imposing Section 254(g) rate integration requirements on CMRS carriers, if such requirements do in fact apply to CMRS carriers.

B. The CMRS Industry is Competitive

The CMRS market is competitive, and this competition justifies forbearance with regard to rate integration of CMRS long distance service. Since 1995, the Commission has issued 102 MTA A and B Block licenses, most of the 493 BTA C block licenses, approximately 1400 BTA D, E, and F Block licenses for broadband PCS; 43 national and regional licenses for narrowband PCS; and 1,020 licenses for 900 MHz SMR.¹⁸ Further, considering only cellular, PCS, and enhanced SMR, there can be as many as nine competitors in any particular area in the near future. In Hawaii, there are at least three *operating* CMRS providers.¹⁹

¹⁶ *MO&O, supra*, note 3 (Dissenting Statement of Powell, C.) at 5.

¹⁷ Press Statement of Chairman William E. Kennard In Re Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (March 24, 1998).

¹⁸ *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*, 7 Com. Reg. (P&F) 1, 6 (1997) (“*Second Competition Report*”).

¹⁹ *See PCS Source Book* at 49 (Phillips Fall 1998);

Competition has driven cellular service prices down by nearly 64% since 1987.²⁰

The average monthly bill for wireless telephone service declined from \$47.70 in December 1996 to \$42.78 in December 1997 alone.²¹ The Commission has recognized the competitive pricing that characterizes the CMRS market:

[O]ne study reported that between 1994 and early 1997 the average price in competitive markets had dropped by 25 percent. Several other studies have shown that this decline continued into 1997. One study compared mobile telephone prices in December 1996 and September 1997 and found a decline of approximately 6 percent with some decreasing as much as 30 to 40 percent. A series of quarterly surveys from 1997 found that prices have dropped between 15 percent and 34 percent, much of which was due to cellular operators lowering their prices in response to broadband PCS operators. Finally, a study comparing year-end prices for 1996 and 1997 found that the median price per minute had dropped between 30 percent and 40 percent for residential users and between 30 percent and 50 percent for business users.²²

In sum, as Chairman Kennard recently testified before the Senate Commerce Committee:

In the wireless industry, the FCC has eliminated the original duopoly structure and introduced more competition by making more spectrum available. Now, in many markets, consumers have a choice of as many as 5 wireless providers, and can purchase service at prices that last year cost 40 percent less than it did three years ago.²³

²⁰ *Second Competition Report*, 7 Com. Reg. at 7.

²¹ *See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Third Report*, 13 FCC Rcd. 19746, 19765 (1998) (“*Third Competition Report*”).

²² *Id.* at 19770.

²³ Testimony of William E. Kennard, Chairman, Federal Communications Commission, Before the Senate Commerce Committee, at 2, FCC News Release “FCC Chairman Kennard Sees 1996 Telecom Act Working; Notes the FCC Contributions to its Success” (rel. May 26, 1999).

C. Rate Integration Is Not Necessary to Ensure Just, Reasonable, Non-discriminatory CMRS Rates

The competitive nature of CMRS is sufficient to protect consumers and prevent unreasonable discrimination. Consumers can easily replace any CMRS provider that charges disproportionate rates for interstate, interexchange calls. The high churn rate in the CMRS industry indicates that consumers do in fact change CMRS carriers in order to obtain lower prices or more favorable terms. Thus, any attempt by a CMRS provider to charge unjust or unreasonable rates for interstate, interexchange service merely will cause its customers to switch carriers.

Consequently, market forces are sufficient to ensure just, reasonable and nondiscriminatory rates because competition removes the opportunity and incentive for any carrier to adopt anticompetitive and prejudicial rates, and terms and conditions of service. As Commissioner Powell has stated:

Competition and free markets are not simply regimes that allow firms to profit at the expense of consumers. Trusting these devices is not to abandon any concern for consumer[s] in favor of money-grubbing, self-interested firms. . . . [Competition], *generally*, keeps prices at levels consumers are willing to pay, it *generally* promotes innovation in new products and services for consumers, and it *generally* promotes growth into new and, yes, even traditionally underserved markets. . . . Though competition is not perfect in maximizing consumer well-being, I challenge anyone to make the case that regulation does it better.²⁴

That market forces are adequate to ensure just, reasonable and nondiscriminatory CMRS rates is further shown by the lack of any demonstrable harm to consumers in non-contiguous points resulting from the lack of rate integration to date. The Commission has not

²⁴ *MO&O* (Dissenting Statement of Powell, C.) at 4.

cited any outpouring of consumer complaints concerning discriminatory or unreasonable CMRS interexchange rates; in fact, it has not cited any such complaints in this proceeding. Similarly, there is no evidence that CMRS providers currently charge or will charge unreasonable or discriminatory rates for interstate, interexchange calls originating or terminating in Alaska, Hawaii, Puerto Rico, or other non-contiguous points. Instead, many CMRS providers are offering plans that provide free long distance as part of a packaged CMRS offering.²⁵ Yet, even though carriers are not *required* to offer these plans everywhere, they are being offered in non-contiguous areas.²⁶ In other words, the Commission's current desire to impose rate integration upon the CMRS market is driven entirely by speculative fears.

Even if market forces alone were insufficient to protect consumers, Sections 201 and 202 of the Act remain in effect and serve as a final guarantee that CMRS rates are just and reasonable, in the absence of a rate integration requirement. Any claims that a carrier is unreasonably discriminating between the interstate, interexchange CMRS rates it charges in non-contiguous states and territories versus mainland areas can be adjudicated pursuant to Section 208. Indeed, the threat of such a proceeding serves as a substantial deterrent to unreasonable discrimination.

²⁵ Insofar as these plans do not assess a separate toll charge for long distance calls, they are not subject to rate integration requirements. Even Alaska and Hawaii concede that such plans should not be subject to rate integration. *See* Opposition of the State of Alaska to Petitions for Reconsideration at 15 (Oct. 31, 1997) ("Interstate CMRS calls for which there is not a toll charge may not properly be subject to rate integration requirements because they are not considered interexchange calls"); Opposition of the State of Hawaii at 19 (Oct. 31, 1997) ("The State favors wide-area calling plans that offer distance-insensitive charges because they promote the public policy. . .").

²⁶ Both GTE and AT&T offer plans in Hawaii that provide for free CMRS long distance.

In addition, PrimeCo notes that forbearance is not an irrevocable policy choice on the part of the Commission — it is free to decide in the future not to forbear from requiring integration of CMRS rates if it becomes clear that competition is no longer sufficient to protect consumers in non-contiguous U.S. markets from undue discrimination. Thus, a Section 208 proceeding gives the Commission an opportunity to analyze the legal and policy issues relating to potential discrimination in CMRS interstate, interexchange rates based upon actual claims of harm and factual evidence, rather than empty speculation. Where facts gathered in complaint proceedings, or even a significant upswing in the number of complaints filed, reveal to the Commission the possibility that rate integration forbearance may no longer be warranted, the Commission would be free to impose rate integration on CMRS carriers.²⁷

D. Rate Integration is Not Necessary to Protect Consumers

As discussed above, the CMRS industry is fiercely competitive. In the current marketplace, no CMRS provider has market power and it is virtually impossible for a CMRS provider to survive if it is not attentive to the needs of consumers. Any CMRS provider that fails to treat its customers fairly will drive its customers to a competing CMRS system. Thus, consumer protection will not be compromised by forbearance from enforcement of Section 254(g). Again, as discussed above, the continued existence of Section 202 and the Section 208 complaint process provides additional protection in this area.

²⁷ Providing of course that the Commission is successful in defending its interpretation of Section 254(g) as applying to CMRS rates before the United States Court of Appeals.

E. Forbearance Is Consistent With The Public Interest

The competitive CMRS marketplace protects consumers and competitors alike from anticompetitive and discriminatory business practices, as well as unjust and discriminatory rates. Thus, economic regulation such as mandatory integration of interstate, interexchange rates in this case has become unduly burdensome and obsolete. Moreover, forbearance from rate integration will facilitate the growth of competition by allowing carriers certain flexibility to anticipate what services customers most desire and to respond rapidly to changes in demand for wireless services with innovative service and price options.

As demonstrated in comments previously filed in this proceeding, the “daisy-chain” effect of the affiliate rule will actually work to reduce competition with regard to CMRS long distance rates.²⁸ For example, under the PrimeCo ownership situation, the affiliate rule would require three separate carriers to agree to charge the identical rates for their respective CMRS interstate toll services (AirTouch Communications, Inc., Bell Atlantic, and PrimeCo). As noted, numerous other CMRS carriers would in turn be drawn into this rate integration web based on various existing ownership arrangements, with the possible result that very few — if not a single — national interexchange, interstate rate plans could apply to virtually all CMRS carriers.²⁹ The stifling effect that such a result would have on competition in the provision of service is self-evident.

Rate integration would also eliminate a carrier’s flexibility to establish rates on a market-by-market or regional basis, thereby eliminating the carriers’ most effective competitive

²⁸ See BellSouth Comments in Support of PrimeCo’s Motion for Stay of Enforcement, CC Docket No. 96-61, at 9.

²⁹ See *id.* at 9, Attachments A-C.

tool — pricing. Although some CMRS providers have aggregated markets together to form nationwide networks, the majority of the industry operates regional systems clustered around communities of interest rather than arbitrary MSA, MTA or BTA boundaries.³⁰ Indeed, industry practice is to establish markets that do not, in many cases, correlate with license boundaries. In fact, legitimate business considerations and customer demands have caused very different market areas to evolve. For example, in Texas, PrimeCo has established service areas without regard to MTA boundaries.

CMRS providers compete locally on a number of additional levels such as the size of the home coverage area, the roaming footprint, rate plans, and packaged service offerings.³¹ Competitive conditions in each local market vary considerably, with some markets having significantly lower cost structures and requiring slimmer margins in order to remain competitive. Again, CMRS carriers must retain the flexibility to respond to price pressures in competitive markets.

The almost inevitable result of CMRS rate integration, however, would be the elimination of market-based pricing arrangements thereby diminishing consumer choice, lessening competition, and increasing prices. PrimeCo believes, therefore, that Section 10 of the Communications Act compels the Commission to forbear from imposing Section 254(g) rate integration requirements on CMRS carriers, if such requirements do in fact apply to CMRS carriers.

³⁰ Only three CMRS providers are in the process of developing nationwide CMRS networks. *See Third Competition Report*, 13 FCC Rcd. at 19772.

³¹ *See id.* at 16-28.

III. ALTERNATIVELY, IF THE COMMISSION IMPOSES RATE INTEGRATION UPON CMRS CARRIERS, IT SHOULD TAILOR THE REQUIREMENTS NARROWLY

In the event the Commission again refuses to forbear from requiring integration of CMRS rates, PrimeCo urges the Commission to exercise extreme caution in implementing integration in the CMRS context. As discussed above, the CMRS market is vigorously competitive and unnecessary regulatory intervention in the market could skew market forces with unintended, unforeseen and undesirable consequences. The Commission has long recognized that competition rather than regulation is the best method for protecting consumer interests in highly complex and competitive industries.³² Indeed, as Chairman Kennard recently stated:

[A]s old-industry boundaries fade away and competition becomes king, the FCC itself must change. Simply, the top-down regulatory model is as out of date for the 21st century as the rotary phone.³³

PrimeCo submits that the Commission should not now take a significant step backward by imposing rigid rate regulation upon the highly competitive CMRS industry.

Again, caution is also warranted given the fact that the record contains no evidence showing that consumers in non-contiguous points have been harmed by the lack of CMRS rate integration to date. The reason that there is no showing of harm is that the Commission's rate integration policy is designed to remedy a problem that arose in and is peculiar to the wireline industry — and which has no correlation in the competitive wireless industry.

³² See *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd. 6786, 6790 ¶ 29 (1990), *erratum*, 5 FCC Rcd. 7664 (1990), *modified*, 6 FCC Rcd. 2637 (1991), *aff'd sub nom.*, *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

³³ William E. Kennard Testimony Before the Senate Commerce Committee, at 3.

The Commission's rate integration policy was designed to eliminate the practice of providing long distance service between the contiguous forty-eight states and various non-contiguous domestic markets at international, rather than domestic, rates. Thus, the Commission required carriers offering interstate, interexchange service to or from non-contiguous points such as Alaska, Hawaii, Puerto Rico, and the Virgin Islands to do so in accordance with rate structures and uniform mileage rate patterns applicable to the mainland.³⁴

This policy was spurred by the development of satellite communications, which permitted the provision of interstate, interexchange service between the contiguous and non-contiguous states at roughly the same rate.³⁵ Specifically, traditional long distance providers competed on a nationwide basis and had access to virtually every home in the United States via the wireline telephone network. Once satellite capacity was obtained, a call could be completed anywhere within the United States, including the non-contiguous markets, for roughly the same cost.

In other words, there was a clearly defined reason for rate integration to stop wireline carriers from charging higher international rates to domestic markets when there was no justification for the higher rates. Further, rate integration made sense in the context of wireline rate structures with defined exchanges, toll services, and mileage-based rates. These factors simply do not carry over into the wireless context, however. Instead, there are substantial,

³⁴ See *Integration of Rates and Services*, 61 F.C.C. 2d 380, 383-84 (1976) ("1976 Integration of Rates and Services Order").

³⁵ *Establishment of Domestic Communications Satellite Facilities*, Docket No. 16495, *Second Report and Order*, 35 FCC 2d 844, 856-57 (1972), *aff'd on recon.*, 38 F.C.C. 2d 665 (1972), *aff'd sub nom. Network Project v. FCC*, 511 F.2d 786 (D.C. Cir. 1975); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket 96-61, *Notice of Proposed Rulemaking*, 11 FCC Rcd. 7141, 7180-81 (1996).

rational distinctions between wireless and wireline services which justify subjecting CMRS to a different regulatory scheme.

The Commission has already recognized that “interstate, interexchange CMRS offerings are not the same service as other interstate, interexchange services.”³⁶ Additionally, most CMRS competition is at the local market level. This is because CMRS networks are designed to respond to local conditions in the market (or markets) where they are located. Costs vary from market to market, just as the identity of the competitors and the demands of the consumers vary. Thus, unlike the case of wireline carriers providing service to non-contiguous domestic markets, the cost of providing an end-to-end CMRS call will vary from market to market depending upon the investments made by the carriers to expand coverage areas and improve service.

In short, the harm that rate integration was designed to cure simply does not exist in the wireless arena. Nor could it exist, because competitive pressures and existing law keeps CMRS carriers from charging unjust, unreasonable or discriminatory rates. As discussed herein, and in the comments previously submitted to this Commission, however, imposing rate integration upon CMRS carriers will significantly disrupt the current competitive market for wireless services. Consequently, the Commission should not permit such disruption in the absence of any clearly articulated and demonstrable harm — and particularly in the absence of express Congressional directive to the contrary.

It is PrimeCo’s continued position that Section 254(g) was not intended to extend principles of rate integration to CMRS. Indeed, the legislative history of the 1996 Act reflects

³⁶ *Reconsideration Order*, 12 FCC Rcd. 11,812 at ¶18.

Congress' express intent that Section 254(g) simply codifies existing FCC policies concerning rate averaging and rate integration which, as discussed above, relate only to *wireline carriers*.³⁷

According to the Senate Report, for example, Section 254(g):

*simply incorporates in the 1934 Act the existing practice of geographic rate averaging and rate integration This provision is not intended to alter existing geographic rate averaging policies as enforced by the FCC on the date of enactment, including the FCC'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."*³⁸

Furthermore, as recently as the *Reconsideration Order*, the Commission admitted that "Congressional conferees made clear that Congress intended [S]ection 254(g) to incorporate the Commission's *existing rate integration policy*."³⁹ Thus, in the absence of a clear Congressional mandate and/or a clearly identifiable harm requiring remedy, rate integration in the CMRS context is nothing more than regulation for regulation's sake. To confirm, under these circumstances, PrimeCo submits that if the Commission does impose integration obligations upon CMRS carriers, it should do so with extreme caution and as narrowly as possible.

A. Defining Exchange and Toll Service

In the *MO&O*, the Commission seeks comment on the definition of "telephone toll service" and "exchange" in the context of CMRS.⁴⁰ PrimeCo submits that the Commission

³⁷ See H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 132 (1996)("Joint Explanatory Statement").

³⁸ S. Rep. No. 104-23, 104th Cong., 1st Sess. 30 (1995) (*citing* 61 FCC 2d 380 (1976)) (emphasis supplied).

³⁹ *Reconsideration Order*, 12 FCC Rcd. 11812 at ¶ 2 (emphasis supplied).

⁴⁰ *Further Notice* at ¶ 14.

should do nothing to define these terms for CMRS purposes. Any definition of “toll service” and/or “exchange” would have broad implications with potentially unforeseen consequences beyond the scope of this proceeding. As an initial matter, CMRS service areas do not follow state lines and do not in any way coincide with exchange areas defined for wireline carriers. Rather, CMRS licenses are issued by MSAs, BSAs, MTAs, and BTAs which frequently cross state boundaries and have no relevance for “exchange areas.”

In addition, as a legal matter, the Commission has found that CMRS carriers are not interexchange carriers.⁴¹ Further, it has continuously regulated CMRS carriers differently from other “providers of interstate, interexchange services,” with regard to policies and rules such as those related to access charges. Thus, for the Commission to now define a CMRS exchange area would potentially have significant — and unintended — implications in other regulatory contexts.

Moreover, as noted above, PrimeCo and other carriers frequently combine market areas based upon local commonalities of interest among their customers, rather than easily defined geographic lines, such as MTA or exchange boundaries. Defining “toll service” and “exchange area,” however, could well preclude carriers’ ability to continue organizing their markets based upon customer interests, thereby undermining their ability to respond efficiently to customer demand for new and innovative services and pricing arrangements. For these reasons, PrimeCo strongly urges the Commission not to define “toll service” and/or “exchange area.”

The fact that *Hawaii* believes that restrictive definitions of exchange areas are necessary to prevent carriers from “discriminating” against its citizens by establishing wide area

⁴¹ See *MTS/WATS Market Structure*, 97 F.C.C.2d 834, 884 (1984).

plans that encompass the mainland United States while excluding non-contiguous areas such as Hawaii, does not compel a contrary result.⁴² While Hawaii's concerns may raise discrimination issues under Sections 201 and 202 of the Act, they are not "rate integration" issues. For example, it appears that Hawaii is concerned about a carrier adopting a postalized rate structure with local calling rates for calls throughout the contiguous United States and separately stated toll rates for all calls to or from non-contiguous markets such as Hawaii. However, this rate scheme would in fact be consistent with the express terms of Section 254(g) if the carrier charged customers in Hawaii the same rate for calls to and from the contiguous United States as customers in the contiguous states are charged for calls to and from the non-contiguous markets.⁴³ In the above example, all customers would be charged the same toll rates regardless of where they are located.

B. Roaming

The Commission also seeks comment on the effects of rate integration on roaming charges associated with interstate, interexchange calls.⁴⁴ PrimeCo submits that roaming rates and plans should be excluded from any rate integration requirements. As a preliminary matter, PrimeCo does not believe roaming charges fit within the express terms the statute. Section 254(g) covers rates charged to subscribers for interstate, interexchange service. Roaming,

⁴² See *Further Notice* at ¶ 12.

⁴³ Section 254(g) requires only that "a provider of interstate interexchange telecommunications services *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.*" 47 U.S.C. § 254(g) (emphasis supplied).

⁴⁴ See *Further Notice* at ¶ 28.

however, is more accurately described as a contractual relationship between carriers, in which one carrier pays another for the right to have its subscribers utilize the other's network.

More important, extending rate integration to cover roaming charges would be contrary to the public interest. The Commission has steadfastly refused to require CMRS carriers charge the same rates for roaming in every market.⁴⁵ Cellular carriers compete vigorously in their marketing efforts on the basis of their roaming footprint and roaming rates.⁴⁶ If CMRS carriers were required to integrate their roaming rates in all markets, their ability to differentiate themselves from their competition would be severely limited. As a result, rate integration "may actually serve to lessen overall competition in the CMRS market."⁴⁷

Moreover, roaming charges are *not necessarily* cost-based, charges. Roaming charges are the results of negotiations between carriers and depend on a number of inter-carrier issues that are totally unrelated to the cost of providing the service. Thus, there would be no rational basis upon which to integrate roaming charges. In sum, roaming rates and plans should be entirely excluded from any rate integration requirement.

C. Affiliation

The Commission proposes to require rate integration across affiliates for CMRS carriers and seeks comment on how to implement this proposal.⁴⁸ PrimeCo disagrees with the

⁴⁵ See *Interconnection and Resale Obligations Pertaining to CMRS*, 11 FCC Rcd. 9462 (1996).

⁴⁶ See *id.* at 9498 (Separate Statement of Chong, C.).

⁴⁷ *Id.*

⁴⁸ *Further Notice* at ¶ 18.

Commission. Instead, PrimeCo urges the Commission to maintain the *status quo* and exempt CMRS affiliates from any obligation to integrate rates across affiliates.

The record in this proceeding identifies a number of compelling reasons why the Commission should not apply the affiliate requirement of its rate integration rule to CMRS providers.⁴⁹ As demonstrated in the previously filed forbearance and reconsideration petitions, application of the affiliate requirement to CMRS providers will have significant anti-competitive effects and could profoundly disrupt existing ownership arrangements for many carriers. In fact, Hawaii and Alaska also agree that there are significant problems associated with applying the affiliate rule to CMRS providers and have expressly supported providing some relief in this regard.⁵⁰ Therefore, PrimeCo again urges the Commission to relieve CMRS carriers from the obligation to integrate rates across affiliates.

Grandfathering existing CMRS affiliate relationships is also important, in any event. CMRS ownership structures evolved in response to certain legal and factual realities surrounding the evolution of the wireless industry — not as an effort to evade rate integration.⁵¹

⁴⁹ See, e.g., AirTouch Petition for Reconsideration at 14-15; Bell Atlantic Mobile Petition for Reconsideration and Forbearance at 14-15; BellSouth Petition for Reconsideration and Forbearance at 21-24; Personal Communications Industry Ass'n Petition for Reconsideration and Forbearance at 8-9; and PrimeCo Petition for Reconsideration and Forbearance at 15-17.

⁵⁰ Opposition of the State of Hawaii at 23-25; Opposition of the State of Alaska at 14-16. Alaska and Hawaii, however, cannot agree as to the appropriate scope of such remedy.

⁵¹ When cellular licensees were first selected by lottery, the Commission encouraged competing applicants to enter into settlement agreements by providing an “award of cumulative chances” to improve the joint venture applicant’s chances of winning the lottery. See *Algreg Cellular Engineering*, 12 FCC Rcd 8148, ¶¶ 25-29 (1997); *Amendment of the Commission’s Rules to Allow the Selection from Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings*, 98 FCC 2d 175, 201, *recon. granted in part and denied in part*,

(continued...)

Thus, to the extent that the affiliate requirement was adopted to prevent carriers from circumventing rate integration, that rationale does not apply to the case of existing CMRS affiliates. Consequently, PrimeCo believes that CMRS carriers should not now be punished for ownership structures that were adopted for wholly legitimate business purposes. At a minimum, *existing* CMRS ownership structures should be grandfathered from any integration requirement.

In the absence of such relief, application of the affiliate requirement could easily require CMRS carriers to agree to set a few (or possibly a single) national interexchange, interstate rate for CMRS long distance offerings.⁵² Such a result, on its face, could arguably constitute unlawful price fixing and would run counter to important antitrust policies. Indeed, this result is directly contrary to the important pro-competitive purposes of the 1996 Act.⁵³ Moreover, PrimeCo believes that it is unlikely that anyone would benefit from standardizing CMRS long distance rates in this way. For example, Hawaii admits that CMRS wide-area calling plans developed in the absence of rate integration promote the public interest but stubbornly insists that Section 254(g) requires rate integration of the interstate, interexchange

⁵¹ (...continued)
101 FCC 2d 577, 584, *further recon.*, 59 Rad. Reg. 2d (P&F) 401 (1985), *aff'd sub nom. Maxcell Telecom Plus v. FCC*, 815 F.2d 1551 (D.C. Cir. 1987). As a result of these settlements and the lottery process generally, many partial ownership interests in cellular licensees were created. *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order*, 8 FCC Rcd. 7700, 7745 ¶ 107 (1993). These partnerships remain the cellular licensees in many markets and, indeed, some large cellular carriers currently control dozens of such partnership licenses.

⁵² *See* BellSouth Corporation's Comments in Support of PrimeCo's Motion for Stay of Enforcement at 9, Attachments A-C.

⁵³ The legislative history makes clear that the 1996 Act was intended to establish a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector development of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition." Joint Explanatory Statement, H.R. Conf. Rep. No. 104-458 at 1.

portion of such plans.⁵⁴ In this regard, however, Hawaii ignores the likelihood that in order to integrate rates CMRS carriers would be forced to move away from low-cost wide area calling plans, resulting in higher rates for consumers.

D. Integration Across Classes of CMRS

The Commission invites comment on whether the rates of cellular and broadband PCS services should be integrated.⁵⁵ PrimeCo submits that the Commission should not require rate integration to apply across cellular-PCS lines within a company or group of affiliates. The Commission has previously determined that carriers would not be required to engage in cross-service integration between wireline and CMRS and there is no reason adopt a different program for PCS and cellular services.⁵⁶

Indeed, there are significant competitive reasons which suggest that carriers should not be required to integrate rates for cellular and broadband PCS services. Requiring a PCS carrier's rates to be integrated with those of its sister cellular carriers in other markets will significantly impair the ability of that PCS carrier to enter new markets and compete with incumbent cellular carriers on the critical basis of pricing. As new entrants, PCS carriers often adopt more flexible pricing approaches to develop and maintain a customer base, in order to compete with cellular carriers that are already well-established in their markets. Indeed, as recognized by the Commission, studies indicate that PCS providers set prices between 10 and 20 percent below their cellular competitors, often forgoing more substantial profit margins in order

⁵⁴ Hawaii Opposition at 19.

⁵⁵ *Further Notice* at ¶ 33.

⁵⁶ *Reconsideration Order*, 12 FCC Rcd 11812, at ¶ 18.

to acquire market share.⁵⁷ Further, the Commission itself has largely recognized that these new entrants bear significant responsibility for the substantial pricing reductions which are occurring in the wireless industry.

Under rate integration, however, all the competitive and pricing advantages of new PCS entrants would be lost. A PCS licensee's entry-related pricing strategies would be dependent not on market conditions, but rather on upon the pricing strategies of its sister cellular carriers in unrelated markets. In short, PCS licensees would be hamstrung in their ability to enter new markets in competition with incumbent cellular providers. Consequently, the Commission should not require rate integration to apply across cellular-PCS lines within a company or group of affiliates.

CONCLUSION

For the foregoing reasons, PrimeCo urges the Commission to forbear from applying rate integration requirements to the competitive CMRS industry. If rate integration is nevertheless applied to CMRS, the Commission should do so with extreme caution and only adopt such rules as a necessary to remedy a demonstrable harm to consumers in non-contiguous domestic markets. To that end, any CMRS rate integration rules should not disturb the proliferation of wide-area rate plans and roaming arrangements that respond to consumer demands and

⁵⁷ See *Third Competition Report*, 13 FCC Rcd. at 19769-770.

needs, and should not force carriers to integrate the interexchange rates of their cellular and PCS operations. Finally, the Commission should establish no integration obligation for CMRS affiliates.

Respectfully submitted,

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