

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**RECEIVED**

**MAY 27 1999**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

CC Docket No. 96-61

**DOCKET FILE COPY ORIGINAL**

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 )

**To: The Commission**

**COMMENTS OF OMNIPOINT COMMUNICATIONS INC.**

Omnipoint Communications Inc. (Omnipoint), by its attorneys, hereby files comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding. In the FNPRM, the Commission requests comments on how Section 254(g) should be applied to CMRS providers, including how Section 254(g) should be applied to wide-area calling plans and services offered by affiliates. Omnipoint strongly urges the Commission to forbear, pursuant to Section 10 of the Act, from applying the rate integration requirements to CMRS providers. In the alternative, Omnipoint urges the Commission to find that rate integration does not apply to wide-area calling plans, affiliate arrangements, and roaming and airtime charges and to adopt rules that allow CMRS providers the maximum flexibility in implementing innovative and competitive rate plans.

No. of Copies rec'd 074  
List ABCDE

I. FORBEARANCE FROM APPLYING THE RATE INTEGRATION REQUIREMENTS TO CMRS PROVIDERS IS WARRANTED

The Commission should forbear, pursuant to Section 10 of the Act, from applying the rate integration requirements to CMRS providers. Under Section 10(a) of the Act, the Commission is required to forbear from applying any provision of the Act if it determines that: (1) enforcement is not necessary to ensure that rates and practices are just and reasonable and not unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. To determine whether forbearance is in the public interest, the Commission is to consider whether forbearance will “promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”<sup>1</sup> Under this test, forbearance from the rate integration requirements clearly is warranted for CMRS providers.

First, the Commission’s deregulatory, pro-competitive policies have led to a vibrant, highly competitive CMRS market, which ensures that CMRS rates and practices are just and reasonable and not unreasonably discriminatory. The Commission itself has found that prices for CMRS services have fallen as a result of the tremendous increase in competition in the CMRS market.<sup>2</sup> The imposition of CMRS rate uniformity requirements would be at odds with the competitive nature of the CMRS market and the Commission’s decision to deregulate CMRS rates.

---

<sup>1</sup> 47 U.S.C. Section 160(b).

<sup>2</sup> Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (rel. June 11, 1998).

Second, rate integration is not necessary to protect consumers as the competitive CMRS market ensures that providers charge reasonable rates and create new pricing plans to meet consumer demand. On the contrary, rate integration would harm consumers by restricting the ability of carriers to offer innovative pricing plans. A multitude of pricing plans benefits consumers by allowing consumers to tailor the service they receive, and the price that they pay, to better reflect their individual calling needs. Wide-area calling plans and rate plans that allow a certain number of calls (local or interstate) for a fixed monthly rate, are some of the innovative rate plans that CMRS providers, including Omnipoint, have implemented to respond to the competitive market. Rate uniformity could hinder the implementation of such plans and, as a result, force consumers to pay for services they do not need or want.

Other regulations and safeguards are in place to protect consumers, such as Sections 201 and 202, which require carriers to charge all consumers just, reasonable and not unreasonably discriminatory rates and to refrain from unjust or unreasonably discriminatory practices. Moreover, if market conditions change in the future and competition in the CMRS market is no longer sufficient to protect consumers, the Commission could find that forbearance is no longer justified and require CMRS providers to comply with rate integration at a later time.

Third, forbearance is consistent with the public interest because it will promote competitive market conditions and enhance competition among CMRS providers. As demonstrated, numerous and varied pricing plans and service options have been developed by CMRS providers in response to the highly competitive CMRS market. To protect and further the development of competition, the ability of carriers to quickly respond to the pricing plans of their competitors in new and innovative ways must be preserved. The imposition of the rate

integration requirements would adversely affect the ability of CMRS providers to do so and, as a result, would be contrary to the public interest.

In addition, rate integration fails to account for the different implementation costs that CMRS providers encounter in different regions. CMRS providers should be able to develop pricing plans that reflect the differing costs of providing service in different geographic regions.

As demonstrated above, the requirements of Section 10 have been met and, therefore, the Commission should forbear from applying the rate integration requirements to CMRS providers.

## II. WIDE-AREA CALLING PLANS

As recognized by the Commission, wide-area calling plans allow customers to extend the size of the calling area in which they do not incur roaming or separate long-distance charges. Therefore, for rate integration purposes, wide-area calling plans should be considered the “exchange area,” as defined by the Act, and rate integration should not apply.

If, however, the Commission finds that wide-area calling plans are subject to rate integration, then the Commission should forbear from applying rate integration requirements to such plans. Providing maximum flexibility for CMRS pricing and local calling area decisions is fully consistent with the policy goals of Section 254(g) of the Communications Act. The Commission recognized that CMRS calling plans and areas are vastly different than the incumbent LEC traditional exchange areas when it established MTAs as the CMRS “local service area” for purposes of reciprocal compensation.<sup>3</sup> This is especially true for broadband PCS, which the Commission licenses on a multi-state MTA and BTA basis. These large multi-

---

<sup>3</sup> First Report and Order, CC Dkt. No. 96-98, 11 FCC Rcd. 15499, 16014 (1996), rev'd in part, on other grounds, Iowa Utilities Bd. v. FCC, No. 96-3321 (8<sup>th</sup> Cir. July 18, 1996).

state PCS regions were adopted in order to follow “the natural flow of commerce;”<sup>4</sup> and to “facilitate regional and nationwide roaming; [and to ] allow licensees to tailor their systems to the natural geographic dimensions of PCS markets.”<sup>5</sup> The Commission’s PCS licensing method was intended to provide licensees with maximum flexibility to aggregate multiple BTA or MTA licenses using a single network, thereby providing the public with competitive alternatives to the incumbent cellular and LEC exchange services. Thus, any action by the Commission that would effectively eliminate the benefits of wide-area calling plans would be counter to the Commission’s licensing approach.

Omnipoint offers a wide-area calling plan option called the OmniRate (sm) North America plan, which allows monthly customers to make a predetermined number of minutes of calls for a set monthly charge. Under the OmniRate North America plan, customers can place calls to anywhere in the continental United States, including Alaska and Hawaii, and Canada, among other areas. There are no long distance or roaming charges when traveling within the GSM network in the United States or Canada under this calling plan. For customers who do not select the OmniRate North America plan, Omnipoint offers several alternative calling plans that meet market demand for regional and local plans. Every customer has access to these options and, therefore, there is no unreasonable discrimination present. Moreover, by providing many different options, customers are able to choose the calling plan, and rate, that best suits their calling needs and is most economical. The Commission should not implement rate integration in a way that would frustrate this obvious consumer benefit.

---

<sup>4</sup> Memorandum Opinion and Order, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4986 (1994).

<sup>5</sup> Second Report and Order, GN Dkt. No. 90-314, 8 FCC Rcd. 7700, 7732 (1993).

### III. RATE INTEGRATION ACROSS AFFILIATES

If the Commission declines to mandate broad forbearance from rate integration requirements for CMRS providers, the Commission should forbear from imposing rate integration requirements across affiliates. Rate integration across affiliates would effectively eliminate a number of competitors in a given geographical region, resulting in a less competitive marketplace, higher prices and less choice for consumers. In addition, carriers will have less incentive to create new pricing plans for consumers, as rates will be required to be the same across any affiliated companies, even if they are competitors in a given market.

Should the Commission elect to enforce rate integration requirements across affiliates, Omnipoint supports eighty-percent ownership control as the appropriate standard to trigger the application of rate integration. As noted by other parties previously in this docket, CMRS providers have entered into a multitude of affiliations, which have served to expand CMRS availability to consumers and to increase the number of service and pricing options available to them. A restrictive definition of "affiliate" would reduce the choices available to consumers by requiring competitive CMRS providers to charge the same rates. The eighty-percent test will offer carriers the most flexibility in establishing rates and pricing plans.

### IV. RATE INTEGRATION FOR ROAMING AND AIRTIME CHARGES

If the Commission declines to mandate broad forbearance from rate integration requirements for CMRS providers, the Commission should forbear from rate integration requirements for roaming and airtime charges. Competition in the marketplace is sufficient to ensure that just and reasonable rates are charged for all services, including roaming and airtime charges. Roaming charges have been eliminated in some calling plans implemented by CMRS providers, including Omnipoint's wide-area calling plan described above. Consumers will

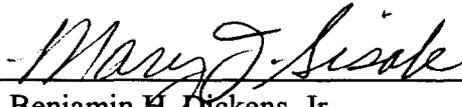
simply leave their service provider for a competitor if the carrier does not charge reasonable rates commensurate with the rates charged by the rest of the marketplace. Consumers drive the marketplace, and carriers are constantly striving to meet the calling needs of consumers. Rate integration is not necessary to protect consumers or the public interest.

V. CONCLUSION

As demonstrated herein, competition is working in the CMRS marketplace to drive rates down and eliminate unreasonable discrimination. Therefore, there is no need for further Commission regulation in this area. If, however, the Commission decides to apply rate integration to CMRS providers, then Omnipoint urges the Commission to forbear from applying rate integration to wide-area calling plans, affiliate arrangements and roaming and airtime charges.

Respectfully submitted,

**OMNIPOINT COMMUNICATIONS INC.**

By:   
Benjamin H. Dickens, Jr.  
Mary J. Sisak  
Its Attorneys

Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW  
Suite 300  
Washington, DC 20037  
202-659-0830

Filed: May 27, 1999