

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

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FEDERAL COMMUNICATIONS COMMISSION  
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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 )  
\_\_\_\_\_ )

CC Docket No. 96-61

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**SPRINT PCS COMMENTS**

Jonathan M. Chambers  
Roger C. Sherman  
Sprint Spectrum L.P. d/b/a/Sprint PCS  
1801 K Street, N.W., Suite M112  
Washington, D.C. 20006  
(202) 835-3617

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## Summary

Sprint PCS submits that the Commission should reevaluate its conclusion that “rate integration” applies to CMRS, rather than to begin the complex process of attempting to determine which particular CMRS services should and should not be subject to rate integration regulation.

Nearly six years after Congress deregulated CMRS pricing and encouraged the licensing of additional CMRS providers through auctions, the Commission is now asking how it should regulate interstate CMRS rates — even though it has been documented again and again that CMRS prices continue to fall as competition intensifies. Moreover, it has *never* been demonstrated that there is a market failure in the competitive CMRS market warranting the imposition of government intervention and new regulation — regulation that would necessarily limit consumer choice and distort the free flow of competitive market forces.

If, however, the Commission determines that new regulation of competitive markets is appropriate, it should at most apply “rate integration” only to the “interstate, interexchange telecommunications services” of CMRS providers. Because the Communications Act defines an intra-exchange service to include any service for which a toll charge is not assessed, it would be inappropriate to apply rate integration regulation to any CMRS wide-area calling plans — including national “one rate” plans. Under no circumstances should the Commission abandon its past practice and begin regulating the scope of CMRS local calling areas. American consumers would be harmed if carriers like Sprint PCS were required to discontinue national “one rate/airtime only” calling

plans whereby a call can be made to any point in the country without the customer having to pay a toll surcharge.

Nor should the Commission apply rate integration regulation to “off network” roaming, where the telecommunications service is actually provided by a third-party carrier. The clear market trend is to reduce, if not eliminate altogether, roaming surcharges. Application of rate integration regulation to roaming could therefore have the undesirable effect of reversing this trend, to the detriment of consumers.

The real answer to the Commission’s (still undocumented) rate integration concerns is to allow the market to take its course. If market trends are permitted to continue, all surcharges (toll and roaming) may become the exception rather than the rule.

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**SPRINT PCS COMMENTS**

Sprint Spectrum L.P., d/b/a Sprint PCS (“Sprint PCS”), hereby responds to the Commission’s request for further comment pertaining to the application of “rate integration” to providers of commercial mobile radio service (“CMRS”).<sup>1</sup>

Sprint PCS submits that the Commission should reevaluate its conclusion that “rate integration” applies to CMRS, rather than begin the complex process of attempting to determine which particular CMRS services should and should not be subject to rate integration regulation. Nearly six years after Congress deregulated CMRS pricing and encouraged the licensing of additional CMRS providers through auctions, the Commission is now asking how it should regulate interstate CMRS rates — even though it has been documented repeatedly that CMRS prices continue to fall as competition intensifies. In fact, it has never been demonstrated that the market has failed to produce innovative

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<sup>1</sup> See *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket No. 96-61, *Further Notice of Proposed Rulemaking*, FCC 99-43 (April 21, 1999)(“*CMRS Rate Integration Further NPRM*”).

and competitive services throughout the entirety of the United States, including Alaska and Hawaii. Without such a showing, the imposition of new regulation that would limit consumer choice and distort the free flow of competitive market forces is unnecessary. The fact that over three years after Section 254(g) was enacted the Commission continues to struggle in applying “rate integration” to the CMRS industry further confirms that Congress never intended to apply this type of price regulation to the competitive CMRS market.

**I. The Commission Should Reevaluate Its Application of A “Rate Integration” Requirement to the Competitive CMRS Market**

The Commission has initiated a proceeding in which it apparently hopes to determine which CMRS services should be subject to rate integration regulation. Sprint PCS demonstrates below that the better course of action would be for the Commission to reexamine the questions of whether rate integration regulation should be extended at all to the competitive CMRS industry and whether such regulation does more harm than good.

**A. There Has Been No Demonstrated Need for New Regulation of the CMRS Industry**

In 1993 Congress affirmed the Commission’s deregulatory policy for the wireless industry and gave the Commission additional powers to undertake further deregulation.<sup>2</sup> In response, the Commission noted that its role is to “ensure that the marketplace — and not the regulatory arena — shapes the development and delivery of mobile

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<sup>2</sup> See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b) (1993). Among other things, the Congress gave the Commission new power to forbear from applying the Communications Act to CMRS carriers. See 47 U.S.C. § 332(c)(1)(A). It also pre-empted states from exercising rate and entry regulation over the CMRS industry. See *id.* at § 332(c)(3)(A).

services to meet the demands and needs of consumers.”<sup>3</sup> The Commission has therefore held, repeatedly, that new CMRS regulations should not be imposed “unless clearly warranted” and only upon a demonstration of “a clear-cut need.”<sup>4</sup> Sprint PCS submits that there is nothing in the record demonstrating a “clear-cut need” for expanding rate integration regulation to CMRS providers. In fact, there is no record evidence at all that suggests a need for applying price regulation to the competitive CMRS industry.

Alaska and Hawaii have asserted that expansion of rate integration to CMRS providers is “necessary for the protection of [CMRS] consumers.”<sup>5</sup> According to Alaska, CMRS rate integration “is necessary precisely because, without it, discriminatory charges and practices . . . are indeed *possible*.”<sup>6</sup> Similarly, Hawaii asserts that “[w]ithout rate integration, such CMRS resellers . . . *could* discriminate against offshore points.”<sup>7</sup>

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<sup>3</sup> *Third CMRS Order*, 9 FCC Rcd 7988, 8002 ¶ 23 (1994). See also *Second CMRS Order*, 9 FCC Rcd 1411, 1418 ¶ 15 (1994)(“[W]e establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees.”)

<sup>4</sup> See, e.g., *CMRS First Resale Order*, 11 FCC Rcd 18455, 18463 ¶ 14 (1996)(“[A]ll regulation, necessarily implicates costs, including administrative costs, which should not be imposed unless clearly warranted.”); *Connecticut CMRS Rate Petition Order*, 10 FCC Rcd 7025, 7031 ¶ 10 (1995), *aff’d* 78 F.3d 842 (3d Cir. 1996)(“Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation for which the Commission and the states could demonstrate a clear cut need.”).

<sup>5</sup> 47 U.S.C. § 160(a)(2) and § 332(c)(1)(A)(ii). It is noteworthy that they began making this argument only *after* the Commission ruled in passing in its reconsideration order that rate integration should be extended to CMRS. See *Rate Integration Reconsideration Order*, 12 FCC Rcd 11812, 11821 ¶ 18 (1997). The Commission reached this summary conclusion even while acknowledging that “CMRS is primarily a telephone exchange and exchange access service” and that “interexchange CMRS offerings are not the same service as other interstate interexchange CMRS offerings.” *Id.*

<sup>6</sup> Opposition of the State of Alaska to Petitions for Reconsideration, CC Docket No. 96-61, at 10 (Oct. 31, 1997)(emphasis added).

<sup>7</sup> Opposition of the State of Hawaii, CC Docket No. 96-61, at 6 (April 16, 1999)(emphasis added). Hawaii appears to have abandoned its earlier position, *entirely undocumented*, that its residents were already subjected to discriminatory CMRS rates. See Opposition of the State of Hawaii, CC Docket No. 96-61, at 10 (Oct. 31, 1997)(“It is abundantly clear that consumers on

“Possible” discrimination does not provide an adequate basis for the imposition of new regulations that have never before been applied to CMRS providers.<sup>8</sup> At minimum, the Commission should require proponents of new regulation to demonstrate at least some evidence of a problem before imposing a regulatory solution. This is especially true given that the Commission has long recognized that price and other tariff regulation are unnecessary for the CMRS industry because “[c]ompetition . . . leads to reasonable rates.”<sup>9</sup>

Finally, under the Administrative Procedures Act,<sup>10</sup> the Commission must engage in reasoned decisionmaking,<sup>11</sup> and may impose new requirements only if they are “supported by substantial evidence.”<sup>12</sup> In this proceeding, there is no evidence supporting extension of rate integration regulation to CMRS providers. There certainly does not exist a demonstrated “clear-cut” need for such regulation.

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Hawaii and other offshore points would continue to pay discriminatory CMRS rates if forbearance from rate integration were granted.”).

<sup>8</sup> See *Rate Integration Forbearance Order*, FCC 98-347, at ¶ 4 (“Prior to the 1996 Act, the Commission had not applied any rate integration obligations to CMRS providers.”).

<sup>9</sup> *Second CMRS Order*, 9 FCC Rcd at 1478 ¶ 174.

<sup>10</sup> See 5 U.S.C. §§ 551 *et seq.*

<sup>11</sup> Indeed, the concept of reasoned decisionmaking has been described as “the keystone of the Rule of Administrative Law.” *American Gas Ass’n v. FPC*, 567 F.2d 1016, 1030 (D.C. Cir. 1977).

<sup>12</sup> 5 U.S.C. § 706(2)(e). See, e.g., *AT&T Corp. v. FCC*, 86 F.3d 242 (D.C. Cir. 1996); *Center for Auto Safety v. FHA*, 956 F.2d 309, 314 (D.C. Cir. 1992) (“[A]gency action is arbitrary and capricious if it rests upon a factual premise that is unsupported by substantial evidence.”). The Supreme Court has admonished that “substantial evidence is more than a mere scintilla . . . . It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *NLRB v. Colombian Enameling & Stamping*, 306 U.S. 292, 300 (1939).

**B. Congress Did Not Intend to Apply Rate Integration Regulation to CMRS Providers**

Unable to find a factual basis for their argument that rate integration regulation should be extended to CMRS, Alaska and Hawaii also posit a legal argument: CMRS rate integration regulation is required by Section 254(g) of the Communications Act. According to Alaska and Hawaii, after preempting states from exercising CMRS rate regulation and giving the Commission authority to deregulate rates in 1993 (a power it exercised in 1994), Congress decided in 1996 to re-impose certain price regulations on a CMRS industry that had become more competitive than it had been in 1993. As demonstrated below, however, there is no evidence that Congress intended the Commission to apply new rate integration rules to the CMRS industry three years after it removed all price regulation.

Alaska and Hawaii misinterpret critical terms within Section 254(g). Specifically, Section 254(g) specifies that rate integration shall apply to a “provider of interstate interexchange telecommunications services.”<sup>13</sup> Sprint PCS is a CMRS provider; it is not a provider of “interexchange services” as Congress used that term. To be sure, Sprint PCS assesses toll charges on calls made under certain rate plans, and the provision of toll services is similar to the provision of interexchange services. Congress has separately defined the term “telephone toll service,”<sup>14</sup> however, and the fact that it instead chose to use the term “interexchange service” in Section 254(g) illustrates that Congress did not intend to sweep all toll services within the reach of Section 254(g). Indeed, the

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<sup>13</sup> See 47 U.S.C. § 254(g).

<sup>14</sup> 47 U.S.C. § 153(48)(“The term ‘telephone toll service’ means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.”)

Commission has long recognized that “toll service” is not synonymous with “interexchange service” and that interexchange service is only a subset of toll service.<sup>15</sup>

Moreover, although CMRS providers may in certain circumstances impose toll charges on some of their customers, this toll service is fundamentally different from the toll services provided by interexchange carriers. The Commission has recognized that CMRS constitutes an end-to-end service; even calls for which a CMRS provider may impose a toll charge are considered to be CMRS and are regulated as such.<sup>16</sup> The Commission has also recognized that CMRS providers serve a different market than landline carriers: “people on the move.”<sup>17</sup> Accordingly, the Commission established a very different regulatory regime for CMRS services (including calls for which toll charges are assessed) as compared to that imposed on interexchange carriers. There is, in short, nothing in either the language of Section 254(g) or the context in which it was enacted to suggest that Congress intended to apply Section 254(g) to the competitive CMRS market — including even those CMRS calls where a separate surcharge may be imposed.

Even if there were an ambiguity over the application of Section 254(g) to the toll services provided by CMRS carriers, that ambiguity is removed by reference to the legislative history.<sup>18</sup> Congress stated that it enacted Section 254(g) “to *incorporate*

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<sup>15</sup> See, e.g., *MTS/WATS Market Structure*, 94 F.C.C.2d 292, 302-03 ¶¶ 24-26 (1983).

<sup>16</sup> Congress, too, has recognized that CMRS is fundamentally different from the interexchange services provided by landline carriers. For example, Congress has determined that CMRS providers need not provide equal access, recognizing that CMRS toll and local services do not constitute separate markets. See 47 U.S.C. § 332(c)(8). Additionally, it has authorized Bell-affiliated CMRS carriers to transport CMRS calls across LATA boundaries, characterizing such traffic as “incidental, interLATA” traffic. See *id.* at §§ 271(b)(3) and (g)(3)

<sup>17</sup> *First Annual CMRS Report to Congress*, 10 FCC Rcd 8844, 8865 ¶ 62 (1995).

<sup>18</sup> Sprint PCS is aware that a majority of the Commission stated recently that the language of Section 254(g) “is unambiguous and plainly applies to CMRS providers.” *Rate Integration For-*

the policies contained in the Commission's" 1976 *Rate Integration Order* — an *Order* that applied to landline interexchange carriers only.<sup>19</sup> In the words of the Commission, "Congressional conferees made clear that Congress intended section 254(g) to *incorporate* the Commission's *existing* rate integration policy":

Under that policy, since 1972, the Commission had *required any carrier that provides domestic interstate interexchange service* between the contiguous forty-eight states and various offshore points to integrate its rates for offshore points with its rates for similar services on the mainland.<sup>20</sup>

This "existing" policy, while applying to "any carrier" providing "interexchange service," was never applied to CMRS providers — providing yet further evidence that CMRS carriers do not provide "interexchange service."<sup>21</sup>

## **II. Application of Rate Integration Regulation to CMRS Providers Will Retard Market Developments That Benefit Consumers**

The Commission must exercise great care in extending to mobile service providers a policy designed for fixed, landline carriers. Mobile service is fundamentally different than fixed service. As noted above, mobile carriers serve a different market

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*bearance Order*, FCC 93-347 at ¶ 11. As Commissioner Powell has noted, this conclusion cannot be squared with the Commission's contrary holding only one year earlier that Section 254(g) "is, in our view, ambiguous." *Rate Integration Reconsideration Order*, 12 FCC Rcd 11812, 11819 ¶ 14 (1997).

<sup>19</sup> H.R. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. 132 (1996). *See also* S. Rep. No. 23, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 30 (1995)(Section 254(g) "simply incorporates in the 1934 Act the existing practice of . . . rate integration . . . . *This provision is not intended to alter existing geographic rate averaging policies as enforced by the FCC on the date of enactment.*")(emphasis added).

<sup>20</sup> *Rate Integration Reconsideration Order*, 12 FCC Rcd 11812, 11813 ¶ 2 (1997)(emphasis added)

<sup>21</sup> *Rate Integration Forbearance Order*, FCC 98-347, at ¶ 4 ("Prior to the 1996 Act, the Commission had not applied any rate integration obligations to CMRS providers."). It is no answer to state that "[i]f Congress had intended to exempt CMRS providers, it presumably would have done so expressly." *Id.* at ¶ 10. There was no need for Congress to specially exempt CMRS providers because in using the phrase "interexchange service" rather than "toll services," it had already indicated that CMRS providers were not covered by Section 254(g).

segment: “people on the move.”<sup>22</sup> They use different “rate structures such as larger local calling areas for CMRS, roaming charges, and charges for incoming calls.”<sup>23</sup> Most significantly, mobile carriers operate in a robustly competitive market, as Sprint PCS anticipates the Commission’s upcoming *Fourth Annual CMRS Competition Report* will document.

The focus of the current inquiry is on two surcharges imposed in some (but not all) CMRS calling plans: toll charges and roaming charges. However, as demonstrated below, the clear trend in the industry — a trend developed in response to market needs rather than to regulatory intervention — is to reduce if not eliminate these fees altogether.

Sprint PCS submits that if this trend is allowed to continue, soon the very “interstate, interexchange” CMRS services that the Commission is proposing to subject to rate integration regulation may no longer exist. Therefore, it is essential that if the Commission determines that it must apply unnecessary (and unsupported) regulations to these services, it must be careful not to retard the natural flow of competitive market forces to the detriment of the American public.

**A. The Mobile Services Market Has Undergone Revolutionary Changes to the Benefit of Consumers**

The mobile services market has undergone revolutionary changes in the four years since the Commission published its *First Annual CMRS Competition Report* in

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<sup>22</sup> *First Annual CMRS Competition Report to Congress*, 10 FCC Rcd 8844, 8865 ¶ 62 (1995).

<sup>23</sup> *PCIA Forbearance Order*, 13 FCC Rcd 16857, 16901 ¶ 91 (1998).

1995.<sup>24</sup> Consumers have clearly benefited by these market-driven changes — as evidenced by the fact that the number of mobile subscribers has nearly tripled over these four years (from 24.1 million customers at the beginning of 1995 to 69.2 million customers at the end of 1999) and by the fact that during this same period the average monthly CMRS bill has dropped by 30% (from \$56.21 to \$39.43).<sup>25</sup>

One of the most significant recent changes has been the dramatic increase in the size of local calling areas — and the corresponding decrease in the circumstances where long distance toll charges are imposed. In 1995, the Commission noted that that while some wide-area calling plans existed, with some “as large as a whole state,” such plans were “relatively rare”:

At the present time, . . . such plans (and customers using them) are the exception, not the rule. . . . [W]hile there is evidence that regional and national markets may be emerging, it appears that the vast majority of mobile radio services are provided in local and metropolitan geographic markets under current conditions.<sup>26</sup>

Today, many CMRS providers — including AirTouch, Bell Atlantic, BellSouth, PrimeCo, and SBC — offer toll free wide area calling plans that encompass entire regions of the country. And, three CMRS providers — AT&T Wireless, Nextel, and Sprint PCS — offer some type of national calling plan, with regional carriers forming alliances to simulate a national presence.<sup>27</sup> For example, under Sprint PCS’ national

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<sup>24</sup> See *First Annual CMRS Competition Report to Congress*, 10 FCC Rcd 8844 (1995).

<sup>25</sup> See CTIA, *Semi-Annual Wireless Industry Survey* (Dec. 1998).

<sup>26</sup> *First Annual CMRS Competition Report*, 10 FCC Rcd at 8850 ¶ 17 and 8866 ¶¶ 63-64. See also *Bell Atlantic Mobile/NYNEX Mobile Merger Order*, 10 FCC Rcd 13368, 13374 ¶ 20 (1995).

<sup>27</sup> See *Third Annual CMRS Competition Report*, 13 FCC Rcd at 19773. Indeed, earlier this week the regional carrier, AirTouch, announced a new flat-rated national calling plan. See Dow Jones Newswires, “AirTouch Offers Flat-Rate National Cellular Plan” (May 25, 1999).

“Free and Clear” plans, a consumer can place a call *anywhere* on Sprint PCS’ network and call *anywhere* within the U.S. *without* incurring a separate toll charge.

Similar changes have occurred in roaming.<sup>28</sup> The Commission noted in its 1997 *Second Annual CMRS Competition Report* that cellular carriers had finally started reducing their roaming charges as new PCS licensees were about to enter the market.<sup>29</sup> Today, only two years later, at least two carriers — Nextel and Sprint PCS — impose no roaming charges when a customer travels to a different market and uses its network.<sup>30</sup> AT&T Wireless offers a “digital one rate” plan where for \$89.99 monthly (and a one-year contract), a customer can avoid all roaming and toll charges regardless of whether the call is made “on network” or “off network.”<sup>31</sup> Sprint PCS recently announced a “travel option” where, for an extra \$19.99 monthly, a business customer can purchase a bundled set of up to 200 “off network” minutes and thereby avoid all per-minute and long distance charges normally associated with “off network” roaming.<sup>32</sup>

The dramatic growth in wireless subscribership and the significant reduction in average monthly bills documents that consumers have realized concrete savings

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<sup>28</sup> Since the beginning of 1995 CMRS subscribership has increased nearly 200% while roaming revenues have increased by only 91% during the same period. See CTIA, *Semi-Annual Wireless Industry Survey* (Dec. 1998).

<sup>29</sup> See *Second Annual CMRS Competition Report to Congress*, 12 FCC Rcd 11266, 11284-85 (1997).

<sup>30</sup> See *Third Annual CMRS Competition Report*, 13 FCC Rcd at 19787.

<sup>31</sup> See *id.* at 19777.

<sup>32</sup> See Sprint PCS Press Release, “Clearly Connecting the Virtual Office: Sprint Launches First Offerings in Full Suite of Superior Wireless Business Solutions,” [www.sprintpcs.com/news/1999/5\\_18\\_99.html](http://www.sprintpcs.com/news/1999/5_18_99.html) (May 18, 1999). Indeed, earlier this week *RCR* published an article, “Is Roaming Dead?” Now that many carriers are offering one-rate plans and buckets of minutes, some are asking if roaming is dead.” *RCR*, “Is Roaming Dead,” at 1 and 5 (May 24, 1999).

by these market-driven developments. Because there exists a real risk that a decision to begin regulating these CMRS offerings will stop (if not reverse) this trend, it is imperative that the Commission proceed with the utmost caution.

**B. The Commission Should Not Introduce Price Regulation Under the Guise of Regulating the Size of CMRS Local Calling Areas**

The Commission has requested comment on “whether there are wide-area calling plans or other types of plans that should not be subject to rate integration.”<sup>33</sup> Inasmuch as a “wide-area calling plan” defines a CMRS provider’s toll-free local calling area, the real question the Commission is asking is whether it should begin regulating the size of a CMRS provider’s local calling area. Not only would such new regulation constitute a dramatic departure from past Commission practice, but such an approach would also disserve consumers and the public interest.

It bears emphasis that the two proponents of CMRS rate integration do not agree on this issue. Alaska readily acknowledges that “CMRS calls for which there is no toll charge are not considered interexchange and, for this reason, may not properly be subject to rate integration.”<sup>34</sup> It further appears that Alaska recognizes the benefits of giving CMRS providers the flexibility to design their own local calling areas, because this flexibility has led to the development of national local calling areas where CMRS customers can avoid toll charges altogether.

Hawaii takes a different very position. According to Hawaii, any call “crossing an MTA [is] an interexchange call,” regardless of whether a separate toll sur-

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<sup>33</sup> *CMRS Rate Integration Further NPRM* at ¶ 9.

<sup>34</sup> *Id.* at ¶ 11.

charge is imposed.<sup>35</sup> While claiming that it “favors wide-area calling plans,”<sup>36</sup> Hawaii nonetheless asserts the Commission should stop giving CMRS providers the flexibility to design the scope of their own local calling area.<sup>37</sup> Apparently, Hawaii wants this Commission to begin regulating any local-area calling plan that is larger than an MTA.<sup>38</sup>

Hawaii’s argument that CMRS local calling areas should be limited to MTAs defies marketplace realities. Only a handful of all CMRS providers (A and B block PCS licensees) hold licenses corresponding to MTA boundaries. And, the largest A and B block PCS licensees — AT&T Wireless, PrimeCo and Sprint PCS — have defined their local calling areas in ways that transcend MTA boundaries.

The public would certainly not benefit through adoption of the Hawaiian position. In fact, consumers would be harmed by such an arrangement. Would AT&T Wireless and Sprint PCS, in the name of rate integration, be unable to offer their innovative and popular “one rate/airtime only” plans under which customers can make a nationwide call without incurring any toll charges?

Ironically, residents of Hawaii would be especially harmed by the position advocated by their state. For example, Sprint PCS offers its national “Free and Clear” plans in Hawaii. The state government of Hawaii, however, would preclude its citizens

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<sup>35</sup> *Id.* at ¶ 12.

<sup>36</sup> Hawaii Opposition, CC Docket No. 96-61, at 19 (Oct. 31, 1997).

<sup>37</sup> Hawaii Opposition, CC Docket No. 96-61, at 9-10 (April 16, 1999)(“The Commission . . . should not simply allow CMRS providers to ‘adopt their own local calling areas.’”).

<sup>38</sup> Hawaii’s position is actually more complicated — and more unintelligible. Hawaii would apply rate integration regulation to an “interexchange charge [that is] hidden within a ‘local’ airtime charge.” Hawaii Opposition, CC Docket No. 96-61, at 20 n.63 (Oct. 31, 1997). Yet, Hawaii has chosen not to share with either the Commission or industry precisely how carriers are to integrate “hidden” charges.

from calling friends, family, and business associates on the mainland without incurring toll charges — supposedly in the name of protecting the interests of its citizens.

Adoption of the Hawaiian position would also require Sprint PCS to restructure virtually every one (if not all) of its dozens of “standard” (or regional) service plans, plans designed specifically for regional preferences. For example, Sprint PCS offers service in the metropolitan area of Wichita, Kansas. Under its “standard” plan, Wichita customers while on the Sprint PCS network can, without incurring a separate toll charge, make a call anywhere within the states of Kansas and Oklahoma — states that encompass eight different MTAs. Would Hawaii, in the name of rate integration, have the Commission regulate Sprint PCS’ standard plans for which local calling areas encompass more than one MTA and more than one state? It is not apparent to Sprint PCS how the interests of Hawaii are impacted in any way by the calling patterns between residents of Kansas and Oklahoma.<sup>39</sup>

Assuming *arguendo* that Section 254(g) applies to mobile services, it applies at most to the “interstate interexchange telecommunications services” offered by CMRS providers. While the Communications Act does not define the term “interexchange service,” by definition the term does not include intra-exchange service. Congress has defined the term, “exchange service,” as “service within a telephone exchange . . . and which is covered by the exchange service charge . . . by which a subscriber can originate and terminate a telecommunications service.”<sup>40</sup> Thus, an “exchange service”

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<sup>39</sup> Rate integration regulation may make sense to carriers offering toll service using distance sensitive rates. However, such regulation makes little sense when applied to carriers using a postalized rate structure, and makes no sense when applied to carriers that do not impose toll charges at all.

<sup>40</sup> 47 U.S.C. § 153(47).

under the Act is any service whereby a customer can originate a call without being assessed a special surcharge.

Therefore, any CMRS local calling area (or wide-area calling plan) constitutes “exchange service” under the Act and is not subject to rate integration. Put another way, if a carrier offers a service whereby customers do not incur any toll charges for calls terminating anywhere in the U.S., the carrier effectively has one, national exchange. With this type of plan, the carrier does not offer “interexchange service,” and the intra-exchange service it does provide is not subject to a rate integration requirement.

The Commission has noted that for CMRS, “[m]arkets are defined by services, not legal or regulatory terms.”<sup>41</sup> The Commission should therefore decline the invitation to change its long-standing practice of relying on market forces to define the scope of CMRS local calling areas. Because Section 254(g) applies at most to “interstate, interexchange services,” the Commission should not, and under law may not, apply rate integration regulation to *any* intra-exchange service — even if the exchange is co-extensive with the entire United States.

**C. Rate Integration Should Not Apply to “Off Network” Services Provided to Customers Through Other Carriers**

The Commission has also asked whether rate integration regulation should be applied to roaming.<sup>42</sup> Roaming involves the contractual arrangements a CMRS provider executes with other CMRS providers so its customers can make and receive calls while in the service area of the host carrier. With roaming, the telecommunications

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<sup>41</sup> *Third CMRS Annual Competition Report*, 13 FCC Rcd at 19754.

<sup>42</sup> *See CMRS Rate Integration Further NPRM* at ¶ 29.

service is provided by the host network and through a carrier-carrier contractual arrangement, the host system is paid by the “home” carrier, which then decides how to recover these costs from its customers.<sup>43</sup>

Roaming is *sui generis* to CMRS; there is no fixed, landline service counterpart to roaming. Although most roaming calls are made within the local calling area of the visited system (which may or may not cross state and MTA boundaries),<sup>44</sup> some roaming calls could be considered to have an “interstate, interexchange” component if the customer originates a call the visited system classifies as a toll call or if the customer receives a call (because calls to a roamer are directed to the home system, which then forwards the call attempt to the visited system for delivery). The Commission has been struggling for several years with the issue of whether these “automatic” roaming arrangements should be regulated and, if so, how.<sup>45</sup> It has also been struggling with the state/interstate classification of roaming services as part of the universal service proceeding.<sup>46</sup>

Sprint has a variety of plans for customers interested in roaming “off network.” In addition to the “travel option” discussed above, in most markets (including Hawaii) Sprint PCS offers a two-tiered roaming schedule: \$0.39 per minute for local roaming and \$0.69 for roaming outside the local roaming area. For example, customers

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<sup>43</sup> See, e.g., *Public Notice*, “Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks,” CC Docket No. 94-54, 12 FCC Rcd 20317 (1998).

<sup>44</sup> See *CMRS Rate Integration Further NPRM* at ¶ 29.

<sup>45</sup> See, e.g., *CMRS Interconnection Obligations*, 11 FCC Rcd 9462 (1996); *Public Notice*, “Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks,” CC Docket No. 94-54, 12 FCC Rcd 20317 (1998).

of the New York City area pay only \$0.39 in most areas while roaming within New York, New Jersey, and Connecticut. In Hawaii, the \$0.39 rate is available throughout all the islands.

The Commission asks whether it would be possible for CMRS providers “to impose separate, uniform . . . roaming charges when a call is an interstate, interexchange call.”<sup>47</sup> Although this matter is complicated by the fact that CMRS calling areas do not correspond to state boundaries, the real question should be why the Commission would want to require a uniform roaming rate. Indeed, why would the Commission would want to engage in rate regulation of a competitive industry? Consumer interests are promoted when they enjoy a diversity of choices. Sprint PCS submits that its customers would perceive no benefit if as a result of new rate integration regulation, it were required to discontinue its local (*i.e.* less expensive) roaming rate and instead charge a single higher price for all “off network” roaming.

The real solution to the Commission’s (still undocumented) rate integration concerns is to allow the market to continue pushing innovation, simplicity, and lower prices. Only in a marketplace driven by competition is it more likely that surcharges for toll calls and roaming will become the exception rather than the rule.

### **III. Conclusion**

The Commission has spent the past three decades attempting to promote competition. These policies have borne fruit, especially in the intensely competitive CMRS industry. Now that competition has arrived and competitive forces are working

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<sup>46</sup> See *CMRS Universal Service Further NPRM*, 13 FCC Rcd 21252, 21270-71 ¶¶ 33-34 (1998).

<sup>47</sup> See *CMRS Rate Integration Further NPRM* at ¶ 29.

the Commission should stand aside and allow competitive forces to work for the benefit of consumers in the form of increased choices, innovative service offerings, and lower prices.

Respectfully submitted

**SPRINT SPECTRUM L.P.,**  
d/b/a SPRINT PCS

By:



Jonathan M. Chambers  
Roger C. Sherman  
Sprint Spectrum L.P. d/b/a/Sprint PCS  
1801 K Street, N.W., Suite M112  
Washington, D.C. 20006  
(202) 835-3617

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## **Certificate of Service**

I, Tony Traini, hereby certify that on May 27, 1999, I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of these Sprint PCS comments.

**\*Ari Fitzgerald**  
Legal Advisor to Chairman Kennard  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**\*Paul E. Misener, Senior Legal Advisor**  
to Commissioner Furchtgott-Roth  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**\*Dan Conners**  
Legal Advisor to Commissioner Ness  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**\*Peter A. Tenhula**  
Legal Advisor to Commissioner Powell  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**\*Karen Gluick**  
Legal Advisor to Commissioner Tristani  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**\*Thomas Sugrue, Chief**  
Wireless Telecommunications Bureau  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**\*Ms. Magalie Roman Salas, Secretary**  
Federal Communications Commission  
The Portals, TWA325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

ITS  
1231 20<sup>th</sup> Street, N.W.  
Washington, DC 20554

John W. Katz  
Special Counsel to the Governor  
Director, State-Federal Affairs  
Office of the State of Alaska  
444 North Capitol, N.W., Suite 336  
Washington, DC 20001

Herbert E. Marks  
James M. Fink  
Squire, Sanders, & Dempsey, L.L.P.  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 407  
Washington, DC 20044

Kathryn Matayoshi, Director  
Charles W. Totto, Executive Director  
Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs  
250 South King Street  
Honolulu, HI 96813

  
\_\_\_\_\_  
Tony Traini