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

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| In the Matter of | ) | |
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| Policy and Rules Concerning the Interstate Interexchange Marketplace | ) | CC Docket No. 96-61 |
| | ) | |
| Implementation of Section 254(g) of the Communications Act of 1934, as amended | ) | |

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## COMMENTS OF AMERICA ONE COMMUNICATIONS, INC.

America One Communications, Inc. ("America One") hereby submits these comments concerning the above-captioned Notice of Proposed Rulemaking ("NPRM"). America One is a leading reseller of wireless services in the United States. Resellers benefit consumers by increasing service and price options, and by providing services to underserved and unserved market segments.[1]

### INTRODUCTION AND SUMMARY

In the First Rate Integration Reconsideration Order, (the "Rate Integration Order")[2] the Commission extended the rate integration requirement to the CMRS industry (including resale carriers). The record underlying that Order, however, was neither complete nor accurate on the impact of applying rate integration to CMRS resellers. The Commission did not have an opportunity to consider the significant service coverage and rate-setting differences between wireline interexchange service and CMRS resale. A review of these differences leads to the conclusion that the policy reasons underlying the rate integration requirement in the wireline long-distance context do not apply to CMRS resale. Accordingly, as Commissioner Powell points out in his separate statement on the NPRM, the Commission should take this opportunity to re-evaluate whether the rate integration requirement should apply at all in certain CMRS contexts.

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[1] See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, Memorandum Opinion and Order, WT Docket No. 98-100 (rel. July 2, 1998) ¶ 35.
[2] 12 FCC Rcd 11812 (1997).

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As a general matter, the rate integration requirement should not apply to CMRS carriers. The rate integration policy was designed for the wireline long-distance market in which carriers have nationwide networks. Historically, the policy was premised on concerns that nationwide long-distance carriers might discriminate unreasonably against consumers in non-contiguous states and U.S. territories. These concerns are not applicable in the CMRS industry, in which the vast majority of carriers have regional rather than nationwide networks, and only a few of these carriers are licensed to provide service in non-contiguous states or territories. Further, there is nothing in Section 254(g) of the Communications Act, 47 U.S.C. § 254(g), which suggests that Congress intended for the rate integration requirement to apply to CMRS.

Particularly in the resale context, application of the rate integration policy to CMRS is both anti-competitive and contrary to consumer interests. In the wireline long distance market, there are several carriers with nationwide "footprints" and it is common for resellers of long-distance services to resell the services of only one wireline carrier. As a result, wireline resellers do not have to confront the problem of cross-carrier rate differences. By contrast, in CMRS, the vast majority of facilities-based carriers do not have nationwide footprints. To the extent a CMRS reseller competes in several states and regions of the country, it must resell the services of several different facilities-based carriers, which inevitably will price their services differently.

Faced with an integration requirement, a CMRS reseller must choose between two unsatisfactory alternatives. It may charge some consumers higher rates than it otherwise would to maintain an "integrated" long-distance rate at least equal to the highest long-distance rate that it is charged by the carriers whose services it resells. Or, it may decline to compete in certain markets or to provide certain services. In either case, consumers suffer. The Commission should, therefore, revise its rate integration policy to exclude CMRS resale carriers.

If, however, the CMRS rate integration requirement is retained, it should apply only to calls for which a separate toll charge is assessed. CMRS calling plans that allow customers to terminate calls over a large geographic area with no separate toll charge are not "interexchange" services under Section 254(g) and should not be subject to the rate integration requirement. Similarly, the Commission should not apply the rate integration policy to "wide-area" plans that allow customers to

complete calls within a given area without incurring roaming and/or toll charges. Finally, resale carriers should not be required to integrate rates for cellular and PCS services. The "wholesale" rates charged for cellular and PCS services by facilities-based carriers differ greatly. CMRS resellers simply cannot integrate the rates for cellular and PCS services and offer both on a competitive basis.

## DISCUSSION

### I. The Rate Integration Requirement Should Not Apply To CMRS Resale Carriers.

When the Commission determined, in the Rate Integration Order,[3] that the rate integration requirement would apply to CMRS carriers and, by extension of its wireline rate integration policies, to resellers of those services, it had before it an inadequate and incomplete record on the issue.[4] Had the Commission enjoyed the benefit of a full record on this matter, America One believes that it would have concluded that extension of the rate integration requirement to CMRS resale carriers is anti-consumer and anticompetitive.

#### A. The Rate Integration Requirement Is Inapposite To CMRS Resale.

Unlike wireline facilities-based, long-distance carriers, CMRS carriers serve limited geographic areas. A CMRS resale carrier who operates on a regional or nationwide scale must resell the services of a number of CMRS carriers.[5] The facilities-based carriers whose services are resold do not all charge the same rate for long-distance or roaming service. As a result, the CMRS reseller often has a different cost structure in every region of the country in which it competes and for every package of services that it provides, depending on the rates charged by the underlying facilities-based carriers.

CMRS resale carriers are, for the most part, conduits for long-distance and roaming charges imposed by the underlying, facilities-based carriers. When a

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[3] 12 FCC Rcd 11812, 11821-22 (1997).

[4] See, e.g., Policy and Rules Concerning the Interstate Interexchange Marketplace; CC Docket 96-61, Dissenting Statement of Commissioner Powell (rel. Jan. 28, 1999) at 3 & n.5. Only one cellular carrier filed comments in response to the original notice and no party addressed the issue of extending the rate integration policy to CMRS providers. See Policy and Rules Concerning the Interstate Interexchange Marketplace, Memorandum Opinion and Order (rel. Dec. 31, 1998) ¶ 17.

[5] Most CMRS resale carriers resell the services of several facilities-based carriers. See, e.g., 16 Mobile Phone News 24 (June 15 1998) at 1 (Topp Telecom Inc. resells the services of more than 60 wireless carriers).

reseller's customer makes a long-distance call on his or her mobile phone, the reseller generally is charged for the long-distance service by the facilities-based carrier whose service it is reselling. As an economic matter, a reseller must pass that charge through as a long-distance charge to its customer. The same holds true for roaming charges. The reseller cannot control the rates that it is charged by the facilities-based carriers whose services it resells, nor does it define the "calling area" that the facilities-based carriers use to determine when to impose roaming or long-distance charges.

Because resellers generally have no discretion regarding the costs that they incur when their customers roam or make long-distance calls, most resellers would, absent the rate integration requirement, charge a "market" rate for long-distance and roaming in each region of the country, *i.e.*, a rate competitive with that of the facilities-based carriers in the region. For example, if carrier A, whose service is resold in the midwestern United States, charges the reseller $.15 per minute for long-distance service, and carrier B, whose service is resold on the Atlantic seaboard, charges the reseller $.10 per minute for long-distance service, the reseller generally would, absent a rate integration requirement, charge its Atlantic seaboard customers a lower long-distance rate to reflect its lower costs in that market. The same holds true for roaming charges in most instances.

There is nothing unreasonably discriminatory about the difference in rates that the reseller would charge absent the rate integration requirement. In the hypothetical above, Carrier A charges $.12 per minute for long-distance service because that is the "market" rate in Carrier A's region. The market rate in Carrier B's region is somewhat lower. Assuming they are "unaffiliated," the Commission's rules do not require Carrier A and Carrier B to charge the same rate (*i.e.*, to integrate their rates) for long-distance service in both regions, and the difference in their rates is not regarded as "discriminatory," but as a function of geographic differences in the market.

Similarly, it is not "discriminatory" when a resale carrier charges one rate for reselling Carrier A's services in the midwest and a different rate for reselling Carrier B's services on the Atlantic seaboard. The same economic forces driving the difference in the underlying carriers' rates are responsible for the disparity in the resale carrier's rates. It is no more necessary to require the reseller to integrate the

rates that it charges for reselling Carrier A's and Carrier B's services than it is to require Carrier A and Carrier B to integrate their rates with each other.

### B. The Rate Integration Requirement Leads To Higher Consumer Prices And Less Competition.

As a matter of simple economics, CMRS resellers forced to integrate their rates across the service areas of different facilities-based carriers must choose between two highly undesirable alternatives. The resale carrier may charge all of its customers a long-distance rate that is equal to the highest long-distance rate that it pays to the facilities-based carriers whose services it resells. This places the resellers at a competitive disadvantage in markets where the facilities-based carriers charge lower long-distance rates. In the alternative, the reseller may absorb (*i.e.*, not recover) the difference between its long-distance rates and any higher long-distance rate that it pays to a facilities-based carrier. This second "alternative" tends to make entry into certain markets prohibitively expensive. Ironically, the resulting barrier to entry would be greatest in those markets in which the facilities-based carriers have the highest long-distance rates and in which competitive entry is most needed.

No party, save perhaps the incumbent facilities-based carriers who are resistant to resale under any circumstances, benefits from the policy. Accordingly, the Commission should "— for the first time in this proceeding —"[6] take a hard look at the rate integration policy in the CMRS context and conclude that the policy should not apply to CMRS resale carriers.[7]

## II. Wide-Area Calling Plans Should Not Be Subject To The Rate Integration Requirement.

In the NPRM, the Commission has asked for comment on whether wide-area calling plans should be subject to the rate integration requirement and, if not, what types of plans qualify as wide-area calling plans.[8]

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[6] Separate Statement of Commissioner Powell at 1.

[7] To the extent that the Commission regards itself bound by Section 254(g) to apply the rate integration policy to CMRS resale carriers, it should, for all of the reasons set forth above, forbear from applying that policy to CMRS resale carriers under Section 10 of the Communications Act, 47 U.S.C. § 160. Resale carriers do not present a rate discrimination problem, application of the policy in this context disserves consumer interests, and the public interest would be served by allowing resale carriers to compete on a market-by-market basis.

[8] NPRM ¶¶ 9-16.

### A. The Rate Integration Policy Should Apply, If At All, Only To Separately Billed Toll Charges.

As set forth above, the rate integration requirement should not apply to CMRS resale carriers. If, however, the Commission decides to retain the requirement in this context, it should define CMRS interexchange charges subject to the requirement as those that are separately billed, or identified, as toll charges.

Section 254(g) directs the Commission to establish rate integration requirements for "interstate, interexchange" services. Thus, to the extent that the Commission is going to apply the rate integration requirement to CMRS services, it must, consistent with the reach of its statutory authority, determine what CMRS services constitute "interexchange" services and limit the application of its rate integration policy only to those services.

CMRS carriers should be afforded substantial leeway to define their own service "exchange" areas. As the Commission has noted, "interexchange service" is not defined in the Communications Act, nor are CMRS carriers normally limited in their discretion to define "exchange" areas, *i.e.*, the area in which a call is regarded as a local call to which no separate toll charge applies, for service purposes.[9]

By affording CMRS carriers discretion to establish exchange areas of any size or description, the Commission will give carriers maximum flexibility to respond to market conditions and consumer demands. In addition, allowing CMRS carriers to define their own exchange areas will promote competition because carriers will be able to compete on the basis of the reach of their "local calling" or "exchange" areas. In terms of Section 254(g), therefore, CMRS "telephone exchange service" should constitute any service for which no separate toll charge is assessed. Conversely, a "telephone toll service" or "interexchange service" would be any service for which the CMRS carrier assesses a separate toll charge.

The CMRS rate integration requirement should therefore apply, if at all, only to calls for which a separate toll charge is assessed. CMRS calling plans that permit customers to terminate calls over a large geographic area with no separate toll charge are not "interexchange" services, even if that plan includes nationwide service. By construing Section 254(g) to reach only services for which a separate toll

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[9] Id. ¶ 11. Local wireline telephone companies, too, have flexibility in defining the size of their "exchange" areas.

charge is assessed, the Commission will "foster customer choice, pricing flexibility and [foster] competitive development of the industry."[10]

Similarly, "roaming" charges within a plan are not toll charges and a call is not an "interexchange" call merely because roaming charges are applied. Indeed, roaming calls quite often are entirely "local" in the sense that they originate and terminate within a small area in the roamed-upon carrier's network. It should not be assumed, therefore, that a call for which a separate roaming charge is assessed also is a "long-distance" call subject to the rate integration requirement.

### B. The Rate Integration Policy Should Not Apply To "Wide-Area" Plans That Allow Customers To Complete Calls Within A Defined Area Without Incurring Roaming And/Or Toll Charges.

"Wide-area" calling plans for which no separate toll charges are assessed allow CMRS carriers to tailor their service plans to the needs of their customers and to respond to market forces. The Commission should define broadly "wide-area" calling plans in terms of whether a subscriber may complete a call within the defined area without incurring toll charges. Therefore, the term "wide-area" should be deemed to include plans in which there is no roaming or toll charge for calls placed within an area, as well as plans in which there may be a roaming charge, but no toll charge.

For many of the same reasons that the rate integration rules should apply, if at all, only to separately billed toll charges, wide-area calling plans should be exempt from the rate integration requirement. In defining an area subject to a wide-area calling plan, a CMRS carrier has, in essence, defined an "exchange" area. Calls within the defined area are not, therefore, "interexchange" calls and necessarily fall outside of the Commission's statutory charge under Section 254(g). Further, there is no evidence that wide-area plans are being used to discriminate against geographically "insular"[11] groups of customers or to evade the rate integration requirement.

On the other hand, if carriers are required to integrate wide-area calling plans, they will limit the service choices and pricing plans available in the market. Any plan that cannot be made available to all consumers will be made available to no

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[10] Id. ¶ 15.
[11] Id. ¶ 16.

consumers. Section 254(g) was not intended to stifle creative competition in the development of CMRS pricing plans such that a single vanilla plan or a few vanilla-like plans are all that is available in the market. For all of these reasons, the Commission should not apply its rate integration policy to CMRS wide-area calling plans.

## III. The Rate Integration Requirement Should Not Apply To Airtime And Roaming Charges Associated With Interexchange Calls.

Airtime and roaming charges are not "interexchange" charges. Neither charge varies depending upon whether the call to which they are applied is terminated to a local number or a long-distance number (*i.e.*, whether there is a toll charge associated with the call). On that basis alone, airtime and roaming charges, even if associated with a toll call, should not be subject to the rate integration requirement.

## IV. Rates For Cellular And PCS Services Should Not Be Required To Be Integrated.

Finally, the Commission has asked for comment on whether "rates for cellular and broadband PCS services should be integrated."[12] America One opposes such a broad application of the rate integration rule. Rate integration is not normally required for different classes of services.[13] The Commission should not depart from this policy in the case of cellular and PCS services.

Cellular and PCS service providers typically have very different cost structures. To require carriers to integrate the rates for these different services is to force a square peg in a round hole. The result will be to tie the hands of competitors. Carriers that would otherwise offer both services in response to market demand may be forced to decide between taking a loss on one service or simply providing only cellular <u>or</u> PCS service rather than both.

This problem is magnified in the CMRS resale context. As noted above, the resale carrier has little or no control over the cost of the service — if it is going to resell PCS services, it must pay the PCS carrier's rate, and if it is going to resell cellular service, it must pay a cellular carrier's rate. The only discretion that the reseller has is whether or not to offer any particular service in any particular region.

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[12] <u>Id.</u> ¶ 33.
[13] <u>Id.</u> ¶ 32.

If the Commission's regulations require resale carriers to integrate cellular and PCS rates, resale carriers may not be able to offer both types of service on a competitive basis. Restricting the ability of resale carriers to compete with a full package of services will not advance the policies underlying Section 254(g). Instead, it will reduce the number of service options available in the market and stifle competition to the detriment of consumers.

## CONCLUSION

For the reasons set forth above:

1) The Commission should revise its rate integration policy such that CMRS resale carriers are not required to integrate rates for resold long-distance services.

2) To the extent that the rate integration policy applies in the CMRS context, the Commission should require the integration only of separately billed toll charges.

3) The Commission should define broadly "wide-area" plans to include plans in which there is no long-distance and/or roaming charge for calls placed within a certain area, and should exempt these plans from the rate integration requirement.

4) The Commission should not extend the rate integration policy to CMRS roaming and airtime charges that are associated with long-distance calls.

5) The Commission should abandon any plan to require the integration of cellular and PCS rates.

Respectfully submitted,

**AMERICA ONE COMMUNICATIONS, INC.**

Henry Goldberg
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229-19th Street, N.W.
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

Raidza Wick, Esq.
2650 Park Tower Drive
4th Floor
Vienna, VA 22180
(703) 208-2885

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