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

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In the Matter of

Local Competition and) CC Docket No. 99-301
Broadband Reporting)

COMMENTS OF BELL ATLANTIC MOBILE, INC.

Bell Atlantic Mobile, Inc. (BAM)¹ submits these initial comments on the Commission's proposals in this docket to impose new information reporting requirements on telecommunications carriers.²

BAM understands the Commission's interest in obtaining additional data from all local exchange carriers – CLECs as well as ILECs – in order to monitor the growth of wireline competition, and agrees that there is a basis to obtain data from those entities. But it strongly opposes extending any new reporting requirements to providers of broadband commercial mobile radio services (CMRS), which are not

¹ BAM provides commercial mobile radio service (CMRS) in eighteen states and the District of Columbia.

² *Local Competition and Broadband Reporting, Notice of Proposed Rulemaking ("Notice")*, CC Docket No. 99-301 (rel. October 22, 1999), 64 Fed.Reg. 59719 (specifying initial comment date of December 3, 1999).

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local exchange carriers.³ The *Notice* supplies no justification for doing so. Imposing another paperwork requirement on CMRS providers, particularly as an ongoing obligation, would be needless, excessive regulation.

1. There Is No Basis to Force Submission of CMRS Subscriber Data.

The *Notice* proposes to collect state-by-state subscriber data from all broadband CMRS providers with more than 50,000 subscribers nationwide. *Id.* at ¶ 30. It does not demonstrate, however, why collecting this data is necessary, or even relevant, to achieving the stated goal. The sole rationale offered is that, once the Commission has the data, it “will be able to develop an accurate sense of the developing potential of mobile telephony to substitute for wireline local service.” *Id.* BAM disagrees.

First, the specific number of subscribers a CMRS provider has in a state provides no useful information about the development of competition to *wireline* service. While the public is increasingly relying on mobile handsets to make and receive calls, subscriber counts supply no evidence on whether a particular subscriber has purchased service *as a substitute for* landline service. Subscriber data do not reveal whether that subscriber uses his or her service *instead of* subscribing to a LEC’s service, or *in addition to* LEC service. The proposed requirement would generate thousands of reports from CMRS carriers that would

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996), at ¶ 1004 (subsequent history omitted) (determining that CMRS providers will not be classified as LECs).

provide the Commission with absolutely nothing relevant to the purpose for collecting the information in the first place.

Second, forced submission of CMRS subscriber counts would also not supply any relevant data as to the second goal identified in the notice – monitoring of the deployment of broadband services. While the information collection requirements proposed for LECs would require separate reporting for lines used for such services, that distinction is not proposed for CMRS, nor could it be, because subscribers to CMRS services are not segregated between subscribers to “broadband” and “other” services. Instead, subscribers choose among diverse offerings (varying from carrier to carrier and market to market) that are expected to include broadband-type offerings, but wireless broadband technology is not a discrete service with its own set of subscribers as it is in landline markets.

Third, the Commission already has extensive data about numbers of CMRS subscribers. Its annual competition reports have cited reams of statistics about subscribers, gathered from numerous sources such as investment firms, marketing companies, and other reports already prepared by carriers for governmental filings and other purposes.⁴ The *Notice* fails to explain why this extensive information is

⁴ For example, the most recent competition report identified the number of subscribers to the top 25 “mobile telephone operators.” *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Conditions With Respect to Commercial Mobile Services, Fourth Report*, FCC 99-136 (rel. June 24, 1999), at Table 4. Requiring CMRS carriers to submit the same data would serve no purpose.

not sufficient. If the Commission wants “an accurate sense of the developing potential of mobile telephony to substitute for wireline local service,” *Id.* at ¶ 30, requiring new reports will not give it any better information than it already has.⁵

Fourth, the *Notice’s* cursory discussion of CMRS data collection requirements ignores the requirement that it impose new CMRS regulation only after making a record-based determination that the information is clearly necessary to achieve a stated purpose. In its 1993 amendments to Section 332 of the Communications Act, Congress mandated that the CMRS market be governed to the greatest extent possible by competitive forces, not regulation.⁶ The Commission has acknowledged that it bears a high legal burden before it imposes new CMRS regulation.⁷ The *Notice* does not mention, let alone meet, that burden.

⁵ The *Notice* incorrectly states, “Mobile telephony providers do not report subscribership data to the Commission, and we therefore do not know the precise number of mobile telephony providers with at least 50,000 subscribers.” *Id.* at ¶ 39. All mobile carriers, however – regardless of size – must file annual reports paying the required “regulatory fees.” See 47 C.F.R. § § 1.1152 (schedule of fees for wireless services). Those fees are calculated based on the number of subscribers (for the reports filed in September 1999, the fee was 32 cents per subscriber). The Commission thus *does* have specific subscriber data for all broadband CMRS providers. (BAM and, it believes, other carriers, submit this data with a request for confidential treatment.)

⁶ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66. In implementing Section 332, the Commission confirmed Congress’ goal of “promoting opportunities for economic forces – not regulation – to shape the development of the CMRS market.” *Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order*, 9 FCC Rcd 7988, 8004 (1994).

⁷ It later held that “Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation for which the
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2. Any Collected CMRS Subscriber Data Must Be Kept Confidential.

BAM is equally opposed to the Commission's tentative conclusion that "all local competition and broadband information collected pursuant to the proposed survey be made available to the public." *Notice* at ¶ 74.

First, the rationale for this conclusion does not support it. Disclosure of the individual carrier reports is clearly not necessary to assess the degree to which competition is developing in local telephone markets. The same goal would be fully achieved by disclosing only aggregate data – for example, the number of lines that are held by all CLECs or cable firms in a state. Aggregated carrier information is equally sufficient should the Commission require broadband CMRS data. It would be entirely irrelevant to the reason for collecting the information that a *particular* CMRS provider had certain subscribers who had migrated from landline service (even assuming such data were available, which it is not).

Second, state-by-state CMRS subscriber counts are competitively sensitive data that is not, to BAM's knowledge, revealed except in limited situations and then only under confidentiality arrangements. The highly competitive nature of wireless service makes subscriber counts extremely valuable commercial information that a carrier will zealously guard against disclosure. This is particularly true for carriers

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Commission and the states could develop a clear cut need." *Petition of the Connecticut Dep't of Public Utility Control*, 10 FCC Rcd 7025, 7031 (1995), *aff'd*, 78 F.3d 842 (2d Cir. 1996).

operating in smaller states or newer carriers, where trends in market share can have significant impacts on that carrier's ability to secure credit, but it is also true for larger carriers. Revealing this information could potentially undermine the very competition that the Commission seeks to promote. No other competitive industry is forced to reveal in such a detailed way such competitively sensitive information.

The trade secret and confidential nature of subscriber data has been recognized by states and by the North American Numbering Council (NANC) in several contexts. For example, the New York Public Service Commission (PSC) formerly required cellular carriers to submit data for the purpose of monitoring the development of competition. However, it granted confidentiality to the subscriber data which was submitted, expressly recognizing the commercially valuable and trade secret nature of this information.⁸ Notably, the PSC *repealed* the reporting requirement for cellular carriers altogether in 1997, because it found that sufficient information on the cellular industry was available from public sources.⁹

⁸ *In the Matter of the Rules and Regulations of the Public Service Commission as to the Proposed New Annual Report Schedules of Other Common Carriers, AT&T Communications of New York, Local Exchange Carriers and a Completely New Annual Report for Cellular Communications Companies, Order Approving Annual Report Forms*, Case No. 90-C-0018 (issued February 7, 1992).

⁹ *Proceeding on Motion of the Commission to Monitor the Development of Competition, Order Adopting Telecommunications Competition Monitoring Report*, Case No. 96-C-0647 (issued May 20, 1997).

NANC has also acknowledged the importance of treating as confidential the subscriber or lines-in-service data that is used to monitor number utilization. NANC has advocated that this information should only be released in aggregate form and that carrier-specific data should not be publicly available. In fact, NANC has recommended that states should not even be able to *obtain* carrier-specific data, unless a legally enforceable confidentiality agreement is in place.¹⁰ Many states already have confidentiality procedures in place to guard against disclosure of carrier-specific data. This Commission should also acknowledge that CMRS data must not be revealed except on an aggregate basis.

The *Notice* does not acknowledge the highly sensitive nature of subscriber data in the wireless industry when that data is disclosed other than on an industry-wide basis. While BAM opposes the collection of any wireless data as unnecessary and thus unlawful, any such collection that may be required must at a minimum treat that data as confidential, and as exempt from disclosure under the Commission's information collection rules.¹¹

¹⁰ The Commission has described NANC's recommendations for keeping carrier-specific data confidential in the pending proceeding to explore new number utilization rules. *Number Resource Optimization, Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999), at ¶ 78.

¹¹ The Commission acknowledges that its information collection rules (47 C.F.R. § § 0.459 et seq.) grant any party the right to request confidential treatment of any materials submitted to the Commission. *Notice* at ¶ 76. But relying on this case-by-case procedure would burden the Commission with having to process numerous requests for confidentiality. The far better course is to grant confidential treatment in advance to these reports. Again, this would

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In sum, there is no basis for the Commission to extend the carrier reporting requirements being considered in this docket broadband CMRS, and it should not do so.¹² In addition, any new carrier reporting rules should grant confidential treatment to all carrier reports.

Respectfully submitted,

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not prevent the Commission from releasing aggregated information that is not carrier-specific.

¹² The proposed change to 47 C.F.R. § 20.15(b) to sweep broadband CMRS providers within the landline reporting rules should thus not be made.