

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

he Matter of)
)
SOUTHWESTERN BELL MOBILE)
SYSTEMS, INC.)
)
Petition for a Declaratory Ruling Regarding)
Just and Reasonable Nature of, and)
the Law Challenges to, Rates Charged)
by CMRS Providers When Charging for)
Incoming Calls and Charging for Calls in)
One-Minute Increments)

_____ Docket No. _____

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Commission

~~COMMENTS OF~~
~~THE RURAL TELECOMMUNICATIONS GROUP~~

The Rural Telecommunications Group ("RTG"), by its attorneys, and pursuant to the
authorization extended in the Federal Communications Commission's ("FCC" or "Commission")
Public Notice released November 24, 1997 (DA 97-2464), hereby respectfully submits these
comments in response to the Petition for Declaratory Ruling ("Petition") submitted by
Southwestern Bell Mobile Systems, Inc. ("SBMS") in the above-captioned proceeding. RTG
supports SBMS's contention that market forces, rather than government regulation, should
govern Commercial Mobile Radio Services ("CMRS") practices, and that the states should be
precluded from exercising any authority over the setting of CMRS rates.

I. STATEMENT OF INTEREST

RTG is a group of concerned rural telephone companies who have joined together to
coordinate the efforts of all rural telephone companies to speed the delivery of new, efficient and

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**Before the
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SOUTHWESTERN BELL MOBILE)
SYSTEMS, INC.) **_____ Docket No. _____**
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Petition for a Declaratory Ruling Regarding)
the Just and Reasonable Nature of, and)
State Law Challenges to, Rates Charged)
by CMRS Providers When Charging for)
Incoming Calls and Charging for Calls in)
Whole-Minute Increments)

To: The Commission

**COMMENTS OF
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The Rural Telecommunications Group (“RTG”), by its attorneys, and pursuant to the invitation extended in the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice released November 24, 1997 (DA 97-2464), hereby respectfully submits these comments in response to the Petition for Declaratory Ruling (“Petition”) submitted by Southwestern Bell Mobile Systems, Inc. (“SBMS”) in the above-captioned proceeding. RTG supports SBMS’s contention that market forces, rather than government regulation, should determine Commercial Mobile Radio Services (“CMRS”) practices, and that the states should be precluded from exercising any authority over the setting of CMRS rates.

I. STATEMENT OF INTEREST

RTG is a group of concerned rural telephone companies who have joined together to promote the efforts of all rural telephone companies to speed the delivery of new, efficient and

innovative telecommunications technologies to the populations of remote and underserved parts of the country. RTG especially advances the interests of rural telephone companies in wireless technologies. RTG members include CMRS licensees and applicants for CMRS licenses.

II. DISCUSSION

A. **The Increments of Time by which CMRS Is Billed Must Be Determined by the Provider, Not Government, If the Goal of Developing Competition Via Marketplace Forces Is to Be Achieved**

RTG members were polled by questionnaire about their CMRS billing practices; specifically whether they billed for incoming calls, and what time increment they utilized to calculate their charges. All respondents bill their subscribers for incoming calls, and the increments of time by which charges are calculated vary from whole-minute increments, to 30-second increments with a 30-second minimum, to six-second increments. Some respondents offer a flat-fee plan. One respondent reported that it intends to offer real-time billing in the future, and another member is planning to offer one-second billing units on two of its networks. Respondents indicated that their competitors also varied in their choice of billing units -- some billed in whole-minute increments, while others billed per second. While respondents were equally divided on the issue of whether billing in less than whole-minute increments was a competitive advantage, all respondents, including those that bill in whole-minutes, believe that billing units should be determined by the CMRS provider, not mandated by government.

RTG concurs with SBMS's argument that:

[t]he presence of so many rate options not only shows that the marketplace is working well, but also allows consumers to choose the rate plan they find most desirable and so best serves the public interest. Thus, the Commission should

declare that a CMRS provider's choice of rate plans are competitive rate-setting decisions which are best left to the increasingly competitive marketplace.¹

RTG respondents that do bill in less-than-whole-minute increments indicated that doing so enhances the subscriber's perception that the service is a good value and appeals to the customer who would balk at the notion of paying for air time and services he or she had not used.

Respondents billing in whole-minute increments indicated that this was the billing unit that works best for them. Neither class of billers, however, had any reservations about other CMRS providers choosing a billing method different from their own.

CMRS providers, whether they are in large or small markets, offer their services to the public pursuant to the plans they feel will attract business. Those providers who choose a plan that is attractive to their market base will have subscribers, and those who choose a plan that fails to meet the requirements of their customers will likely lose those customers to a competitor with a better plan. It is antithetical to the workings of competition for any regulatory body to direct the manner in which CMRS charges should be calculated. Rounding up to the next minute may perfectly suit one provider's market, while real-time or one-second increments may be the only method that sustains business in another market. Any regulation that selects any method over another can only accommodate a portion of the public, while permitting the CMRS provider to choose the billing unit based on its survey of its market means that the public is being served on its own terms.

¹ Petition of SBMS at 6.

B. The States Must Be Precluded from Regulating the Billing Unit Methods Employed By CMRS Providers under both Legal and Practical Terms

All RTG respondents are adamant that the states must not have any regulatory authority over how CMRS is billed. SBMS accurately notes that “[i]f a state were allowed to regulate either which services a CMRS provider could charge for or how much it could charge, Congress’ intent in Section 332(c)(3) [of the Communications Act of 1934, as amended] would be thwarted.”² Section 332(c)(3) of the Communications Act states in no uncertain terms that “no State . . . shall have any authority to regulate the . . . rates charged by any commercial mobile service.”³ The billing plan is part and parcel of the service offered, insofar as customers subscribe to a particular CMRS offering because they also are attracted to the price and manner in which the price is assessed. In a CMRS marketplace that is growing increasingly competitive each day, customer choice replaces the need for state intervention in terms of rate regulation. Customers who determine that a carrier’s rates are unjust or unreasonable can cancel their service and find an alternative means of communication. Any attempt by the states to regulate the CMRS billing unit is tantamount to the rate regulation prohibited by Section 332(c)(3).

² SBMS Petition at 14-15.

³ 47 U.S.C. § 332(c)(3).

On practical terms, the geographical nature of CMRS precludes the states from regulating the billing methods of CMRS providers. As SBMS states, many CMRS providers operate single systems across state lines as well as separate systems in various states, and disparate state regulation would have a serious adverse impact on the operating costs of providers who would be forced to create multiple operating systems to meet the billing and rate requirements of the states in which it operates.⁴

State regulation would increase the cost paid by many consumers of CMRS as providers ante up to cover the physical network and administrative costs of complying with differing state regulations. This is especially true for small and rural carriers. As one RTG member stressed, the high cost of regulation cannot be passed along to the rate payer of small companies in rural areas, because small, rural carriers must provide services at reasonable costs in order to compete. Small, rural carriers lack the population base that would be necessary in order to raise rates to the extent that the additional costs of complying with multiple state regulations could be recovered.

RTG maintains that the Commission must be the governing authority over CMRS. The states have no legal right to do it, and there are no practical means by which state regulation could be accommodated.

⁴ See SBMS Petition at 30.

III. CONCLUSION

RTG supports SBMS's Petition to the extent that it advocates for CMRS providers' ability to select the billing methods that best serve their subscribers, and argues against state involvement in CMRS billing and rate setting practices.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP

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