

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of DISPATCHES)
)
 Implementation of Sections 3(n) and 332 of the)
 Communications Act) GN Docket No. 93-252
)
 Regulatory Treatment of Mobile Services)
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)
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ORDER

Adopted: February 25, 2000

Released: March 10, 2000

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

1. On February 3, 1994, the Commission adopted final rules in the *CMRS Second Report and Order*,¹ which implemented revisions to Section 3(n) and 332 of the Communications Act of 1934 (the Act), which were enacted in the Omnibus Budget Reconciliation Act of 1993.² These revisions to Sections 3(n) and 332 of the Act created a comprehensive framework for the regulation of mobile radio services, including existing common carrier mobile services, private land mobile services, and new services such as Personal Communications Services. Between May 19 and July 1, 1994, the Commission received 15 petitions for reconsideration of the *CMRS Second Report and Order*, 19 oppositions, and 12 replies addressing a broad range of issues.

2. Some issues raised by petitioners on reconsideration are outside the scope of the *CMRS Second Report and Order* and are dismissed on that basis.³ Many of the issues raised on reconsideration

¹ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*).

² The amendments to Sections 3(n) and 332 were effected by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, which was signed into law on August 10, 1993. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), codified in principal part at 47 U.S.C. § 332.

³ GTE and McCaw requested that the Commission extend to other commercial mobile radio service (CMRS) carriers its decision permitting PCS providers to offer CMRS and private mobile radio services on a combined basis; Pacific Bell and Ameritech requested that the Commission remove the cellular structural separation requirements for the Bell Operating Companies; and McCaw requested that the Commission clarify the standard to be applied in resolving complaints regarding CMRS rates under Section 208 of the Act.

have subsequently given rise to, or been addressed in, separate proceedings.⁴ Still others, including several requests for clarification, have been rendered moot by other subsequent events or Commission actions.⁵ Several of the remaining issues were previously addressed by the Commission in the *CMRS Second Report and Order*. Because none of the petitioners has presented new information or argument

⁴ An order on partial reconsideration of the *CMRS Second Report and Order*, responding to a petition filed by NCRA and a joint petition filed by Cellular Service, Inc. and ComTech, Inc., addressed issues regarding CMRS interconnection with respect to resellers. See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Memorandum Opinion and Order on Partial Reconsideration of Second Report and Order*, 11 FCC Rcd 19729 (1996), *affirmed*, Telecommunications Resellers Association v. FCC, 141 F.3d 429 (D.C.Cir. 1998), *further recon. pending*. See also, Revision of Part 22 of the Commission's Rules governing the Public Mobile Services, CC Docket No. 92-115, *Report and Order*, 9 FCC Rcd 6513, 6571 (1994) (*Part 22 Rewrite Order*) and Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996) (addressing the question of symmetry between cellular and PCS providers in the provision of ancillary and fixed services raised by GTE); *Part 22 Rewrite Order*, 9 FCC Rcd at 6519-20, paras. 25-28 (addressing a question raised by GTE concerning relaxation of the filing requirements for cell site modifications); Eligibility of the Specialized Mobile Radio Services and Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, *Report and Order*, 10 FCC Rcd 6280 (1995) (addressing Watercom's request that commercial maritime mobile service providers be permitted to provide dispatch services); Petition of Arizona Corporation Commission to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services, PR Docket No. 94-104, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Report and Order and Order on Reconsideration*, 10 FCC Rcd 7824 (1995) (addressing the PA PUC's inquiry regarding the showing required to demonstrate that CMRS has substantially replaced landline telephone exchange service); Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, *Report and Order*, 12 FCC Rcd 15668 (1997), *appeal pending sub nom.*, GTE of the Midwest, Incorporated v. FCC & USA, No. 98-3167 (6th Cir. filed Dec. 12, 1997), and Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, *First Order on Reconsideration* in WT Docket 96-162, *First Memorandum Opinion and Order* in AAD File No. 98-43, 14 FCC Rcd 11343 (1999) (addressing Pacific Bell's request for clarification that LECs and LEC affiliates engaged in the provision of CMRS are not subject to the Part 64 accounting safeguards and that LEC affiliates need not adopt the Part 32 Uniform System of Accounts); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *First Report and Order*, 11 FCC Rcd 15490 (1996) (*Local Competition First Report and Order*), *rev'd. on other grounds*, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utilities Board*) (addressing MCI's and McCaw's request for clarification that mutual compensation is an essential component of LEC-CMRS interconnection).

⁵ AMTA observed that pegging the cut-off date for transitioning from treatment as a private mobile service to CMRS to August 10, 1993 would bifurcate the 220 MHz industry by subjecting approximately ten percent of 220 MHz carriers to CMRS regulation immediately. NARUC and the PA PUC raised several procedural issues concerning the Commission's procedures for processing state commission requests under Section 332 of the revised Act for authority to regulate CMRS rates. Watercom requested waiver of the filing fees associated with cancelling its tariff filings in response to the Commission's decision to forbear from such filings. GTE requested clarification that enhanced services are auxiliary services and properly categorized as CMRS. SEIKO and CUE Network requested clarification that services provided on FM subcarriers, although classified as CMRS, should continue to be exempt from the foreign ownership requirement.

that would warrant reversal, we deny these petitions.⁶ The two remaining issues, raised by McCaw, concern requests that the Commission preempt states from requiring CMRS providers to file informational tariffs and from imposing their own interconnection requirements on CMRS providers. In the absence of evidence in the record that states are attempting to exercise jurisdiction with respect to informational tariffs and CMRS interconnection requirements, there appears to be neither a reason to address these issues nor a record sufficient to support substantive decisions with respect to them. Consequently, we also deny this petition.

3. Accordingly, IT IS ORDERED that those petitions for reconsideration, or portions thereof, filed by AMTA, McCaw, MCI, PCIA, and NCRA with respect to the *CMRS Second Report and Order* in GN Docket No. 93-252, as identified above, are DENIED on the merits. The remaining petitions, or portions thereof, filed by AMTA, Ameritech, CUE Network, GTE, McCaw, MCI, NARUC, NCRA, the New York DPS, Pacific Bell, the PA PUC, SEIKO and Watercom are DISMISSED because the issues raised are either moot or beyond the scope of this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁶ AMTA argued that the definition of CMRS should exclude entities with limited capacity or geographic scope. MCI and NCRA asked the Commission to rescind its decisions to forbear from requiring or permitting CMRS providers to file tariffs for interstate service or interstate access service and to forbear from filing intercarrier contracts. PCIA requested that the Commission reverse its decision not to forbear from the requirements of Sections 225 (Telecommunications Relay Services) and 226 (TOCSIA). NARUC and the New York DPS disagreed with the Commission's conclusion in the *CMRS Second Report and Order* that Section 332(c)(3)'s preemption of state rate regulation extends to CMRS interconnection rates.

APPENDIX A**List of Parties Filing Petitions for Reconsideration**

American Mobile Telecommunications Association (AMTA)
Ameritech
Cellular Service, Inc. and ComTech, Inc. (CSI)
CUE Network Corporation (CUE Network)
GTE Service Corporation (GTE)
McCaw Cellular Communications, Inc. (McCaw)
MCI Telecommunications Corporation (MCI)
National Association of Regulatory Utility Commissioners (NARUC)
National Cellular Resellers Association (NCRA)
New York State Department of Public Service (New York DPS)
Pacific Bell
Pennsylvania Public Utility Commission (PA PUC)
Personal Communications Industry Association (PCIA)
SEIKO Telecommunications Systems, Inc. (SEIKO)
Waterway Communications System, Inc. (Watercom)

List of Parties Filing Oppositions and Comments

AirTouch Communications
Ameritech
Bell Atlantic Companies
BellSouth Corporation
Cellular Telecommunications Industry Association (CTIA)
Federal Communications Bar Association
GTE
McCaw
MCI
NARUC
Nextel Communications, Inc.
NYNEX Corporation
Pacific Bell and Nevada Bell
Paging Network, Inc.
Public Utilities Commission of the State of California
PCIA
Southern Company
Sprint Corporation (Sprint)
Watercom

List of Parties Filing Replies to Oppositions

CSI
CTIA
GTE
McCaw
MCI
NARUC
Pacific Bell
PA PUC
PCIA
SEIKO
Southwestern Bell Corporation
Sprint

**SEPARATE STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Order

I write separately only to express my disappointment that our backlog has led ultimately to cursory orders like this one. In addressing petitions for reconsideration six years after the original order, we, as an agency, have failed to fulfill our regulatory obligation to render meaningful decisions in a reasonable period of time. Virtually every issue raised in these 15 petitions for reconsideration has been overtaken by events. Nonetheless, the Wireless Bureau has taken substantial steps to both eliminate the backlog and prevent its recurrence. Much of the Bureau staff has put in long and difficult hours to wade through the mountains of paper left from the backlog. Their dedicated work should be applauded.

I only regret that my support is tempered by the knowledge that such an effort was made necessary in the first place.