

Aug 22 9 35 AM '00

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

In the Matter of)	
)	
Interconnection and Resale Obligations)	
Pertaining To Commercial Mobile)	CC Docket No. <u>94-54</u>
Radio Services)	
)	
)	
)	
)	

**ORDER ON RECONSIDERATION OF MEMORANDUM OPINION
AND ORDER ON RECONSIDERATION**

Adopted: August 17, 2000

Released: August 22, 2000

By the Commission:

I. INTRODUCTION

1. The wireless resale rule prohibits CMRS providers from unreasonably restricting resale of their services. In the *CMRS Resale Report and Order*, the Commission extended its resale rule, initially applicable to cellular providers, to providers of broadband personal communications services (PCS) and certain specialized mobile radio (SMR) services to promote competition in the broadband CMRS market.¹ The Commission determined to sunset the resale rule five years after completion of its initial grant of broadband PCS licenses,² *i.e.*, November 24, 2002.³

¹ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *First Report and Order*, 11 FCC Rcd 18455 (1996) (*CMRS Resale First Report and Order*), *aff'd sub nom.* Cellnet Communications v. FCC, 149 F.3d 429 (6th Cir. 1998) (*Cellnet*).

² *Id.* at 18468 (para. 24). The Commission's decision to sunset the CMRS resale rule was affirmed in *Cellnet*.

³ Commencement of Five-Year Period Preceding Termination of Resale Rule Applicable to Certain Covered Commercial Mobile Radio Service Providers, CC Docket No. 94-54, 13 FCC Rcd 17427 (1998).

2. On September 27, 1999, we issued an Order on Reconsideration of the *CMRS Resale Report and Order*.⁴ On reconsideration, we affirmed the 2002 sunset date⁵ but modified the resale rule to exclude customer premises equipment (CPE) and CPE in bundled packages,⁶ and to exclude from its scope certain C, D, E, and F block PCS licensees,⁷ as well as all CMRS providers of voice or data services that do not use in-network switching facilities.⁸ On December 19, 1999, MCI WorldCom filed a petition for further reconsideration of two issues addressed in the *CMRS First Reconsideration Order*. MCI WorldCom requests that we eliminate the exclusion for CPE and extend the sunset at least one full year beyond the successful conclusion of wireless local number portability implementation. The Commission has received six filings in response to this petition.⁹ For those reasons set forth below, we deny MCI WorldCom's Petition for Reconsideration and reaffirm our determinations to exclude CPE from the scope of the CMRS resale rule and to sunset the rule on November 24, 2002. With respect to the exclusion for certain C, D, E, and F block PCS licensees, we are not addressing here what impact our ultimate decision regarding eligibility to participate in the reauction of C and F block licensees may have on the scope of the CMRS resale rule.¹⁰

⁴ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54; Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services; Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Docket No. 98-100; Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33; *Memorandum Opinion and Order on Reconsideration*, FCC 99-250 (rel. Sept. 27, 1999), 1999 WL 759700 (*CMRS Resale First Reconsideration Order*).

⁵ *CMRS Resale First Reconsideration Order* at paras. 12-25.

⁶ *Id.* at paras. 26-30.

⁷ *Id.* at paras. 32-41. This exemption is based on our equation of C, D, E and F block licensees with "smaller, new entrant competitors that have little market share and little or no incentive to restrict resale unreasonably. . . ." See *id.* at para. 34. However, we are presently considering modification of the size status restriction on bidder eligibility when we reauction the recovered C and F block licenses. See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Further Notice of Proposed Rulemaking*, FCC 00-197 (rel. June 7, 2000) 2000 WL 729073 (*C and F Block Auction Notice of Proposed Rulemaking*).

⁸ *Id.* at paras. 44-47.

⁹ See Appendix A. In addition, SBC filed an *Ex Parte* presentation on March 28, 2000.

¹⁰ See *C and F Block Auction Notice of Proposed Rulemaking, supra*.

II. DISCUSSION

A. Application of CMRS Resale Rule to Bundled Packages

3. Background. In the *CMRS Resale Report and Order*, the Commission included CPE within the ambit of the resale rule to eliminate carriers' incentives to cross-subsidize the CPE component with service revenues to competitively disadvantage resellers.¹¹ However, in the *CMRS Resale First Reconsideration Order*, we decided to exclude CPE and CPE in bundled packages from the scope of the CMRS resale rule.¹² On further reconsideration, MCI WorldCom contends that we should continue to include CPE within the scope of the CMRS resale rule because resellers will be required to employ the same handset solutions to the Commission's various E911 requirements as those adopted by the underlying facilities-based carrier. MCI WorldCom expresses concern that manufacturers "may be pressured" to fill facilities-based carriers' handset orders first and that this will delay their acquisition by reseller customers.¹³ MCI WorldCom also requests that the Commission require facilities-based carriers that elect to adopt network-based E911 solutions to provide such E911 capabilities to resellers' customers in order to ensure end-user customer safety.¹⁴

4. Discussion. We are unpersuaded by MCI WorldCom's arguments and continue to believe it appropriate to exclude CPE and CPE in bundled packages from the scope of the CMRS resale rule. We based our decision to adopt this approach on reconsideration, on the lack of evidence in the record that facilities-based carriers are actually cross-subsidizing the CPE component of their rates in order to disadvantage resellers, and on our assessments that the provision of CPE below cost to attract new customers is a legitimate promotional strategy and that resellers are capable of obtaining CPE elsewhere at volume discounts.¹⁵ We also observed that excluding bundled CPE from the resale rule is equitable because, to the extent the provision of CPE can be considered a marketing expense, such a policy puts resellers on the same footing as facilities-based carriers with respect to such expenses.¹⁶ By its own admission, MCI WorldCom's comment with respect to handset availability is speculative. We agree with those filing oppositions to its request, that MCI WorldCom has adduced no evidence or argument to establish that market driven incentives will not ensure an adequate supply of ALI-capable¹⁷ handsets to the extent that a reseller is reselling the service of a CMRS provider that has elected to

¹¹ *CMRS Resale Report and Order* at para. 31.

¹² *CMRS Resale First Reconsideration Order* at paras. 26-30.

¹³ MCI WorldCom Petition at 5.

¹⁴ *Id.* at 5-6. This issue is beyond the scope of this proceeding.

¹⁵ *CMRS Resale First Reconsideration Order* at para. 29.

¹⁶ *Id.*

¹⁷ Automatic Location Information.

deploy a handset solution.¹⁸ Consequently, we deny its request that we include CPE and CPE in bundled packages within the scope of the CMRS resale rule.

B. Extension of Sunset Date

5. **Background.** In the *CMRS Resale Report and Order*, the Commission decided to sunset the resale rule at the end of the five-year period following award of the last group of broadband PCS licenses, *i.e.*, November 24, 2002.¹⁹ On reconsideration, we affirmed the sunset date.²⁰ On further reconsideration, MCI WorldCom contends that the 2002 sunset date should be extended at least one full year beyond the date as of which wireless local number portability (LNP) implementation is successfully concluded.²¹

6. **Discussion.** We decline to grant MCI WorldCom's request for an extension of the sunset date for the CMRS resale rule. The Commission based its decision in the *CMRS Resale Report and Order* to sunset the resale rule at the end of the specified five-year period on its finding that the competitive development of broadband PCS and covered SMR service will obviate the need for a resale rule in the cellular, broadband PCS and covered SMR markets. We affirmed that decision on reconsideration, based on the absence of record evidence that the market will not be sufficiently competitive by November 24, 2002. MCI WorldCom has proffered no argument or evidence that the broadband CMRS market will be insufficiently competitive by that date to obviate the need for the resale rule. Instead, it interposes objections to the sunset derived from the implementation of LNP for wireless customers. We agree with those opposing its request that MCI WorldCom has engaged in mere speculation and has provided no support for its contention that the sunset will precipitate mass terminations of resale agreements and those customer inconveniences predicted by MCI WorldCom.²²

¹⁸ See CTIA Opposition at 6-8, US WEST Opposition at 8-10, BellSouth Opposition at 7-9.

¹⁹ *CMRS Resale Report and Order* at para. 24.

²⁰ *CMRS Resale First Reconsideration Order* at paras. 12-25.

²¹ MCI WorldCom Petition at 2-5. MCI WorldCom argues that LNP is a "safety net," in the absence of which a wireless carrier's anticipated termination of its resale agreements after the sunset date could strand wireless resale customers required to change telephone numbers in order to continue service. MCI WorldCom asserts that this problem will be exacerbated for wireless resale customers by implementation of the Commission's Calling Party Pays rules, which will induce customers to give out their telephone numbers and suffer even greater inconvenience when forced to change them upon termination of their provider's resale agreement. MCI WorldCom contends that the specter of this problem "skews the market in the favor of facilities-based carriers at the expense of resellers." *Id.* at 3. Based on its contention that wireless carriers have resisted complying with the Commission's LNP requirements by filing requests for extensions of time for implementation, MCI WorldCom requests that the Commission require the top ten wireless carriers to report quarterly regarding their progress in implementing LNP and provide the Commission with master test schedules for such implementation.

²² CTIA Opposition at 2-4; SBC Comments at 1-4. In addition, several parties contend that current churn rates in the broadband CMRS market belie MCI WorldCom's assertions that number portability is a priority for customers. See BellSouth Opposition at 1-6; US WEST at 6-8.

We also agree with opposing parties that the issues raised by MCI WorldCom regarding LNP implementation are outside the scope of the present proceeding and does not require delay of the Commission's sunset of the CMRS resale rule.²³ Hence, we also deny this part of MCI WorldCom's petition.

III. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

7. The Commission has not prepared an additional Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible impact on small entities of the Commission's decisions, as otherwise required by the Regulatory Flexibility Act, 5 U.S.C. § 604, because no changes have been made in this Order to the Commission's rules or policies.

B. Authority

8. This action is taken pursuant to Sections 1, 4(i), 4(j), 10, 201, 202, 303(r), 309, 332, and 403 of the Communications Act, 47 U.S.C. §§ 1, 4(i), 4(j), 160, 201, 202, 303(r), 309, 332, 403.

C. Further Information

9. For further information regarding this Order, contact Jane Phillips, Wireless Telecommunications Bureau, Policy Division, at (202) 418-1310.

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by MCI WorldCom IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²³ CTIA Opposition at 4-6; US WEST Opposition at 4-5; GTE Opposition at 5.

Appendix A

Petition for Further Reconsideration:

MCI WorldCom, Inc. (MCI WorldCom)

Oppositions and Comments to Petition for Further Reconsideration:

BellSouth Corporation (BellSouth)

Cellular Telecommunications Industry Association (CTIA)

GTE Service Corporation (GTE)

Personal Communications Industry Association (PCIA)

SBC Wireless Inc. (SBC)

US WEST WIRELESS, LLC (US WEST)

Reply Comments:

MCI WorldCom