

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
2000 Biennial Regulatory Review)	IB Docket No. 00-202
)	
Policy and Rules Concerning the International,)	
Interexchange Marketplace)	

To: The Commission

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular"),¹ by its attorneys, hereby submits comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced proceeding.² Cingular supports the Commission's proposal to completely detariff CMRS providers' international services. Cingular submits further that there is no need to impose the proposed information retention requirements on CMRS providers offering service solely by reselling the international switched services of unaffiliated facilities-based carriers. As discussed herein and in the *NPRM*, Sections 10 and 11 of the Communications Act require elimination of CMRS providers' international tariffing requirements.

¹Cingular Wireless, previously known as Alloy LLC, is the new joint venture between the domestic wireless operations of SBC Communications, Inc. ("SBC") and BellSouth Corporation ("BellSouth"), and provides wireless voice and data Commercial Mobile Radio Services ("CMRS") to more than 19 million customers in 38 states, the District of Columbia and two U.S. territories.

²2000 Biennial Review, *Policy and Rules Concerning the International, Interexchange Marketplace, Notice of Proposed Rulemaking*, IB Docket No. 00-202, FCC 00-367 (rel. Oct. 18, 2000) ("*NPRM*").

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**I. MEANINGFUL CMRS AND INTERNATIONAL SERVICES COMPETITION
RENDERS CMRS PROVIDERS' INTERNATIONAL TARIFFING OBLIGATIONS
UNNECESSARY AND CONTRARY TO THE PUBLIC INTEREST**

Section 20.15(d) of the Commission's rules provides that "a commercial mobile radio service provider is not required to file tariffs for its provision of international service to markets where it does not have an affiliation with a foreign carrier that collects settlement payments from U.S. carriers."³ The Commission previously rejected complete detariffing for CMRS providers out of concern that "[w]hen an international carrier serves an affiliated route, the carrier and its affiliate may have the ability and incentive to engage in anticompetitive pricing behavior that can harm competition and consumers in the U.S. market," such as price squeeze behavior.⁴ The Commission based this conclusion on its determination in the *Foreign Participation Order* that "[t]o the extent that a foreign-affiliated carrier has the ability to engage in a predatory price squeeze, we find that the existence of a tariff filing requirement . . . will serve to deter such behavior."⁵

Pursuant to the Biennial Review provisions of Section 11 of the Act, the Commission must determine whether the tariffing rules, as applied to CMRS providers, are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service" and further requires that the Commission repeal or modify such rules if they are "no longer necessary

³47 C.F.R. § 20.15(d).

⁴*Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 F.C.C.R. 16857, 16886-87 (1998) ("*PCIA Forbearance Order*").

⁵*Id.* at 16887, n.176 (citing *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 F.C.C.R. 23891, 24000 (1997) ("*Foreign Participation Order*").

in the public interest.”⁶ The Commission’s and carriers’ experience since the *CMRS Forbearance Order* demonstrates that the potential impact (if any) of CMRS providers’ international services on international settlements does not outweigh the public interest benefits of detariffing. As noted in the Biennial Review 2000 Staff Report, “[c]ompetition in the international services markets is also increasing[,] . . . rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.”⁷ Furthermore, the Commission again recently reported that the CMRS industry is becoming increasingly competitive.⁸ In short, there is meaningful competition both (1) among CMRS providers, and (2) within the broader international services marketplace in which CMRS providers may compete.

There are numerous safeguards independent of tariffs that the Commission utilizes to preserve and monitor competition in the international telecommunications services marketplace that render tariffing redundant and unnecessary to serve the public interest. Such safeguards include the dominant carrier regulations of Sections 63.10 and 63.21(b), and the dominant carrier reporting requirements of Part 43. Also, as the Commission has noted, the implementation of the WTO Basic Telecom Agreement and the Commission’s *Benchmarks Order* directly serve the Commission’s public interest objectives for the international services marketplace.⁹

⁶47 U.S.C. § 161.

⁷Federal Communications Commission, Biennial Regulatory Review 2000, Staff Report (Sept. 19, 2000) at 92 (“Staff Report”).

⁸*Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fifth Report*, FCC 00-289 (August 18, 2000).

⁹*See NPRM ¶¶ 10-11* (citing *Benchmarks Order*, 12 F.C.C.R. 19806, 19815-16 (1997)). Indeed, the Commission recently narrowed the application of the benchmarks condition to U.S. carriers with foreign carrier affiliates that possess market power. *See Benchmarks Reconsideration Order*, 14 F.C.C.R. 9256 (1999).

Moreover, the vast majority of CMRS licensees provide international service solely through the resale of unaffiliated facilities-based carriers' services, and therefore have no relationship -- contractual or otherwise -- with the correspondent carrier on the foreign end.¹⁰ For this very reason, the Commission does not apply the settlement rate benchmark condition to switched resale providers.¹¹ Finally, as Cingular noted in its comments on the Staff Report, a comprehensive review of international traffic and revenue data submitted to the Commission would likely indicate that CMRS providers' share of the international services marketplace is minuscule.¹² As Cingular and Verizon Wireless discussed in their comments on the Staff Report, the Commission's tariffing requirements impose significant burdens on wireless carriers with no corresponding public interest benefit.¹³

II. SECTION 10 REQUIRES THAT THE COMMISSION ELIMINATE INTERNATIONAL TARIFFING REQUIREMENTS FOR CMRS PROVIDERS

The Commission has tentatively concluded that its Section 10 "analysis regarding the public interest need for complete detariffing of international interexchange services by non-dominant carriers in order to protect consumers and further competition applies equally to CMRS providers

¹⁰Even where a wireless carrier resells the international services of an affiliated facilities-based carrier, the latter would be subject to the Commission's rules governing international settlement payments. *See* 47 C.F.R. § 43.51. Thus, there is no issue of anticompetitive behavior going undetected. Indeed, CMRS providers' international services are largely ancillary to their domestic wireless services -- as a review of the CMRS industry's recent FCC Form 499 filings would likely demonstrate.

¹¹*Foreign Participation Order*, 12 F.C.C.R. at 23977-86 (discussing how carriers reselling unaffiliated facilities-based carriers' international services do not present anticompetitive risks to international marketplace).

¹²Cingular Biennial Review 2000 Comments (filed under Alloy LLC).

¹³*Id.*; Verizon Wireless Biennial Review 2000 Comments at 2.

of international services.”¹⁴ Cingular supports the Commission’s tentative conclusion, largely for the reasons stated in the *NPRM*.¹⁵ In addition, a number of the factors discussed above provide additional support for the conclusion that all of the prerequisites of Section 10 forbearance have been met.

First, the competitiveness of the CMRS marketplace further supports eliminating tariff filing requirements pursuant to Section 10 of the Act. The Commission reached this same conclusion for unaffiliated routes in 1998 and, if anything, competition in the CMRS marketplace is more intense now than in 1998.¹⁶ Further, the sole basis for retaining the tariffing requirements for certain affiliated routes was to detect and deter certain kinds of anticompetitive practices. As discussed above, such concerns are sufficiently addressed by other Commission regulations.¹⁷ For these reasons, as well as those discussed in the *NPRM*, enforcement of international tariffing requirements for CMRS providers is not necessary for the objectives of Sections 10(a) and (b) of the Act, and forbearance is consistent with the public interest, as required by Section 10(c).¹⁸ Thus, the Commission must forbear from applying international tariffing requirements to CMRS providers.

¹⁴*NPRM* ¶ 29.

¹⁵*Id.* ¶¶ 7-21.

¹⁶*See PCIA Forbearance Order*, 13 F.C.C.R. at 16884-86.

¹⁷*See supra* Section I.

¹⁸47 U.S.C. §§ 160(a)-(c).

III. THE COMMISSION SHOULD NOT IMPOSE NEW PART 42 RECORDKEEPING REQUIREMENTS ON CMRS CARRIERS PROVIDING INTERNATIONAL SERVICES SOLELY VIA RESALE OF UNAFFILIATED FACILITIES-BASED CARRIERS' SERVICES

The Commission has tentatively concluded that it should require CMRS providers to “maintain price and service information . . . for only those routes on which they are affiliated with foreign carriers that possess market power.”¹⁹ Under this requirement, a CMRS carrier must maintain “documents supporting the rates, terms, and conditions of the carrier’s international and interstate, domestic interexchange offerings . . . in a manner that allows the carrier to produce such records within ten business days.”²⁰ As codified, this requirement would require CMRS providers to retain such information for two and one-half years “following the date the carrier ceases to provide services pursuant to such rates, terms and conditions.”²¹ The Commission has tentatively determined that this requirement will “address any concerns that U.S. carriers on affiliated routes may engage in price squeeze strategies.”²²

Cingular submits that this requirement, like tariffing, is unwarranted for CMRS providers, given their comparatively small share of the U.S. international services market. At minimum, such requirements are unnecessary for the vast majority of CMRS providers offering international service via the resale of unaffiliated facilities-based carriers’ services, even on routes where a CMRS provider’s foreign carrier affiliate has market power at the foreign end. As discussed above, such

¹⁹*NPRM* ¶ 31.

²⁰*Id.* at App. A (proposed Section 42.11(a)).

²¹*See* 47 C.F.R. § 42.11(b).

²²*NPRM* ¶ 31.

CMRS providers have no relationship with the correspondent carrier on the foreign end and are unable to effect a price squeeze.

In any event, it is unclear how any type of documentation a CMRS provider maintains to “support” the rates, terms and conditions of its resold international service could further the Commission’s stated objective of preventing and detecting “price squeeze” behavior on affiliated routes.²³ For a CMRS provider offering international service by reselling unaffiliated facilities-based carriers’ services, the primary cost of service is the wholesale service rate of the underlying facilities-based carrier. Any “mark-up” of that underlying rate for resale purposes is a matter of the carrier’s business judgment as to what the competitive CMRS and international service marketplace will support. As discussed above, there are ample alternative mechanisms to detect any price squeeze behavior attempted by the underlying U.S. facilities-based carrier. Therefore, while the Commission is targeting foreign carrier affiliations that arguably affect international settlements, this recordkeeping requirement -- like the current CMRS international tariffing requirement -- shoots wide of its mark by imposing such requirements on carriers unable to effect a price squeeze.²⁴

²³Moreover, it is unclear what the Commission means by documents that “support” a carrier’s rates, terms and conditions of services. The Commission has previously discussed, for example, “copies of service contracts and documentation of agreements and arrangements” as falling within this requirement. *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Sixth Report and Order*, 99 FCC 2d 1020 ¶ 25 (1985), vacated *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir 1985). The Commission to date has not required deregulated CMRS providers to maintain cost support information.

²⁴In the event that the Commission decides to retain this requirement for certain CMRS providers, Cingular notes a minor editorial point in the proposed rule. Specifically, the cross-reference to the definition of “affiliation” in the Part 63 rules should be changed to “§ 63.09(e) of this chapter.”

The Commission does not require that CMRS providers maintain such documentation for their domestic interexchange services.²⁵ Rather, it has determined more generally that the Section 208 complaint process is sufficient to protect consumers and ensure that CMRS providers' rates, terms, and conditions comply with Sections 201 and 202 of the Act.²⁶ For CMRS providers, the Section 208 complaint process is an adequate consumer protection mechanism for both domestic *and* international interexchange services.²⁷

²⁵*Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Order on Reconsideration and Erratum*, 14 F.C.C.R. 6004, 6005 ¶ 1 n.1 (1999) (“rules established in this order, like those in the *Second Report and Order* in this proceeding, apply only to nondominant IXC’s and do not apply to commercial mobile radio service (CMRS) providers”).

²⁶*See PCIA Forbearance Order*, 13 F.C.C.R. at 16965-66; *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 F.C.C.R. 1411, 1478-79 (1994) (“*CMRS Second Report and Order*”).

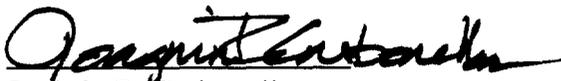
²⁷*See PCIA Forbearance Order*, 13 F.C.C.R. at 16885, n.166 (citing to *CMRS Second Report and Order*, 9 F.C.C.R. at 1478-79, for conclusion that “same considerations apply in the CMRS market for international services”).

CONCLUSION

For the reasons discussed herein, Sections 10 and 11 of the Communications Act require elimination of CMRS providers' international tariffing requirements. Moreover, the Commission should not impose Part 42 recordkeeping requirements on, at minimum, CMRS providers offering international service via the resale of an unaffiliated facilities-based carrier's switched services.

Respectfully submitted,

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