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

In the Matter of	)	
	)	
Promotion of Competitive Networks In Local Telecommunications Markets	)	WT Docket No. 99-217
	)	
Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.40000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network	)	CC Docket No. 88-57

REPLY TO OPPOSITIONS

Verizon Wireless, pursuant to Section 1.429 of the Federal Communications Commission's ("FCC" or "Commission") Rules,[1] hereby respectfully replies to comments submitted in opposition to Verizon Wireless' petition for reconsideration ("Petition") in the above-captioned proceeding. In its Petition, Verizon Wireless argued that contracts granting carriers the exclusive right to locate commercial mobile radio

[1] 47 C.F.R. § 1.429.

services ("CMRS") transmitters in multiple tenant environments ("MTEs") do not raise the same type of anticompetitive concerns that led the Commission to adopt Section 64.2300 of the Commission's rules.[2] Accordingly, Verizon Wireless requested that the FCC reconsider and amend the rule to exclude services offered by CMRS providers.

I. DISCUSSION

A. Regulation is not needed to prevent CMRS from taking anticompetitive actions.

Two entities, VoiceStream Wireless Corporation ("VoiceStream") and AT&T Corp. ("AT&T") filed oppositions to the Petition. VoiceStream and AT&T argue that exclusive access arrangements will make tower siting for CMRS providers even more difficult. They are concerned that CMRS providers will seek to tie up tower sites through exclusive access arrangements, which, in some cases, may effectively prohibit other CMRS providers from offering service in an area.[3]

Verizon Wireless agrees with many of the issues raised by VoiceStream and AT&T in their Oppositions. Verizon Wireless agrees that tower siting for CMRS providers is becoming increasingly more difficult. Verizon Wireless also agrees that CMRS providers should not be permitted to use exclusive access arrangements to prohibit competitors from providing service to a particular area or set of customers. Verizon Wireless differs, however, in its views on whether the FCC needs to adopt

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[2] Section 64.2300 provides that "No common carrier shall enter into any contract, written or oral, that would in any way restrict the right of any commercial multiunit premises owner, or any agent or representative thereof, to permit an other common carrier to access and serve commercial tenants on that premises.

[3] VoiceStream Opposition at 1-3; AT&T Opposition at 17.

regulations to prevent carriers from using exclusive arrangements to accomplish some unlawful purpose. Thus, while VoiceStream and AT&T would have the FCC adopt regulations that apply to CMRS providers to prevent CMRS providers from engaging in anticompetitive or unreasonable conduct, Verizon Wireless believes that the competitive market together with the threat of enforcement action is sufficient protection. Verizon Wireless believes that its approach is the one appropriate for competitive markets and mandated by the Communications Act ("the Act").

The CMRS market is highly competitive.[4] CMRS providers recognize that to succeed in the competitive marketplace, they must improve and expand coverage. To do so, CMRS providers must constantly seek to add new antenna locations. Largely because of the tower siting difficulties noted by VoiceStream and AT&T, carriers seek, wherever possible, to co-locate antennas on existing buildings or structures. Carriers also recognize that if they are not willing to accept additional antennas in their antenna site locations, their competitors may react in kind. Therefore, Verizon Wireless believes that market forces give CMRS providers incentives not to restrict access to antenna sites.

Should a carrier decide to restrict access in a manner that is anticompetitive or otherwise unreasonable or unreasonably discriminatory, however, the FCC has a full arsenal of enforcement mechanisms available to address the situation. The existence

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[4] *See, e.g.,* Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Fifth Report* (released August 18, 2000) at 4 (finding that "the CMRS industry continues to benefit from the effects of increased competition as evidenced by lower prices to consumers and increased diversity of service offerings").

of competitive forces backed by the threat of FCC enforcement render the regulation supported by VoiceStream and AT&T unnecessary.

Applying Section 64.2300 to CMRS providers as a means of ensuring against anticompetitive conduct is also inconsistent with the Communications Act. In amending the Act in 1996, Congress embraced a framework of increased competition together with decreased regulation for competitive market segments. Two key examples of this framework are Section 11 (requiring the FCC to review its regulations every other year and repeal or modify any regulations no longer necessary due to competition) and Section 10 (requiring the Commission to forbear from applying any law or regulation that it determines, considering the effects of competition, to be no longer necessary).[5]

Consistent with this framework, the Commission must seek to reduce regulation where competition renders regulation unnecessary. As discussed above, the competitive marketplace, backed by threat of enforcement, will ensure that CMRS providers do not enter into exclusive access arrangements as a means of limiting other carriers' access to cell site locations. Thus, there is no credible reason to extend the provisions of Section 64.2300 to CMRS providers and, consistent with the regulatory framework established in the Act, the Commission should reconsider Section 64.2300 and amend the rule to exclude services offered by CMRS providers.

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[5] 47 U.S.C. §§ 161, 160.

B. Amending Section 64.2300 to exclude services offered by CMRS providers will serve the public interest.

In its Opposition, VoiceStream argues that Verizon Wireless has not demonstrated how granting its Petition would serve the public interest.[6] As an initial matter, Verizon Wireless notes that VoiceStream's argument turns the Communications Act on its head. As discussed above, rather than requiring carriers to demonstrate that regulations are not in the public interest, the Act requires the Commission to demonstrate that the public interest will be served by applying its regulations. In its Petition, Verizon Wireless argued that the FCC decided to apply Section 64.2300 to CMRS providers without considering either the need for or the effect of applying the rule to CMRS.[7] Thus, the Commission has not satisfied its burden of demonstrating that applying Section 64.2300 to CMRS providers is in the public interest.

Verizon Wireless believes that there are at least two reasons why the public interest would be served by excluding CMRS providers from the ambit of Section 64.2300. First, as discussed previously, the public interest is generally served by allowing competitive markets to operate without unnecessary regulation. Second, as indicated in the Petition, in some cases, building owners may wish to limit the number of antennas placed on a building due to space, radio frequency emissions, aesthetic or other concerns. Building owners may deny access to a building unless they can limit

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[6] VoiceStream Opposition at 3.

[7] While CTIA filed comments in the underlying proceeding supporting equal regulatory treatment of CMRS and non-CMRS fixed wireless service offerings, those comments did not address the merits of prohibiting exclusive access arrangements for traditional CMRS offerings. Moreover, the Commission neither cited nor mentioned CTIA's comments in applying new rule 64.2300 to CMRS.

the number of carriers that can place antennas on a rooftop. In such situations, excluding CMRS providers from the requirements of Section 64.2300 could expand a carrier's tower siting options.

C. Section 64.2300 need not apply to all CMRS in order to ensure regulatory parity for providers of fixed wireless services.

VoiceStream and AT&T oppose the Petition on grounds that CMRS providers are authorized to provide fixed service in competition with local exchange service providers. They argue that if CMRS providers are allowed to enter into exclusive access arrangements, then such providers will be able to block competitors from obtaining access to certain MTEs.[8]

Once again Verizon Wireless understands the concerns raised in opposition to Verizon Wireless' Petition, but disagrees with the measures that should be taken to address the concerns. Thus, while Verizon Wireless takes no position on the merits of Section 64.2300 for the fixed services market, it believes the Commission could address these concerns through more narrowly tailored means that do not prohibit all exclusive access arrangements for CMRS providers.

One way the Commission could address the fixed services concerns without prohibiting CMRS antenna siting activity that does not affect fixed services competition would be to amend the rule to make clear that CMRS antenna siting is excluded from the rule. Thus, a phrase could be added to the end of the rule section stating, "except that nothing in this rule section shall prohibit CMRS providers from entering into contracts that restrict other CMRS providers from locating CMRS antennas in or on the

MTE." This language would narrow the prohibition to allow exclusive contracts that do not affect fixed services competition, while restricting arrangements that may have an anticompetitive effect.

Alternatively, the Commission could adopt the same position it took in the fixed CMRS rulemaking proceeding. There, in considering the proper regulatory classification for fixed CMRS services, the Commission decided to consider the regulatory treatment of such services on a case-by-case basis. The Commission reasoned that given the early stage development of fixed services was in and the variety of services that could develop, it would be better to examine the particular services being offered pursuant to petitions for declaratory ruling.[9] Verizon Wireless believes that the same process could be used to determine applicability of Section 64.2300 to CMRS providers. Thus, either pursuant to a separate petition pertaining solely to Section 64.2300 or as part of the Commission's determination regarding the regulatory treatment of fixed wireless services provided by a CMRS provider, the Commission could determine, given the type of service being provided and the building facilities being used to provide the service, whether the prohibition on exclusive access arrangements should apply.

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[8] VoiceStream Opposition at 3-4; AT&T Opposition at 15-17.

[9] Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, FCC 00-246, *Second Report and Order and Order on Reconsideration* (released July 20, 2000), at 3-4.

II. CONCLUSION

In general, CMRS providers do not require access to a building space or wiring in order to provide CMRS service to tenants located in the building. Accordingly, the Commission's rationale for prohibiting common carriers from entering into exclusive access contracts does not apply to CMRS providers. For this reason, the Commission should reconsider and amend Section 64.2300 to exclude CMRS common carriers. While Verizon Wireless understands the concerns raised by VoiceStream and AT&T in their Oppositions, these concerns can and should be addressed by the competitive market and by more narrowly tailoring Section 64.2300 to exclude CMRS antenna siting.

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Respectfully submitted,

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Certificate of Service

I hereby certify that on this 26th day of March copies of the foregoing "Reply to Oppositions" of Verizon Wireless in WT Docket 99-217 and CC Dockets 96-98 and 88-57 were sent by first-class mail to the following parties:

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