

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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In the Matter of)
)
Year 2000 Biennial Regulatory Review --)
Amendment of Part 22 of the Commission's Rules)
to Modify or Eliminate Outdated Rules Affecting)
the Cellular Radiotelephone Service and other)
Commercial Mobile Radio Services)

WT Docket No. 01-108

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its Comments in response to the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

The Commission has issued this Notice as part of its 2000 Biennial Regulatory Review, pursuant to Section 11 of the Communications Act of 1934, as amended ("Act").³ Specifically, the Commission proposes to amend Part 22 of its regulations to eliminate or modify those

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² Year 2000 Biennial Regulatory Review -- Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, FCC 01-153 (rel. May 17, 2001) ("Notice").

³ 47 U.S.C. § 161.

cellular regulations that have become obsolete.⁴ CTIA supports the Commission's efforts to eliminate and modify regulations that mandate rigid technical standards for cellular carriers or do not promote regulatory parity⁵ among all CMRS providers.

Section 11 of the Act requires the Commission to periodically examine its regulations and modify or eliminate those regulations that have become unnecessary and outdated. The Part 22 technical standards regulating cellular services exemplify the kind of antiquated regulations that Congress intended to be eliminated pursuant to section 11. Not only are the regulations identified in the Notice unnecessary, but in certain instances, they prevent cellular carriers from upgrading technologies, making more efficient use of spectrum, and providing better service to consumers.

Additionally, eliminating many of the Part 22 technical standards and regulations will serve the goal of achieving regulatory parity among similarly situated and competing services -- namely among the several mobile wireless telecommunications services. When Congress amended the Act in 1993 by adopting section 332, 47 U.S.C. § 332, one of the primary objectives was to establish regulatory parity among substantially similar competing mobile services.⁶ Since then, Personal Communications Service ("PCS") has been introduced, with minimal technical standards that provide PCS carriers maximum flexibility to use technologies

⁴ Notice ¶ 1.

⁵ At certain times in the past, "regulatory parity" has described efforts by incumbents to use regulatory requirements as entry barriers. In CMRS, the usage has an entirely different connotation, involving lowering of regulatory costs and barriers.

⁶ See H.R. Rep. No. 103-213, at 494 (1993), reprinted in 1994 U.S.C.C.A.N. 1088, 1183 (stating that the intent of Congress in amending section 332 was to ensure that, "consistent with the public interest, similar services are accorded similar regulatory treatment.").

that make efficient use of the available spectrum and provide digital quality service to consumers.⁷ The more stringent and specific cellular technical standards, however, have remained unchanged. In this biennial review proceeding, the Commission should revise its Part 22 rules and place all similar mobile services under similar regulatory regimes.

In these comments, CTIA supports the Commission's proposals to amend its Part 22 regulations. First, the Commission should amend section 22.901 of the general cellular service rules. Given the competitive CMRS marketplace, these provisions are no longer applicable. Second, the Commission should implement a transition period to phase out the analog cellular compatibility standard, and amend the rule by eliminating the AMPS requirement, allowing the industry to adopt its own technology standards.

Third, CTIA supports eliminating the Electronic Serial Number ("ESN") requirement set forth in Section 22.919, 47 C.F.R. § 22.919. Given the advances in fraud protection technology that the CMRS industry has made on its own initiative, there is no continuing need for this rule. Additionally, this rule could interfere with the development and use of advanced technologies, such as smart card subscriber identity modules in analog compatible cellular telephones.

Fourth, the Commission should eliminate the channelization requirements, the modulation requirements and in-band emissions limitations, and the wave polarization requirements. Carriers and equipment manufacturers are able, and have strong incentives to address and resolve the general interference issues that these rules are intended to alleviate. The Commission's role in matters such as this should be limited to protecting carriers' rights to *utilize their licenses free of interference*.

⁷ The development of ESMR as a CMRS competitor also requires that the Commission streamline unnecessary rules governing CMRS.

Fifth, as CTIA has previously explained in other proceedings, the Commission should privatize the assignment and amendment of System Identification Numbers (“SIDs”). This will reduce the Commission’s administrative burdens, and likely improve the efficiency of SIDs administration, given that PCS carriers’ SIDs already are administered by the private sector.

Sixth, the Commission should delete its rules on quality standards and price thresholds for carriers that provide services incidental to their primary public mobile services. The regulatory consumer protections inherent in these rules are no longer necessary since CMRS market forces ensure that carriers will provide quality service and charge reasonable rates.

Finally, CTIA reiterates the proposal set forth in its December 1999 Petition for Rulemaking that the Commission harmonize the PCS rules addressing license renewals with those regulating cellular service. The current PCS renewal rules are asymmetrical to the cellular renewal process, and do not support the principle of regulatory parity among these substantially similar and competitive services.

II. THE GENERAL CELLULAR SERVICE RULES SHOULD BE AMENDED TO ALLOW COMPETITIVE MARKET FORCES TO OPERATE EFFICIENTLY.

In the Notice, the Commission proposes to eliminate certain parts of section 22.901, which regulates general cellular service requirements and limitations.⁸ Given the competitive CMRS market, these subsections of the rule are no longer necessary to ensure that cellular service carriers provide adequate service to consumers.⁹

⁸ Notice ¶ 13.

⁹ See generally Report to Congress, Sixth Annual CMRS Competition Report, Thomas J. Sugrue Opening Remarks, (June 20, 2001) (“Sixth Annual CMRS Competition Report”). (demonstrating the competitive state of the CMRS market, showing that prices continue to decline while additional carriers enter the market to provide consumers with a greater choice of services).

First, the Commission seeks comment on whether section 22.901(a), which requires cellular service licensees to provide customers with information about their cellular service area, continues to be a necessary requirement.¹⁰ This rule was adopted to ensure that customers have access to cellular service-area information, although no other CMRS providers are subject to this type of requirement. Because consumers will often demand such information when selecting a wireless provider, CMRS providers generally make this information available to their customers.¹¹ Thus, the market is ensuring that customers have access to service-area information, and under section 11, the “regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.”¹²

Second, the Commission proposes to delete section 22.901(b), which requires cellular licensees to notify the Commission if the carrier denies a customer’s request for service due to lack of cellular system capacity.¹³ The Commission is correct in its observation that customers that are denied service by one carrier will likely use other competing mobile telephone service providers to obtain service.¹⁴ Accordingly, section 22.901(b) does not provide any benefit to consumers that is not already available as a result of the market, and the Commission should eliminate this unnecessary reporting requirement pursuant to section 11(b).

¹⁰ Notice ¶ 14.

¹¹ See id.

¹² 47 U.S.C. § 161(a)(2).

¹³ Notice ¶ 15.

¹⁴ Id. Over 75 percent of the U.S. population can choose from among five or more competing CMRS carriers. See Sixth Annual CMRS Competition Report.

Finally, the Commission should amend the introductory paragraph of section 22.901 to eliminate unnecessary and confusing phrases.¹⁵ Deleting the redundant requirement that carriers provide service to subscribers in “good standing” will make the cellular service requirements comparable to other CMRS services -- which are not subject to any specific requirement to provide service. In fact, section 201 of the Act achieves the same goals by requiring all carriers to provide service upon reasonable request.¹⁶ Furthermore, eliminating the unnecessary provision allowing cellular licensees to terminate service to subscribers that operate their cellular telephones in an airborne aircraft will prevent confusion with respect to the Commission’s other statements regarding carriers’ rights to terminate service.¹⁷

III. THE COMMISSION SHOULD AMEND OR DELETE ITS TECHNICAL RULES TO ACHIEVE REGULATORY PARITY FOR ALL CMRS CARRIERS.

In 1993, when Congress amended section 332 of the Act, it intended, *inter alia*, to “achieve regulatory symmetry in the classification of mobile services.”¹⁸ Congress directed the Commission “to review its rules and regulations to achieve regulatory parity among services that are substantially similar,” and ensure that “equivalent mobile services are regulated in the same

¹⁵ Notice ¶¶ 16-17.

¹⁶ 47 U.S.C. § 201(a).

¹⁷ As the Commission explained in the Notice, cellular providers already have the general right to terminate service to any subscriber that operates a telephone in violation of any Commission regulation. See Notice ¶ 17 n.23 (citing Amendment of Sections of Part 21 of the Commission’s Rules to Modify Individual Licensing Procedures in the Domestic Public Radio Services, CC Docket No. 79-259, *Report and Order*, 77 FCC 2d. 84, ¶ 8 (1980)).

¹⁸ See Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, ¶ 13 (1994) (“Section 332 Implementation Second Report and Order”).

manner.”¹⁹ In implementing Congress’ directive, the Commission concluded that all CMRS providers would be subject to regulatory parity to “promote competition in the mobile services marketplace.”²⁰ The Commission “has consistently found that section 332 of the Act requires that similar types of mobile service, such as broadband PCS and cellular, be regulated similarly.”²¹ Both the Commission and the courts also have made clear that they view cellular and PCS as essentially fungible.²² Accordingly, in this proceeding, the Commission is presented with another opportunity to further the congressional goal of achieving regulatory symmetry among similar mobile services and provide cellular service providers with the same minimal regulatory framework designed for PCS carriers.

Furthermore, section 11 envisions that regulation will eventually be displaced by “meaningful economic competition between providers” of similar services.²³ It directs the

¹⁹ H.R. Rep. No. 103-111, at 259 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 586.

²⁰ Section 332 Implementation Second Report and Order ¶ 15.

²¹ Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act to Provide In-Region InterLATA Services In Louisiana, CC Docket No. 97-231, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶ 72 n. 259 (1998); see, e.g., Section 332 Implementation Second Report and Order ¶ 3; Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, ¶¶ 4-5, 10-14 (1994); 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, ¶ 5 (1997) (“Competitive Service Safeguards Report and Order”); Eligibility for the Specialized Mobile Radio Services in the 220-222 MHz Land Mobile and Use of Radio Dispatch Communications, GN Docket No. 94-90, Report and Order, 10 FCC Rcd 6280, ¶¶ 19, 34 (1995).

²² Amendment of the Commission’s Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, ¶¶ 31, 57, 59-60, 97-111, 153 n.120 (1993) (“PCS Second Report and Order”); see Cincinnati Bell Telephone v. FCC, 69 F.3d 752 (6th Cir. 1995).

²³ 47 U.S.C. § 161(a)(2).

Commission to eliminate regulations when competition exists. The CMRS business presently satisfies this condition. The highly competitive state of the CMRS marketplace is evidenced by the ease with which consumers can switch to any of a growing number of mobile wireless competitors. Currently, nearly ninety-one percent of the entire U.S. population has access to three or more CMRS providers.²⁴ Nearly half of the U.S. population has the ability to choose from at least six mobile telephone operators.²⁵ Not surprisingly, the U.S. Department of Labor Bureau of Statistics recently reported that the price of mobile telephony decreased by 12.3 percent during 2000. Thus, as recognized by the Commission and by the Bureau of Labor Statistics, it is now time to pare back unnecessary regulation. Increased service competition and falling prices provide the basis for eliminating many of the regulations identified in the Notice, pursuant to section 11 of the Act.

A. The Requirement That Cellular Carriers Utilize The Analog Cellular Compatibility Standard Is No Longer Necessary And Should Eventually Be Eliminated.

The Commission seeks comment on whether the analog cellular capability standard established in the early years of cellular service should be modified or eliminated.²⁶ As the Commission notes, the Advanced Mobile Phone Service (“AMPS”) standard and OET Bulletin 53 were adopted “to facilitate competition between the two competing cellular carriers in any given area.”²⁷ The AMPS standard is no longer necessary to promote competition in CMRS,

²⁴ See Sixth Annual CMRS Competition Report.

²⁵ See id.

²⁶ Notice ¶ 23.

²⁷ Id.

thus the Commission should adopt a schedule to gradually eliminate the standard that will ensure that present analog subscribers do not experience an unanticipated loss of service.

Section 22.933 establishes OET Bulletin No. 53 as governing the technical standards for analog service and is intended to ensure that carriers comply with technical standards compatible with analog technology. The Commission notes that the AMPS requirement set forth in the Bulletin may have been a necessary regulation during the nascent stages of cellular service.²⁸ However, today's CMRS marketplace no longer requires the Commission to be involved in regulating technical standards. If a common standard is most efficient, competitive market forces will lead carriers to voluntarily adopt the common standard.²⁹ Moreover, industry standards-setting groups are better able than government to establish and maintain technical standards, and modify those standards as technology evolves. The Commission need not and should not continue to be involved in setting technical standards for the cellular industry, and thus, following a transition period, should delete from its regulations references to the technical standards established in OET Bulletin No. 53.

As the CMRS market continues to mature, CMRS technologies also continue to change, and often these changes occur rapidly. It is well established that regulation of standards is inappropriate where technology is constantly reshaping the competitive landscape, and the entry of new providers and service offerings force existing market participants to upgrade their

²⁸ See id.

²⁹ See Gregory L. Rosston and Jeffrey S. Steinberg, Using Market-Based Spectrum Policy to Promote the Public Interest, 50 Fed. Comm. L.J. 87, 102 (1997) ("Rosston and Steinberg").

technologies and business plans in response.³⁰ Continued Commission regulation of the cellular technology standards would serve only to stifle deployment of improved technologies since carriers would be required to continue providing service using spectrum inefficient analog technology.³¹ Accordingly, this type of formal standard setting by the Commission should be avoided in a rapidly changing industry such as CMRS.³²

Instead of maintaining government regulated technical standards, the Commission should give all CMRS carriers the same technical flexibility it has provided to PCS. Such flexibility gives carriers the incentive to develop “innovative, spectrum efficient, low cost, and consumer responsive technologies ... without unnecessary delay or regulatory interference.”³³ The Commission recognized the benefits of flexible standards when it adopted technical standards for PCS. In that proceeding, the Commission used a flexible approach, noting that a rigid technical framework could “stifle the introduction of important new technology.”³⁴ The Commission

³⁰ See, e.g., Stanley M. Besen & Leland L. Johnson, Compatibility Standards, Competition, and Innovation in the Broadcasting Industry, Rand Corporation, Nov. 1986, at 135 (“Compatibility Standards”) (“[T]he government should refrain from attempting to mandate or evaluate standards when the technologies themselves are subject to rapid change.”); Peter Pitsch & David C. Murray, The Competitiveness Center of the Hudson Institute, A New Vision for Digital Telecommunications, Briefing Paper No. 171, Indianapolis, Ind., Dec. 1994, at 2 (“[G]overnment is ill-equipped to regulate tightly a fast-paced environment characterized by rapid technological change and continuous innovation in services.”).

³¹ See Joseph Farrell and Garth Saloner, Competition, Compatibility and Standards: The Economics of Horses, Penguins and Lemmings, in Product Standardization and Competitive Strategy, at 9 (1987) (noting that in certain industries, such as telecommunications, options and needs change very quickly, and “it is important that we should not be inefficiently locked into old choices.”).

³² See Compatibility Standards at ix.

³³ Rosston and Steinberg, at 100.

³⁴ PCS Second Report and Order ¶ 137.

established technical standards only to ensure that PCS services did not cause harmful interference with existing microwave facilities or other PCS facilities, intending that PCS providers would have “maximum flexibility in technical standards . . . to develop in the most rapid, economically feasible, diverse manner.”³⁵

Although the AMPS standard should eventually be eliminated, CTIA agrees with the Commission that it must carefully consider the ramifications that an abrupt deletion of the requirement would have on the 41.9 million analog cellular subscribers.³⁶ To this end, CTIA supports the use of a transition period to phase out the AMPS requirement. A transition period would allow analog cellular subscribers and their service providers sufficient time to upgrade to digital technology without interruption of service and loss of access to 911, TTY and other important services. Importantly, the number of analog subscribers continues to decline as more subscribers move to digital services and new subscribers buy digital services.³⁷ Furthermore, given the number of analog customers, straightforward commercial considerations may well ensure that this customer base is transitioned to digital technology and not abandoned when the transition period ends.³⁸

³⁵ Id. ¶ 136.

³⁶ See Notice ¶ 26; see also Sixth Annual CMRS Competition Report (noting that at the end of 2000, digital customers made up 62 percent of the total CMRS industry subscriber base).

³⁷ The percentage of analog CMRS subscribers has declined substantially over the last 3 years -- analog subscribers accounted for 70 percent of all subscribers in 1998, declined to 49 percent in 1999, and was reported at 38 percent at the end of 2000. See Sixth Annual CMRS Competition Report.

³⁸ In fact, technical flexibility may benefit these analog customers. Under a more flexible regulatory standard, cellular carriers will be able to compete not just on the basis of services, but also on the basis of technology. This will ensure that analog customers are not left behind during the transition to digital technology. See Rosston and Steinberg, at

The elimination of the AMPS requirement through a transition period will thus allow carriers to gradually complete the upgrade to digital technologies, which is more spectrum efficient than outdated analog technology. This transition will ultimately enable cellular carriers to provide better and more services to consumers.

B. The Commission's Efforts To Protect Consumers And Carriers From Cellular Fraud Have Been Superseded By Technological Developments In The Wireless Industry.

In the Notice, the Commission proposes to remove section 22.919, 47 C.F.R. §22.919, which requires carriers to utilize Electronic Serial Numbers ("ESNs"). When the ESN design requirements were first adopted, the "sole purpose" of the rule was to combat cloning -- a form of cellular fraud prevalent in the analog environment of the early 1990s.³⁹ The Commission reasoned that public interest concerns about theft of service were of such a magnitude, that detailed rules mandating specific design requirements to protect against fraud were warranted.⁴⁰

There is no doubt that cloning had serious deleterious effects on the wireless industry, resulting in as much as \$600 million dollars per year in lost revenues.⁴¹ At least some of these fraud related expenses were passed on to subscribers in the form of increased usage charges. However, in the last few years the wireless industry has developed and successfully implemented myriad forms of anti-fraud measures, outside the purview of the Commission's regulations.

100 (noting that technical flexibility will increase competition, and such competition "between the different technologies as well as the competition between different systems should lead to innovation and new services for consumers.").

³⁹ Notice ¶ 33.

⁴⁰ Id.

⁴¹ AT&T News Release, AT&T Wireless introduces new security technology to reduce cellular fraud, <<http://www.att.com/press/0397/970305.pcb.html>> at 1 (March 5, 1997).

In considering the Commission's proposal to delete the ESN requirement, it is important to recognize that technologies such as authentication, encryption, radio frequency fingerprinting, and smart cards, all designed and implemented by the wireless industry without mandate by the Commission, have proven extremely successful in detecting and preventing wireless fraud. The efficacy of these industry developed security measures is evidenced by the fact that between 1996 and 2000, approximately ninety-six percent of cloning had been eliminated.⁴²

The transition from analog to digital also has contributed to the decrease of fraud in the wireless industry. Digital wireless, although not impervious to fraud, offers a better platform on which to build a technically sound defense. This ongoing transition from analog to the more efficient digital wireless technology, however, is not the sole reason for marked declines in cellular fraud. A full-frontal assault by wireless carriers has been lauded for saving the industry (and consumers) potentially billions of dollars. This market-driven response is instructive, not because the wireless industry met the obligations set forth in section 22.919, but because the industry has voluntarily developed technology that exceeds the protections afforded by the requirements of section 22.919. In the Notice, the Commission states that whenever possible, market forces - not government - should be allowed "to determine technical standards."⁴³ Similarly, Chairman Powell recently remarked that "[g]overnment should protect consumers, but should not exercise choice or intervene where the market will correct for bad business . . .

⁴² See Dan Sweeney, "Cloning and the Gangster Life," America's Network, at 4 (Apr. 1, 2001) ("wireless operators' losses from fraud now represent less than 0.5% of total revenues -- an eightfold drop from their peak."); Kristen Beckman, "GTE Tries Holistic Approach to Attack Fraud," RCR, at 1 (Sep. 20, 1999) (noting that GTE's aggressive approach to combating wireless fraud resulted in an 83 percent reduction in losses between 1997 and 1999).

⁴³ Notice ¶ 35.

practices.”⁴⁴ The wireless industry, therefore, is capable of protecting its customers and itself against fraud. These advancements in fraud detection and prevention, the steady transition to digital wireless, and robust competition have all led to a significant drop in the cost of wireless service, and thus obviated the need for Commission imposed ESN security standards. In addition, the rule in its current form impedes the development of advanced technologies such as smart cards, which permit users to move their accounts and security profiles between wireless devices.

C. The Commission Should Eliminate The Channelization And Modulation Requirements, In-Band Emissions Limitations, And The Wave Polarization Requirement.

Consistent with its proposals to eliminate detailed technical standards, the Commission has proposed to delete the original analog cellular channelization plan of section 22.905, the modulation types requirements and the in-band emission limits in section 22.915, and to modify the wave polarization rule in section 22.367.⁴⁵ CTIA supports the elimination and modification of these rules. Not only can CMRS equipment manufacturers and carriers more efficiently address these issues, the Commission’s rules have the effect of creating a static service and equipment market for cellular systems. The Commission, therefore, should allow the industry to establish its own standards for dealing with these issues, and, instead, serve in the less intrusive, but important capacity of arbiter of any interference conflicts that might arise.

Because the Commission has exempted digital technologies from the cellular channelization plan, this rule has effectively lost its meaning. To the extent carriers continue to

⁴⁴ Remarks by Michael K. Powell, Chairman, Federal Communications Commission, Before the Federal Communications Bar Association, Washington, D.C., at 5 (June 21, 2001) (“2001 FCBA Powell Address”).

⁴⁵ Notice ¶¶ 38, 41, 47.

deploy analog systems, the removal of the rule will not change the standards applicable to analog technologies. Stated differently, carriers can be expected to continue to deploy analog technology that is interoperable with other analog systems notwithstanding the absence of a Commission rule mandating such interoperability.

Furthermore, the in-band emissions limitations and the cellular wave polarization requirements are no longer necessary. The Commission's role in regulating such matters should be limited to ensuring that a carrier's system does not interfere with another carrier's right to fully utilize its license. These regulations presently serve to stifle unnecessarily the efficient use of cellular spectrum -- restrictions not faced by PCS carriers. The Commission should instead support the twin goals of spectral efficiency and licensee flexibility, so long as these goals can be accomplished without harmful interference. On their own, carriers can be expected to pursue responsible system engineering and cooperation between and among licensees to preclude and/or resolve interference.

D. Future Coordination Of Cellular System Identification Number (SIDs) Assignment Should Be Privatized.

As with standards-setting, privatizing certain basic administrative functions affecting the provision of cellular service will serve the public interest by reducing administrative burdens borne by the Commission and likely improving the efficiency of the administrative function. Thus, the Commission's proposed amendment to section 22.941, 47 C.F.R. § 22.941, by terminating its role as SIDs administrator, is in the public interest.⁴⁶ Recording changes in SIDs and assigning new SIDs plainly need not be done by government. As has occurred with other functions the Commission delegated to the private sector, privatizing cellular SID assignment

⁴⁶ Id. ¶¶ 48-51.

would eliminate a Commission responsibility that can be done as effectively, if not more so, by the private sector. In fact, the ability of the private sector to effectively administer SID assignments is evidenced by the fact that SID assignment for PCS carriers has always been a service provided by the private sector.

As CTIA explained in its comments in the 2000 Biennial Review Staff Report,⁴⁷ private management of cellular SID administration is not a novel proposition. The Commission originally proposed privatizing cellular SID management in 1994. Although no organization offered to take over the SID code coordination function in 1994,⁴⁸ CTIA proposes that its wholly owned subsidiary, CIBERNET, assume management responsibility for cellular SID assignment. For the last five years, CIBERNET has been assigning SIDs to PCS carriers from a range of SID numbers TIA has assigned to CIBERNET.⁴⁹ Since CIBERNET is presently responsible for broadband PCS SID assignments, it is both logical and cost effective for CIBERNET to assume the responsibilities for cellular carriers as well.

Of course, in order to ensure an easy transition to private management of cellular SID assignment, the Commission must undertake certain straightforward administrative functions. First, the Commission must transfer its legacy cellular SID database to the private manager. This will ensure continuity of service to all cellular carriers. Second, the private manager of cellular SID assignments must be authorized to make SID assignments within the cellular SID range established by TIA's Technical Service Bulletin 29. While CIBERNET is presently authorized

⁴⁷ Biennial Regulatory Review, CC Docket No. 00-175, *Reply Comments of CTIA*, at 7 (filed Oct. 10, 2000).

⁴⁸ See Notice ¶ 50.

⁴⁹ See id.; see also "International Implementation of Wireless Telecommunications Systems Compliant With ANSI/TIA/EIA-41," TIA Technical Service Bulletin #29.

to make PCS SID assignments using a different range of SID codes, TSB 29 expressly reserves to the FCC authority over the cellular SID range. Accordingly, the Commission must assign this authority to the private manager prior to relinquishing its responsibilities.

E. Commission Regulation Of Incidental Services Is No Longer Necessary To Ensure Service Quality And Reasonable Rates.

In the Notice, the Commission proposes to eliminate the three remaining conditions of section 22.323, 47 C.F.R. §22.323, which mandate certain service-quality standards and price thresholds for a carrier engaged in the provision of services incidental to its primary public mobile service. Specifically, section 22.323(a) was promulgated to ensure that mobile subscribers who do not wish to receive incidental services, in no way subsidize the costs associated with providing incidental services to those subscribers who do. Section 22.323(b) provides an additional layer of regulatory protection and mandates that the quality of the carrier's primary public mobile service may not "materially deteriorate" as a result of a carrier's provision of incidental service. The Commission correctly recognizes that the present wireless environment no longer requires such regulatory safety valves to provide for the dual goals of service quality and reasonable rates.⁵⁰ The market now ensures that the ideals of section 22.323 are realized.

The remaining incidental service provisions of Section 22.323 are vestiges of the original duopoly regime. And although this former environment featured both competition and progressiveness, it differs starkly from the current state of CMRS, in which falling prices and increased service offerings prevail for most consumers. As Chairman Powell recently commented, in a healthy, competitive environment such as this, consumers should be given the

⁵⁰ Notice ¶¶ 60-61.

opportunity to make their own best economic decisions; and concerns over service quality and rates can be shifted to the periphery of the regulator's focus.⁵¹ If so, the market will respond, allowing consumers to select providers that offer the best mix of service quality and rates.

As explained, when competitors are similarly situated in the marketplace, de facto regulatory parity should be an unyielding goal. In a responsible fashion, the Commission is proposing action that will not only empower consumers to make market-based choices, but its elimination of the incidental service rules will also bring two directly competitive services into regulatory symmetry. Because PCS is not subject to the incidental services rule, regulatory asymmetry exists between the PCS and cellular. In the Notice, the Commission has addressed this by proposing to amend section 22.901 to permit cellular carriers to offer fixed services on a co-primary basis with mobile services -- similar to the PCS rule found in section 24.3, 47 C.F.R. § 24.3. Thus, maintenance of section 22.323, the "incidental services requirement," is inconsistent with the PCS rules and the amendment proposed in the Notice.

IV. THE COMMISSION SHOULD ADOPT CONSISTENT LICENSE RENEWAL REGULATIONS FOR ALL CMRS LICENSEES.

In December 1999, CTIA filed a Petition for Rulemaking ("Petition") requesting that the Commission extend the cellular service license renewal rules to the PCS license renewal process to achieve further regulatory parity between these services. In the Notice, the Commission proposes to amend the cellular initial application and anti-trafficking regulations, but preserve the cellular comparative renewal process. The Commission should take this opportunity to address the issues raised in the Petition, and revise the license renewal rules to create parity between cellular, PCS, and ESMR licensees.

⁵¹ 2001 FCBA Powell Address at 6.

At present, the cellular renewal rules address the entire renewal process -- from the contents of renewal applications to the two-step process to be followed if competing applications are filed.⁵² The two-step process is explained in detail, with the first-step involving whether a renewal expectancy should be awarded. In contrast, there is only a single PCS renewal rule, and it addresses little more than the criteria for a renewal expectancy.⁵³ This asymmetry is illogical given the similarity of the two services. The Commission should thus square the PCS renewal rules with the cellular rules. Otherwise, the PCS renewal rule may be deemed defective or the Commission may be required to conduct full comparative hearings whenever competing applications are filed.⁵⁴

In the PCS Second Report and Order setting forth the rules for PCS, the Commission indicated that it wanted the cellular and PCS renewal rules to be symmetrical.⁵⁵ Apparently, because at that time the cellular rules were stayed pending appeal, the Commission only adopted one portion of the cellular renewal rules and failed to extend the entire cellular renewal program to PCS. Amending the rules to be identical will ensure (i) that renewal expectancies for both services are awarded based on the same criteria, and (ii) that, like cellular licensees, PCS licensees will be subject to the two-step hearing process when competing applications are filed.

⁵² See 47 C.F.R. §§ 22.935, 22.936, 22.937(g), 22.939, 22.940.

⁵³ See 47 C.F.R. § 24.16.

⁵⁴ See McElroy Electronics Corp. v. FCC, 86 F.3d 248 (D.C. Cir. 1996); Maxcell Telecom Plus, Inc. v. FCC, 815 F.2d 1551 (D.C. Cir. 1987).

⁵⁵ See PCS Second Report and Order ¶ 131; Amendment of the Commission's Rules to Establish New Personal Communication Services, GEN Docket No. 90-314, *Notice of Proposed Rulemaking and Tentative Decision*, 7 FCC Rcd 5676 (1992).

The inconsistency between the cellular and PCS renewal rules appears to be an oversight. The Commission has proffered no reasons for treating cellular and PCS licensees differently at renewal, while suggesting repeatedly that they should be treated alike.⁵⁶ Subjecting cellular and PCS licensees to different renewal rules is contrary to the congressional and Commission policy of like treatment for similar wireless services.

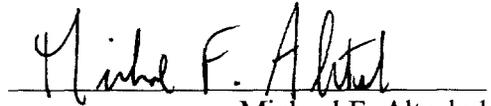
⁵⁶ See, e.g., PCS Second Report and Order ¶¶ 31, 57, 59-60, 97-111, 153 n.120; Competitive Service Safeguards Report and Order ¶ 5.

V. CONCLUSION

CTIA respectfully requests that the Commission eliminate or modify its Part 22 cellular rules in accordance with the recommendations made herein.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

A handwritten signature in black ink, appearing to read "Michael F. Altschul", is written over a horizontal line.

Michael F. Altschul
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