

EXHIBIT D

Examples of Services and Facilities Regulated under Title I

Non-Telecommunications Services

- Enhanced services, including protocol processing, and CPE are non-common carrier services and are not subject to Title II of the Act. They are, however, “communications” services subject to Title I. *See Computer and Communications Industry Assoc. v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (upholding FCC’s *Second Computer Inquiry*.); *In re Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988); *In re Amendment to Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, 3 FCC Rcd 1150 (1988).
- Billing and collection services performed by a LEC for an unaffiliated IXC are not common carriage within Title II of the Communications Act. *See In re Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150 (1986); *In re Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988); *In re The Public Service Commission of Maryland and Maryland People’s Counsel Applications for Review of a Memorandum Opinion and Order*, 4 FCC Rcd 4000 (1989). Similarly, 900-number billing and collection services are not common carriage. *See In re Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act*, 8 FCC Rcd 8697 (CCB, 1993).
- Advertising and notification practices directly relating to a carrier’s provision of interstate communications services seem to fall under Title I. *See In re Petitions of MCI Telecommunications and GTE Sprint Communications Corporation Regarding the Validity of Connecticut Statute and Decisions of the Connecticut Department of Public Utility Control Relating to Unauthorized Intrastate Traffic*, 1 FCC Rcd 270 (1986).
- AOL’s instant message (“IM”) and advanced instant message high-speed (“AIMHS”) services are subject to Title I regulation. *See In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc.*, 2001 FCC Lexis 432 (2001) (stating that the Commission declined to classify the IM or AIMHS services as either information services, cable services or telecommunications services.).

Facilities

- Digital, optical-fiber cable may be provided between North America and Europe on a non-common carrier basis. *See In re International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes*, 104 F.C.C.2d 208 (1986).

- Provisioning of infrastructure sharing agreements need not be subjected to common carrier obligations. *See In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, 12 FCC Rcd 5470 (1997).
- Interstate fiber optic systems can be offered as private carriage, preempting certain state regulations. *See In re NorLight*, 2 FCC Rcd 5167 (1987).

Satellite Services

- Satellite services may be provided as private carriage, including leasing space segment capacity to resellers or offering mobile voice, data, facsimile position location, and other mobile satellite services for both domestic and international subscribers. *See Brightstar Communications Limited*, 8 FCC Rcd 1387 (1993); *In re Volunteers in Technical Assistance*, 12 FCC Rcd 3094 (IB, 1997); *In re Volunteers in Technical Assistance*, 11 FCC Rcd 1358 (IB, 1995); *In re Application of Loral/Qualcomm*, 10 FCC Rcd 2333 (IB, 1995) (allowing LQP to use its Globalstar system for mobile voice, data, facsimile, position location, and other mobile satellite services for both domestic and international subscribers as a non-common carrier. LQP is also authorized to offer space segment capacity on its satellite system on a private carriage basis); *In re Application of TRW Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System*, 10 FCC Rcd 2263 (IB, 1995); *In re Application of Motorola Satellite Communications, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System*, 10 FCC Rcd 2268 (IB, 1995); *In the Matter of Application of Orbital Communications Corp. for Authority to Construct, Launch and Operate a Non-Voice, Non-Geostationary Mobile-Satellite System*, 9 FCC Rcd 6476 (1994); *In re National Rural Telecommunications Coop.*, 7 FCC Rcd 3213 (CCB, 1992).

Mobile Services

- Mobile services can be offered either as common or private carriage. *See In re Amendment of the Commission's Rules to Establish New Personal Communications Services*, 6 FCC Rcd 6601 (1991). Land mobile radio service is private carriage, unless the provider resells interconnected telephone services for profit. *See In the Matter of Mobile Radio New England Request for Rule Waiver*, 8 FCC Rcd 349 (1992) [Note: These two rulings were superseded in part by Section 332, adopted in 1993.].
- SMR licensees who do not resell interconnected services are not common carriers under Section 331(c)(1), regardless of who their customers are. *See In re Amendment of Part 90, Subparts M and S, of the Commission's Rules*, 3 FCC Rcd 1838 (1988).
- In the context of CALEA, PMRS operators are not telecommunications carriers when they offer PMRS services, unless they use their facilities to offer interconnected services for profit to the public or a substantial portion of the public (they would then

be CMRS providers). *See In re Communications Assistance for Law Enforcement Act*, 15 FCC Rcd 7105, (1999).

- Dispatch services may be offered either on a common or non-common carrier basis. *See In re An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, 89 F.C.C.2d 58 (1982).

Paging

- Some paging services qualify as private carriers. *See In re Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492 (1999); *In re Toll Free Service Access Codes*, 13 FCC Rcd 9058 (1998).
- A nationwide Private Carrier Paging System may be offered either on a common or non-common carrier basis. *See In re Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization*, 98 F.C.C.2d 792 (1984).
- Private carriage is permitted on SERS paging-only channels. Moreover, private carriage may be offered to all “present” (*i.e.*, in 1988) classes of SERS eligibles, including medical service eligibles. *See In the Matter of Amendment of Subpart C of Part 90 of the Commission's Rules to Permit Commercial Enterprises to be Licensed Directly in the Special Emergency Radio Service*, 5 FCC Rcd 3471 (1990); *In re Amendment of Subpart C of Part 90 of the Commission's Rules to Permit Commercial Enterprises to be Licensed Directly in the Special Emergency Radio Service*, 3 FCC Rcd 3677 (1988).

Microwave Services

- For-profit microwave systems may be offered as private carriage, even if interconnected with the public switched telephone network. *See In the Matter of General Telephone Co. of the Southwest*, 3 FCC Rcd 6778 (PRB, 1988).
- Microwave spectrum may be used by private operational fixed users. MDS licensees, which may be non-common carriers, are subject to the current MDS rules and application filing procedures. *See In re Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, 11 FCC Rcd 13449 (1996); *In re Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713 (1987).
- Common carriers whose operating systems are licensed under Part 94 will be permitted to lease capacity for private carriage, unless they carry common carrier communications by Section 94.9 of the Rules. *See In re Amendment of Part 94 of the Commission's Rules and Regulations to Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service*, 1985 FCC LEXIS 3605 (1985).

- Private carriage rules will apply to an ITFS licensee who does not engage in an indiscriminate holding out. See *In re Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service*, 1983 FCC Lexis 479 (1983).
- Local cable companies and DBS operators are non-common carriers. See *In re Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, 16 FCC Rcd 4096 (2000).

Proposed Regulations (never finalized)

- High-end services (e.g., services provided to large customers, or other services requiring great customization) should be permitted on a private carriage basis. See *Competition In the Interstate Marketplace*, 5 FCC Rcd 2627 (1990) (recognizing that because large customers are increasingly seeking long-term commitments, these high-end services are “taking on the characteristics of private carriage”).
- PCS may be eligible for either common or non-common carriage regulation, or a combination of both. See *In re Amendment of the Commission's Rules to Establish New Personal Communications Services*, 6 FCC Rcd 6601 (Policy Statement and Order (38267)) (1991). [Note: This ruling was superseded in part by Section 332, adopted in 1993.].
- MVDDS licensees could be allowed to provide one-way video programming and data services; video services would be treated as non-common carrier services. MVDDS providers would be permitted to provide switched voice and data services as common carriers. See *In re Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, 16 FCC Rcd 4096 (2000).