

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

In the Matter of)	
)	
Petition of the State Independent Alliance)	
and the Independent Telecommunications)	WT Docket No. 00-239
Group for a Declaratory Ruling That the)	
Basic Universal Service Offering Provided)	
By Western Wireless in Kansas is Subject)	
To Regulation as a Local Exchange Service)	

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

The Cellular Telecommunications & Internet Association (“CTIA”) hereby submits the following reply comments in opposition to the Petition for Reconsideration and Clarification filed by the State Independent Alliance and the Independent Telecommunications Group (“Petitioners” or “Independents”)¹ of the Commission’s August 2, 2002, Memorandum Opinion and Order (“Order”)² issued in the above-referenced proceeding.

In its initial comments, CTIA, along with other commenters, noted that Petitioners failed to raise any new legal issues or provide any justification for the removal of

¹ See *Petition for Reconsideration and Clarification of the State Independent Alliance and the Independent Telecommunications Group* (filed Sept. 3, 2002); see also *Wireless Telecommunications Bureau Seeks Comment on Petition for Reconsideration and Clarification of Commission Order Regarding Western Wireless’ Basic Universal Service Offering in Kansas, Public Notice*, WT Docket No. 00-239, DA 02-2266 (rel. Sept. 16, 2002).

² See *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service, Memorandum Opinion and Order*, 17 FCC Rcd 14802 (2002) (hereinafter “Order”).

Western Wireless' BUS offering from the purview of Section 332 of the Communications Act of 1934, as amended (the "Act").³ Specifically, the Petitioners neither advanced any new arguments showing that the BUS offering is not a "mobile service,"⁴ nor provided any additional information to refute the Commission's well-reasoned finding that the BUS offering is incidental to Western Wireless' cellular offering and should therefore be regulated as CMRS.⁵

In these reply comments, CTIA responds to the assertions made by certain commenters regarding the mobility of the BUS offering and challenging the Commission's finding that the BUS offering is ancillary to Western Wireless' provision of cellular service. In addition, CTIA also notes that the statutory definition of "mobile service," contained in Section 3(27) of the Act, permits the inclusion of fixed services within the definition of CMRS.

³ See Comments of the Cellular Telecommunications & Internet Association at 2-5 (filed Oct. 16, 2002) (hereinafter "CTIA Comments"); see also Opposition of AT&T Wireless Services, Inc. to Petition for Reconsideration and Clarification at 7 (filed Oct. 16, 2002) (noting that "the Independents simply reiterate the arguments they presented in their Petition for Declaratory Ruling, arguments that were considered and rejected by the Commission in the Kansas Order"); Western Wireless Corporation Opposition to Petition for Reconsideration at 2 (filed Oct. 16, 2002) ("The current Petition is little more than a stale regurgitation of previously-considered arguments combined with unsupported legal assertions, and should meet the same fate as the Independents' original petition.").

⁴ As noted below, "Mobile Service" is defined in Section 3(27) of the Act. See 47 U.S.C. § 153(27).

⁵ See, e.g. CTIA Comments at 2-5.

I. THE PETITIONERS AND SUPPORTING COMMENTERS PROVIDE NO NEW FACTS OR LEGAL ARGUMENTS TO SUPPORT RECONSIDERATION OF THE COMMISSION'S ORIGINAL ORDER

A. The Petition and Comments Provide No Reason to Disturb the Commission Well-Reasoned Determination Regarding the Mobility of the BUS Equipment

As CTIA noted in its initial comments, the Commission assembled a record in this proceeding that clearly demonstrated that the Western Wireless' "BUS is designed to operate in motion with the same seamless hand-off capability as any other cellular phone."⁶ Nothing in the Petition or comments contradicts this finding. The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPATSCO"), for example, merely reiterates its same old arguments regarding the definition of "ordinarily" that previously were rejected by the Commission as a rationale for "clarification" of the Order.⁷

Similarly, the National Telecommunications Cooperative Association ("NTCA") repeats the same old arguments regarding the mobility of the BUS equipment that the Commission already has addressed and rejected, and concludes that the Commission's Order should be reversed because it is "ridiculous and laughable."⁸ The use of such hyperbole, while no doubt pleasing to NTCA's members, provides no new factual basis or legal support for efforts to reverse the Commission's finding that the BUS equipment provides suitable mobility.

⁶ *See id.* at 3.

⁷ *See* Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at 2-4 (noting various possible interpretations of the word "ordinary").

⁸ Comments of the National Telecommunications Cooperative Association at 2 (hereinafter "NTCA Comments").

B. The Petition and Comments Provide No New Arguments Against the Commission’s Determination That BUS Is an Ancillary or Incidental Service

In the *Order*, the Commission noted that the BUS offering enables customers “to send and receive calls throughout the Western Wireless service area and to roam much like customers that take other cellular packages from Western Wireless.”⁹ In addition, the Commission also noted that the BUS service is only offered to a minimal number of Western Wireless’ overall subscribers.¹⁰ In this context, the BUS offering falls fully within the definition of an “ancillary” or “incidental” service, and is properly classified as CMRS.

In the Petition, the Independents state that they disagree with the Commission’s decision, but neither they nor other commenters provide any legal or factual rationale for the Commission to revisit its decision. NCTA, for instance, tries to argue that BUS is not an ancillary service because it is not a mobile service.¹¹ This, however, ignores the fact that the Commission’s decisions repeatedly affirming the right of carriers to provide ancillary services are based on the fact that the ancillary services are provided together with other mobile services, and are not based on whether the ancillary service itself is “mobile.”¹² Accordingly, this argument should be rejected as well.

⁹ Order at ¶ 27.

¹⁰ *See id.*

¹¹ *See* NTCA Comments at 3-4.

¹² *See, e.g. Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order*, 9 FCC Rcd 1411, 1424-25 (1994); *Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service, Report and Order*, WT Docket No. 01-108, FCC 02-229, at ¶ 68 (rel. Sept. 24, 2002) (“We emphasize that our elimination of the rule in no way diminishes or otherwise alters either the right of Part 22 licenses to

II. SECTION 3(27)(C) OF THE ACT ALLOWS CMRS LICENSES TO PROVIDE FIXED SERVICES

Even assuming, *arguendo*, that the BUS offering is not “mobile” and does not qualify as an “ancillary” service, it is still properly classified as a CMRS offering pursuant to Section 3(27)(C) of the Act.¹³ In 1993, when Congress amended Section 332 to address the regulatory treatment of commercial mobile services, Congress supplemented the statutory definition of “mobile services” by including the following new section: “(C) any services for which a license is required in a personal communications service established pursuant to the proceeding entitled “Amendment to the Commission’s Rules to Establish New Personal Communications Services” (GEN Docket No. 90-314; ET Docket No. 92-100), *or any successor proceeding*.”¹⁴ The House Report explained that it made the “conforming changes” to the “mobile services” definition by “adding to it a definition of licensed personal communications services that the Commission would establish as part of its proceedings.”¹⁵ The Conference Report also explained that “mobile service” is defined to “clarify that the term . . . includes the licenses to be issued by the Commission pursuant to the proceedings for personal communications services.”¹⁶

provide incidental services or the regulatory treatment of those services as CMRS, which we have repeatedly affirmed in prior orders.”)

¹³ See 47 U.S.C. § 153(27)(C).

¹⁴ See *id.* Moreover, even the pre-existing definition of “mobile service” permits the use of “portable” stations in addition to “mobile stations.” See 47 U.S.C. § 153(27)(B). Nowhere do the Petitioners allege that BUS equipment is not portable.

¹⁵ H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 262 (1993).

¹⁶ H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 496 (1993) (hereinafter “Conference Report”).

Furthermore, during deliberations, Congress considered and rejected the Senate's proposal to exclude fixed services from the definition of "mobile service." The Senate's proposed definition was nearly identical to the House version with one exception: that "the term does not include rural radio service or the provision by a local exchange carrier of telephone exchange service by radio instead of by wire."¹⁷ Importantly, the Conference agreement adopted the House definition, and not the Senate Amendment. Accordingly, the very issue of whether to include fixed services within the "mobile services" definition was before the Congress in 1993, and Congress found in favor of flexible use between mobile and fixed services.¹⁸

Flexible use of commercial mobile spectrum was also adopted by the Commission in the *CMRS Flex Order*, where the Commission allowed CMRS spectrum to be used "on a co-primary basis for fixed services, mobile services, or any combination of the two."¹⁹ Since this proceeding dealt with the regulatory treatment of PCS licenses, and the harmonization of Commission policy towards PCS providers and other CMRS providers, it necessarily falls within the definition of a "successor proceeding" under Section 3(27)(C).²⁰ Furthermore, since the *CMRS Flex Order* addresses the regulatory parity

¹⁷ *Id.* at 497.

¹⁸ Congress clearly contemplated that CMRS would compete with, and be a substitute for, land line telephone exchange service. *See* 47 U.S.C. § 332(c)(3).

¹⁹ *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8965, 8967 (1996) (hereinafter "CMRS Flex Order").

²⁰ *See id.* at 8970 (noting that the proceeding specifically sought comment on "alternate approaches to allowing PCS and other CMRS providers more flexibility to offer fixed services").

between all CMRS providers, as required by Section 332 of the Act, it advances the principle that all CMRS services should be afforded similar regulatory treatment. Therefore, the appropriate reading of this combined statutory framework allows all CMRS services detailed in this Order to be properly classified as “mobile services,” pursuant to Section 3(27)(C) because they are all contained in a PCS successor proceeding.

Under this framework, even without further inquiry as to whether the BUS offering possesses sufficient mobility or constitutes a permissible ancillary service, the Western Wireless BUS offering is properly categorized as a “mobile service” because the Commission’s *CMRS Flex Order* is a “successor proceeding” pursuant to Section 3(27)(C). Accordingly, on this basis alone, the Petition can and should be rejected.

CONCLUSION

For the aforementioned reasons, the Petition of the State Independent Alliance and the Independent Telecommunications Group for Reconsideration and Clarification should be rejected in its entirety.

Respectfully submitted,

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