

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

CELLNET COMMUNICATIONS, INC.)	
Complainant,)	
)	
)	File No. WB/ENF-F-95-010
v.)	
)	
NEW PAR, INC. d/b/a CELLULAR ONE)	
Defendant.)	

NATIONWIDE CELLULAR SERVICE, INC.)	
Complainant,)	
)	
)	File No. WB/ENF-F-95-011
v.)	
)	
)	
COMCAST CELLULAR COMMUNICATIONS, INC.)	
)	
Defendant.)	

ORDER

Adopted: July 25, 2000

Released: July 26, 2000

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us complaints filed by Cellnet Communications, Inc. (Cellnet) against New Par, Inc. (New Par) and by Nationwide Cellular Service, Inc. (NCS) against Comcast Cellular Communications, Inc. (Comcast)¹ for violation of Sections 201 and 332(c)(1)(B) of the Communications Act (the Act)² and for violation of the Commission's policy

¹Formal Complaint filed by Cellnet on February 16, 1995, File No. WB/ENF-F-95-010; Formal Complaint filed by NCS on February 16, 1995, File No. WB/ENF-F-95-011.

² 47 U.S.C. §§ 201, 332(c)(1)(B)

governing the resale of cellular communications service, together with related pleadings, including motions to dismiss filed by New Par and Comcast.³ As discussed below, we deny these complaints.

II. BACKGROUND

2. The complainants, resellers of cellular services, argue that New Par and Comcast denied requests to enter into an agreement providing physical interconnection to the mobile telephone switching office (MTSO) for purposes of handling calls to and from the complainants' customers.⁴ Under the terms of the requests, the reseller would establish its own switch between the cellular carrier's MTSO and the landline telephone network, and would assume all switching and administrative functions with respect to the reseller's customers.⁵ The defendants declined the requests stating that on the grounds that requests for interconnection "can only be granted by an FCC order after an opportunity for notice and comment...[following] a reasonable request made to the Commission."⁶

3. The complainants argue that they are entitled to establish physical interconnection with defendants subject only to the Commission's determination that such a request is reasonable, and to connect their equipment to cellular systems so long as no public detriment is occasioned thereby.⁷ According to complainants, the defendants cannot reasonably conclude that the requested interconnections would cause harm or public detriment when they have refused to even discuss the proposals, especially given the widespread nature of carrier-to-carrier interconnection.⁸

4. The complainants also claim that defendants violated the Commission's resale policy which requires that "no restrictions on the resale and shared use of cellular services will be permitted."⁹ They seek a Commission finding that the defendants impermissibly deny service to complainants and thereby violate Sections 201(a) and 332(c)(1)B) of the Act and impermissibly and unreasonably restrict the resale of cellular service in violation of the Commission's resale policy. They further request that the Commission require the cellular carriers to conduct good faith negotiations regarding the proposed interconnection arrangement.¹⁰

³ Cellnet and NCS will be referred to collectively as "complainants" or "resellers". New Par and Comcast will be referred to collectively as "defendants" or "cellular carriers".

⁴ Cellnet Complaint at 4; NCS Complaint at 5.

⁵ *Id.*

⁶ Cellnet Complaint at 5; *see also* NCS Complaint at 6-7.

⁷ Cellnet Complaint at 7, NCS Complaint at 8,11.

⁸ Cellnet Complaint at 7-8; NCS Complaint at 11-12.

⁹ Cellnet Complaint at 11, NCS Complaint at 12-13.

¹⁰ Cellnet Complaint at 11-12; NCS Complaint at 13-14.

5. In their answers, New Par and Comcast admit the allegations concerning the documentary proposals for interconnection and their responses thereto, but deny that any of their actions violate the Communications Act or the Commission's resale policy, and also deny the remaining allegations made by complainants.¹¹ The defendants also state a number of affirmative defenses. In replies, the complainants deny the cellular carriers' affirmative defenses and restate their requests for relief.¹²

6. In its Motion to Dismiss, Comcast principally argues (1) that the Commission's resale policy is not applicable to the complaint; (2) that Comcast declined to provide NCS with interconnection services it does not now offer to the public; (3) that the Commission has never found, after an opportunity for a hearing, that CMRS providers have an obligation to provide interconnection to resellers; (4) that the precedents requiring interconnection unless public detriment is caused are limited to the right of end users to interconnect customer premises equipment; and (5) that the Commission has no jurisdiction because complainants have not established that the interconnection they seek is entirely interstate.¹³ In its Motion to Dismiss, New Par, for the most part, makes essentially the same arguments as Comcast.¹⁴

7. In its Opposition to Comcast's Motion to Dismiss, NCS principally claims (1) that the opportunity for a hearing can be provided in a complaint proceeding, at the end of which the Commission can order interconnection; (2) that Comcast has violated the Commission's policy against unreasonable restrictions on resale; (3) that Section 332 of the Act gives the Commission authority to regulate interconnection of cellular services including reseller switches, since they cannot be jurisdictionally separated, and (4) there is no reason why the CPE case standards of technical feasibility, lack of economic harm, private benefit and lack of public detriment should not be as applicable to customers who are switched resellers as to other customers who use CPE.¹⁵ In its Opposition to New Par's Motion to Dismiss, Cellnet essentially reiterates the arguments made previously and distinguishes the authorities cited by New Par.¹⁶

¹¹ New Par Answer filed on April 24, 1995 at 1-7; Comcast Answer filed on April 27, 1995 at 1-6.

¹² Cellnet Reply filed on May 9, 1995 at 1-2; NCS Reply filed on May 9, 1995 at 1-2.

¹³ Comcast Motion to Dismiss, filed on May 19, 1995 at 3-6, 10-22, 26-28. Other arguments raised by Comcast include whether a reseller is a "person providing CMRS" within the meaning of Section 332, whether the proposed interconnection is technically feasible, and whether granting interconnection would be adverse to the public interest for a variety of reasons. *Id.* at 9-10, 33-38.

¹⁴ New Par also argues that unbundling should not be required because it does not control bottleneck facilities, that New Par would have to validate and track all calls originating or terminating on its system no matter what Cellnet does, and that switching functions and air time offered by New Par are part of a single cellular transmission service which New Par offers to the public on a non-discriminatory basis, rather than an anti-competitive tying arrangement. New Par Motion to Dismiss, filed Aug. 4, 1995 at 15-18.

¹⁵ NCS Opposition to Motion to Dismiss, filed on June 23, 1995, at 4-14, 16-18. Other issues raised by NCS include the relevant competitive positions of cellular carriers and resellers, and Comcast's joint venture with Sprint in Philadelphia. *Id.* at 19-25.

¹⁶ Cellnet Opposition to New Par "Motion to Dismiss", filed on August 18, 1995.

III. DISCUSSION

8. The Commission has recently held (1) that Sections 201 and 332 do not require mandatory interconnection between CMRS networks and resellers' switches and (2) that resale switch interconnection is not required by the public interest.¹⁷ Further, we do not agree that the Commission's resale policy requires resale switch interconnection. That policy requires that (1) no provider may offer like communications services to resellers at less favorable prices, terms or conditions than are available to other similarly situated customers, absent reasonable justification; and (2) no provider may directly or indirectly restrict resale in a manner that is unreasonable in light of the Commission's resale policies.¹⁸ Defendants do not offer switch interconnection to their customers or other resellers, and therefore we find that they have not discriminated with regard to the requested resale switch interconnection. We also find that refusal of switch interconnection is not an unreasonable restriction on resale, since, as the Commission found in the *Interconnection Report and Order*, the refusal to interconnect is not anti-competitive and is not required by the public interest.¹⁹ For these reasons, we dismiss these complaints.

IV. PROCEDURAL MATTERS

A. Authority

9. This action is taken pursuant to Sections 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, and 403 of the Communications Act, 47 U.S.C. §§ 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, 403.

B. Further Information

10. For further information regarding this Order, contact Peter Wolfe, Wireless Telecommunications Bureau, Policy Division, at (202) 418-1310.

V. ORDERING CLAUSES

11. IT IS ORDERED THAT the Formal Complaint filed by Cellnet Communications, Inc. against New Par, Inc. seeking an order that directs New Par to conduct good faith negotiations regarding interconnection to Cellnet's switch IS DENIED.

¹⁷ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No 94-54, Fourth Report and Order, FCC 00-253 (July 24, 2000) (Interconnection Report and Order).

¹⁸ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No 94-54, First Report and Order, 11 FCC Rcd 18455, 18462 (para. 11) (CMRS Resale Order).

¹⁹ In view of these findings, the issue raised with respect to the Commission's jurisdiction to direct interconnection of cellular service on the grounds that it is not wholly interstate is moot.

12. IT IS FURTHER ORDERED that the Formal Complaint filed by National Cellular Service, Inc. against Comcast Cellular Communications, Inc. seeking an order that directs Comcast to conduct good faith negotiations regarding interconnection to NCS' switch IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau.