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

In the Matter of	)	
	)	
Forbearance from Applying Provisions of the	)	
Communications Act to Wireless	)	WT Docket No. 98-100
Telecommunications Carriers	)	
	)	

FIRST REPORT AND ORDER

Adopted: August 21, 2000 **Released: September 8, 2000**

By the Commission:

TABLE OF CONTENTS

Paragraph

I. INTRODUCTION 1

II. BACKGROUND 3

A. STATUTORY BACKGROUND. 3
B. PROCEDURAL HISTORY. 7

III. DISCUSSION 12

A. STANDARD FOR FORBEARANCE. 12
B. PROVISIONS APPLICABLE TO CMRS PROVIDERS GENERALLY. 15
C. SMR PROVIDERS. 16
D. FIXED WIRELESS SERVICE PROVIDERS. 25
E. CARRIAGE OF COMMON CARRIER TRAFFIC BY PRIVATE OPERATIONAL FIXED LICENSEES. 31
F. THE PCIA LETTERS. 29

IV. CONCLUSION 35

V. ORDERING CLAUSE 36

APPENDIX List of Commenters and Short-Form Names Used

I. INTRODUCTION

1. On July 2, 1998, in the Notice of Proposed Rulemaking in this proceeding

(*NPRM*),[1] we requested comment regarding whether, pursuant to Sections 10 and 332(c)(1)(A) of the Communications Act of 1934, as amended (the Act),[2] we should: (1) forbear from applying provisions of the Telephone Operator Consumer Services Improvement Act (TOCSIA)[3] and our implementing regulations[4] against commercial mobile radio services (CMRS) aggregators and operator service providers (OSPs) and (2) forbear from applying any provision of the Act or our regulations against any class of providers of wireless telecommunications services. On July 31, 1998, the Personal Communications Industry Association (PCIA) submitted to the Wireless Telecommunications Bureau a letter identifying approximately 71 regulatory requirements applicable to wireless licensees that PCIA believed were administratively unnecessary and should be eliminated or streamlined.[5] PCIA submitted a follow-up letter to the Wireless Telecommunications Bureau on May 18, 1999.[6]

2. Today, we address the comments received in response to the *NPRM* and the July 31, 1998 and May 18, 1999 PCIA Letters (PCIA Letters), other than those comments addressing TOCSIA.[7] We find that, since the *NPRM* was released, we have addressed in other proceedings several of the issues raised in both sets of comments, and have granted relief in the vast majority of instances. With respect to the remaining issues, we decline to grant forbearance with respect to any additional provision based on the record before us, and we will not take further action in response to the PCIA Letters at this time. Finally, we note that will be considering further streamlining of our regulations affecting wireless telecommunications carriers in the course of the 2000 biennial review.

II. BACKGROUND

A. Statutory Background.

3. Pursuant to Section 10 of the Act, the Commission is directed to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, in any or some of its geographic markets, if a three-pronged test is met. Specifically, Section 10 requires forbearance if we determine that:

---

[1] Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 16857 (1998) (*PCIA Forbearance Order* and *NPRM*), *recon. denied*, FCC 99-250 (rel. Sept. 27, 1999).

[2] 47 U.S.C. §§ 160, 332(c)(1)(A).

[3] 47 U.S.C. § 226.

[4] 47 C.F.R. §§ 64.703-64.709.

[5] Letter from Mary McDermott, Senior Vice President and Chief of Staff for Government Relations, PCIA, to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, dated July 31, 1998 (July 31, 1998 PCIA Letter).

[6] Letter from Brent Weingardt, Vice President for Government Relations, PCIA, to Diane Cornell, Associate Chief, Wireless Telecommunications Bureau, dated May 18, 1999 (May 18, 1999 PCIA Letter).

[7] We will consider forbearance from additional provisions of TOCSIA in the near future.

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.[8]

4. In determining whether forbearance is consistent with the public interest, we are directed to consider whether forbearance will promote competitive market conditions, including whether it will enhance competition among existing telecommunications service providers, and a determination that forbearance will promote competition may be the basis for a finding that forbearance is in the public interest.[9]

5. Prior to Congressional enactment of Section 10 in 1996, Congress gave the Commission more limited authority to forbear from applying certain statutory provisions to CMRS providers and services. Under Section 332(c)(1)(A), a provider of CMRS is to be treated as a common carrier under the Act, except to the extent we may specify any provision of Title II of the Act, other than any provision of Section 201, 202, or 208, as inapplicable to any service or person. In determining whether to forbear from applying any provision of Title II under Section 332(c)(1)(A), we are directed to apply a three-pronged test that is substantially similar to the test set forth under Section 10.[10]

6. We have exercised our forbearance authority under both Section 10 and Section 332(c)(1)(A) on several occasions. Prior to the enactment of Section 10, we forbore under Section 332(c)(1)(A) from requiring CMRS providers to comply with the tariff filing obligations of Section 203, the domestic market entry and market exit requirements of Section 214, and several other provisions of Title II.[11] Since 1996, we have rendered numerous forbearance decisions under Section 10 that address specifically wireless telecommunications services. Thus, for example, we have: (1) forborne from applying international tariffing requirements against

[8] 47 U.S.C. § 160(a).

[9] 47 U.S.C. § 160(b).

[10] Specifically, we may forbear under Section 332(c)(1)(A) if we determine that:

(1) enforcement of [a] provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with [a] service are just and reasonable and are not unjustly or unreasonably discriminatory;
(2) enforcement of [a] provision is not necessary for the protection of consumers; and
(3) specifying [a] provision [as inapplicable to a service or person] is consistent with the public interest.

47 U.S.C. § 332(c)(1)(A).

[11] Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, 1463-93, ¶¶ 124-219 (1994) (*CMRS Second Report and Order*), *recon. dismissed in part and denied in part*, 15 FCC Rcd 5231 (2000)*; see also* 47 C.F.R. § 20.15.

CMRS providers under most circumstances,[12] (2) forborne from applying certain provisions of TOCSIA in the CMRS context,[13] (3) extended the time for CMRS providers to comply with certain local number portability requirements,[14] and (4) forborne in most circumstances from applying the requirements of Section 310(d) of the Act to *pro forma* assignments of licenses and transfers of control of wireless telecommunications licensees.[15] Furthermore, wireless telecommunications service providers have benefited from our decision to forbear from applying mandatory tariffing requirements for interexchange access services against all carriers other than incumbent LECs.[16]

B. Procedural History.

7. On May 22, 1997, PCIA filed a petition under Section 10(c) of the Act[17] requesting that the Commission forbear from applying various statutory and regulatory provisions against providers of broadband personal communications service (PCS). We addressed this forbearance request in the *PCIA Forbearance Order*. Concurrently with our release of the *PCIA Forbearance Order*, we issued the *NPRM*, in which we sought comment on potential forbearance from the application of additional statutory and regulatory provisions to all providers of wireless telecommunications services, or any subset thereof. First, although we found in the *PCIA Forbearance Order* that the record was inadequate to support forbearance with respect to many provisions of TOCSIA, we recognized that PCIA had made arguments that could, if adequately supported, establish grounds for forbearance. We therefore sought specific information relevant to determining whether, and in what respects, we should forbear from applying or modify additional TOCSIA requirements in the CMRS context.[18] Second, we requested comment generally on whether we should forbear from applying any regulation or provision of the Act to wireless telecommunications carriers licensed by the Commission, including both CMRS providers and wireless carriers that are not classified as CMRS, such as wireless competitive local

---

[12] *PCIA Forbearance Order*, 13 FCC Rcd at 16884-89, ¶¶ 55-65.

[13] *Id.* at 16894-98, ¶¶ 76-85.

[14] Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999) (*LNP Forbearance Order*), *recon. denied*, 15 FCC Rcd 4727 (2000).

[15] Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, 13 FCC Rcd 6293 (1998) (*FCBA Forbearance Order*).

[16] Hyperion Telecommunications, Inc. Petition Requesting Forbearance and Time Warner Communications Petition for Forbearance: Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers, CC Docket No. 97-146, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 8596 (1997) (*Hyperion*); *see also* 1998 Biennial Regulatory Review – Repeal of Part 62 of the Commission's Rules, CC Docket No. 98-195, *Report and Order*, 14 FCC Rcd 16530 (1999) (*Interlocking Directorates Order*).

[17] 47 U.S.C. § 160(c).

[18] *NPRM*, 13 FCC Rcd at 16900-10, ¶¶ 89-110.

exchange carriers (LECs).[19] In doing so, we specifically sought comment on whether there were types of providers, such as smaller providers, for which application of a particular statutory or regulatory provision would either pose undue costs or yield no benefits to the public.[20] We emphasized that in order to support forbearance, commenters should provide more than broad, unsupported allegations of why the statutory criteria for forbearance are met.[21]

8. Twelve parties filed comments on the *NPRM*, and five parties filed reply comments.[22] In addition to TOCSIA, commenters variously advocate forbearance from imposing: customer proprietary network information (CPNI), local number portability, universal service funding, and interexchange rate averaging requirements on all CMRS providers; all Title II regulation or "all but minimal" regulation on certain specialized mobile radio (SMR) providers; various requirements on local multipoint distribution service (LMDS) and other fixed wireless service providers; and our rule limiting sharing arrangements by private microwave licensees. Two comments were filed opposing potential forbearance in specific situations.[23]

9. Following the release of the *PCIA Forbearance Order and NPRM*, in its July 31, 1998 Letter, PCIA identified approximately 71 regulations that PCIA contended were administratively unnecessary and the elimination or revision of which PCIA believed would not be controversial.[24] PCIA divided these regulations into three categories: (1) rules that had previously been the subject of comment in the *Universal Licensing System* proceeding;[25] (2) rules that PCIA believed the Commission could eliminate or modify without prior notice and comment; and (3) rules that may require notice and comment prior to final Commission action. PCIA asked the Commission to eliminate or modify these regulations as part of its biennial review of regulations affecting providers of telecommunications service pursuant to Section 11 of the Act.[26]

10. The Wireless Telecommunications Bureau sought public comment on the July

---

[19] *Id.* at 16910-14, ¶¶ 111-118.

[20] *Id.* at 16913, ¶ 116.

[21] *Id.* at 16912, ¶ 113.

[22] The names of the commenters and the short forms by which they are referenced herein are listed in the Appendix. Citations herein to comments and reply comments, without further qualification, refer to comments on the *NPRM*.

[23] *See* PaPUC Comments (opposing any forbearance that would reduce CMRS providers' contributions to state and federal universal service funds); Radiofone Reply Comments (opposing any forbearance from enforcing Sections 201 and 202 of the Act against CMRS providers).

[24] July 31, 1998 PCIA Letter at 2.

[25] *See* Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027 (1998) (*Universal Licensing System Report and Order*), *on reconsideration*, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999) (*Universal Licensing System Order on Reconsideration*).

[26] 47 U.S.C. § 161.

31, 1998 PCIA Letter, requesting that comments be filed in both the present proceeding and the *Universal Licensing System* docket.[27] Eight parties filed comments in response to this Public Notice,[28] mostly supporting PCIA's proposals and in some instances identifying additional regulations that commenters believe should be eliminated or streamlined.[29] On May 18, 1999, PCIA submitted a follow-up letter in which it observed that we had already acted favorably on many of the requests in its previous letter and requested timely action on the remaining proposals. PCIA particularly noted that several of its requests had been substantially granted in the *Universal Licensing System Report and Order*.

11. In this item, we address the various proposals set forth in the comments on the *NPRM* and in the PCIA Letters, other than those dealing with TOCSIA. We will consider forbearance from enforcing additional provisions of TOCSIA in the wireless context at a later date.

III. DISCUSSION

A. Standard for Forbearance.

12. In order to forbear from applying a statutory or regulatory provision under Section 10, we must determine that each of three tests is satisfied: (1) enforcement is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest.[30] In determining whether forbearance is consistent with the public interest, we consider whether forbearance will promote competitive market conditions, including whether it will enhance competition among existing telecommunications service providers.[31]

13. In determining when to forbear from applying specific statutory or regulatory provisions, our goal, consistent with sound public policy and Congressional intent, is to deregulate wherever the operation of competitive market forces is capable of rendering regulation

---

[27] Wireless Bureau Seeks Comment on July 31, 1998 Letter from Personal Communications Industry Association Proposing Streamlining of Wireless Regulations, *Public Notice*, 13 FCC Rcd 25368 (1998).

[28] The names of commenters and the short forms by which they are referenced herein are listed in the Appendix. Comments on the July 31, 1998 PCIA Letter are cited hereafter as "[Party] Comments on PCIA Letter."

[29] One commenter, RTG, opposes PCIA's proposal to eliminate Section 22.323 of the rules, 47 C.F.R. § 22.323, which establishes conditions on the provision of incidental services by Part 22 licensees. We recently decided, in another proceeding in which RTG participated, to retain Section 22.323 at this time, but to eliminate the notification requirement contained in Section 22.323(d), and to consider further modification or elimination of Section 22.323 as part of the biennial review. Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *Second Report and Order and Order on Reconsideration*, FCC 00-246, ¶¶ 9-14 (rel. July 20, 2000).

[30] 47 U.S.C. § 160(a).

[31] 47 U.S.C. § 160(b).

unnecessary.[32] At the same time, as we emphasized in the *NPRM*, "the decision to forbear from enforcing statutes or regulations is not a simple decision, and must be based upon a record that contains more than broad, unsupported allegations of why the statutory criteria are met."[33] We therefore cannot forbear in the absence of a record that will permit us to determine that each of the tests set forth in Section 10 is satisfied for a specific statutory or regulatory provision.

14. In addition to Section 10, we also have authority under Section 332(c)(1)(A) to forbear from applying most provisions of Title II to CMRS providers and services. As discussed above, the standards for forbearance under Sections 10 and 332(c)(1)(A) are substantially similar,[34] and no commenter has pointed to any relevant differences between the standards. We conclude that, for purposes of this Report and Order, there is no decisionally significant distinction between the substantive standards for forbearance set out in Section 10 and in Section 332(c)(1)(A). Accordingly, we frame the discussion in the remainder of this Report and Order solely in terms of Section 10.

B. Provisions Applicable to CMRS Providers Generally.

15. In the *NPRM*, the Commission requested that parties submit comments "regarding forbearance from applying any regulation or provision of the Act to wireless telecommunications carriers licensed by the Commission."[35] In response to our request, parties submitted comments requesting forbearance from application of several sets of requirements to CMRS providers. All of these issues have been or are being addressed by the Commission in other proceedings. Specifically, we have considered or are considering elsewhere forbearance and other issues relevant to CMRS providers regarding Customer Proprietary Network Information ("CPNI"),[36] Local Number Portability ("LNP"),[37] rate integration,[38] and the Universal

---

[32] *See* S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. at 1 (1996) (stating Congressional intent "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

[33] *NPRM*, 13 FCC Rcd at 16912, ¶ 113.

[34] *See* ¶ 5, *supra.*

[35] *NPRM*, 13 FCC Rcd at 16912, ¶ 112.

[36] *See* Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, CC Docket No. 96-115, *Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061 (1998) (adopting CPNI rules), *Order on Reconsideration and Petitions for Forbearance*, 14 FCC Rcd 14409 (1999) (declining to forbear due to strong public interest in maintaining CPNI rules in CMRS context) (*CPNI Reconsideration and Forbearance Order*), *vacated and remanded sub nom. U.S. West v. FCC*, 182 F.3d 1224 (10th Cir. 1999) (vacating portions of first CPNI order; finding that opt-in rule for customer-specific CPNI violated First Amendment).

[37] *See LNP Forbearance Order,* 14 FCC Rcd 3092 (forbearing from requiring CMRS providers to offer LNP until November 24, 2002).

Service Fund.[39] We therefore decline to revisit these issues in this proceeding.

C. SMR Providers.

16. Several parties filed comments seeking forbearance from various statutory and regulatory provisions for "non-covered" SMR service providers. As a preliminary matter, it is important to clarify the various ways in which SMR providers are classified for regulatory purposes. "Covered" SMR providers have been defined to include providers that offer "real-time, two-way switched voice services that are interconnected with the public switched network . . . utiliz[ing] in-network switching facilities, enabling the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls."[40] Because of the technical capabilities of their systems and because they are able to compete significantly with traditional cellular and broadband PCS providers, covered SMR providers are subject to certain regulatory provisions that do not apply to other SMR providers, including obligations relating to E911 service, resale, and roaming.[41] Covered SMRs are categorized as CMRS because they meet the criteria for CMRS set out in Section 332(d)(1) of the Act and our rules.[42] And, because all CMRS providers are common carriers,[43] all covered SMR providers are subject to the Title II obligations that apply to common carriers, except to the extent that the Commission has forborne from specific regulations. Non-covered SMRs consist primarily of dispatch services, some of which provide

---

[38] *See GTE Service Corp. v. FCC*, No. 97-1358 (D.C. Cir. July 14, 2000) (holding that rate integration requirements in Section 254(g) of the Act do not unambiguously apply to CMRS); Policy and Rules Concerning the Interstate Interexchange Marketplace, CC Docket No. 96-61, *Memorandum Opinion and Order*, FCC 00-308 (rel. Aug. 23, 2000) (dismissing petitions to forbear from applying rate integration requirements to CMRS as moot and premature, and stating that Commission will expeditiously reconsider application of Section 254(g) to CMRS).

[39] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998) (establishing interim safe harbor percentages of interstate revenues for use by wireless carriers in calculating contributions to Universal Service Fund).

[40] *LNP Forbearance Order*, 14 FCC Rcd at 3094, ¶ 4 n.10; *see also, e.g.,* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Memorandum Opinion and Order on Reconsideration*, 17 Communications Reg. (P&F) 518, ¶ 44 (1999), *recon. denied*, FCC 00-307 (rel. Aug. 22, 2000); Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, FCC 00-251, ¶ 15 (rel. Aug. 28, 2000).

[41] *See* 47 C.F.R. § 20.18; 47 C.F.R. § 20.12. In addition, covered SMR providers will be subject to local number portability requirements after November 24, 2002. *See* 47 C.F.R. § 52.31.

[42] *See CMRS Second Report and Order*, 9 FCC Rcd at 1450-51, ¶¶ 88-93. Commercial mobile service is defined by statute to mean "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public . . . ." 47 U.S.C. § 332(d)(1); *see also* 47 C.F.R. § 20.3. In place of the statutory terminology, the Commission uses the term "commercial mobile radio service."

[43] Section 332(c)(1) of the Act provides that all commercial mobile service providers "shall . . . be treated as . . . common carrier[s] for purposes of this Act[.] . . ."

interconnection to the public switched network (though not in-network switching in their own system), while others do not. Those non-covered SMRs who provide interconnection are classified as CMRS providers, while SMRs who provide noninterconnected service are classified as private mobile radio service (PMRS) providers.[44] Under Section 332(c)(2) of the Act, PMRS providers are not common carriers and are not generally subject to Title II's common carrier obligations. Finally, the Act as amended in 1996 defines "telecommunications carrier" to include "any provider of telecommunications services."[45] The commenters argue that certain obligations triggered by these various regulatory classifications are onerous. After briefly summarizing the comments relating to this set of issues, we will address the commenters' substantive arguments.

17. AMTA, Motorola, and Russ Miller Rental filed relevant comments. AMTA asserts that the Commission should revisit its interpretation of how non-covered SMRs are classified under the Act. In the event we do not revise our interpretations, AMTA asks us to forbear from applying various provisions to non-covered SMR providers. Furthermore, AMTA asserts that Title II regulations, which apply to all CMRS providers, impose "significant burden[s] on the smaller operator."[46] AMTA in particular cites difficulties in complying with time-consuming "form completion and fee calculations"[47] and asserts that the $100 annual fees for the Telecommunications Relay Service ("TRS") fund and the administration of the North American Numbering Plan ("NANP") are too burdensome. Also, AMTA notes that, even though many of its members fall within the *de minimis* exemption for contributing to the Universal Service Fund, the semiannual reporting obligations associated with this fund are onerous.[48] Motorola supports many of the arguments made by AMTA.

18. Finally, Russ Miller Rental, a small interconnected SMR provider that operates a two-way radio system in Texas, requests that the Commission forbear, "in particular, when it places responsibilities on small wireless carriers that are substantially more difficult to comply with than for a larger carrier with resources dedicated to compliance issues."[49]

19. Interconnected SMR Providers as CMRS and Common Carriers: We first address AMTA's arguments that non-covered SMR providers should not be classified as either CMRS providers or common carriers. The Commission has long held that interconnected SMR service is CMRS and, thus, providers of this service are subject to regulations that are generally applicable to CMRS providers.[50] Also, the Commission has recognized that CMRS providers are

[44] *CMRS Second Report and Order*, 9 FCC Rcd at 1451, ¶ 90 (noting that "[l]icensees who provide interconnected service will be classified as CMRS providers, while those who do not will be classified as PMRS providers"); *see* 47 U.S.C. § 332(d).

[45] 47 U.S.C. § 153(44).

[46] AMTA Comments at 19.

[47] *Id.* at 25.

[48] *Id.* at 26.

[49] Russ Miller Rental Comments at 1.

[50] *CMRS Second Report and Order*, 9 FCC Rcd at 1450-51, ¶¶ 88-93.

both common carriers and "telecommunications carriers"[51] and, as a result, must comply with the requirements of Title II of the Act that apply to common carriers.[52] AMTA fails to offer any rationale that would cause us to revisit either of these determinations.[53]

20. General Title II Obligations: We reject AMTA's contention that we should forbear generally from applying Title II requirements to interconnected non-covered SMR providers. First, we note that many Title II requirements already do not apply to these carriers. As noted above, we have exempted non-covered SMRs from numerous regulatory obligations (E911 service, resale, roaming) that are imposed on "covered" carriers. Moreover, we have previously forborne from applying several provisions of Title II to all CMRS providers, including non-covered as well as covered SMR providers.[54] With respect to the remaining provisions of Title II, the record does not show that the statutory criteria for forbearance are satisfied. In particular, with respect to Sections 201 and 202,[55] we held in the *PCIA Forbearance Order* that these sections codify "the bedrock consumer protection obligations"[56] and that their existence "gives the Commission the power to protect consumers by defining forbidden practices and enforcing compliance."[57] Indeed, we noted in the *PCIA Forbearance Order* that we have "never previously refrained from enforcing sections 201 and 202 against common carriers, even when competition exists in a market."[58] Accordingly, we declined to forbear from applying these provisions against broadband PCS providers, and we similarly will not forbear with respect to SMR providers.

21. Title II Funding Obligations: Since the filing of this record, we have streamlined and relaxed many of the specific requirements highlighted by AMTA and the other commenters here. Several Title II requirements relate to mandatory contributions to the funding mechanisms administered by the Commission.

22. AMTA, Motorola, and Russ Miller Rental unanimously object to the time-consuming nature and expense of the obligations associated with these funds. In the 1998 Biennial Regulatory Review, which we completed since the filing of this record, we adopted new,

---

[51] As noted earlier, "[t]elecommunications carrier" is defined as follows: "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services . . . ." 47 U.S.C. § 153(44). Further, "telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

[52] 47 U.S.C. § 332(c)(1)(A); *see* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Notice of Proposed Rulemaking*, 8 FCC Rcd 7988, 7998, ¶ 49 (1993).

[53] We do not address here whether non-interconnected SMRs are "telecommunications carrier[s]" within the meaning of the Act. *See* 47 U.S.C. § 153(44).

[54] *CMRS Second Report and Order*, 9 FCC Rcd at 1463-93, ¶¶ 124-219.

[55] 47 U.S.C. §§ 201, 202.

[56] *PCIA Forbearance Order*, 13 FCC Rcd at 16865, ¶ 15.

[57] *Id.*

[58] *Id.* at 16866, ¶ 17.

streamlined procedures for contributing to the various funds administered by the Commission.[59] These changes addressed the type of complaints made by commenters here. These funds include the Telecommunications Relay Service ("TRS"), the Universal Service Fund, Local Number Portability ("LNP"), and the North American Numbering Plan ("NANP"). Specifically, we (1) replaced fund-specific forms with one form, called the Telecommunications Reporting Worksheet; (2) provided that a single copy of the worksheet will be filed annually in one place, rather than multiple forms filed at different times and in multiple locations;[60] (3) made the basis for assessing contributions consistent for all funds, thus reducing the time necessary to prepare submissions to the Commission; (4) provided that carriers need not calculate their own contributions, but will be billed based on the information that they provide; (5) encouraged electronic filing of worksheets; and (6) reduced the minimum contributions to the TRS and NANP funds to $25 from $100.[61] As we noted, these changes will serve "to harmonize . . . multiple contributor reporting requirements and to minimize the administrative burdens for carriers and service providers. Thus, in lieu of making four separate filings in the spring of 2000, reporting carriers will simply file one copy of the new worksheet on April 1, 2000."[62]

23. Other Reporting Obligations: AMTA and Motorola also argue that the Commission should forbear from applying other reporting obligations. Motorola, in particular, cites the onerous nature of reporting obligations relating to ownership and Equal Employment Opportunity.[63]

24. We addressed many of the commenters' concerns through significant rule changes adopted in the Universal Licensing System ("ULS") proceeding.[64] Several changes that relate to ownership reporting requirements include: (1) applicants for multiple licenses in an auction are required to file only one Form 602 (FCC Ownership Disclosure Information for the Wireless Telecommunications Services), as opposed to one form for each individual license; (2) after having filed the required form the first time, applicants no longer need to file additional forms with subsequent applications, provided the ownership information remains current; (3) should the information on a Form 602 need to be updated, an applicant need only update the information on the form that has changed, rather than resubmitting an entirely new form; and (4) the ownership

---

[59] 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, 16 Communications Reg. (P&F) 688 (1999).

[60] Because the Universal Service rules "require that contributors file data twice a year so that the Commission can develop contribution factors using relatively current information[,]" the Commission kept in place the so-called September 1st filing and simply streamlined the form. *Id.* at ¶¶ 33-34.

[61] *Id.* at ¶¶ 1-5.

[62] *Id.* at ¶ 1.

[63] Motorola Comments at 3.

[64] *See Universal Licensing System Report and Order*, 13 FCC Rcd 21027; *Universal Licensing System Order on Reconsideration*, 14 FCC Rcd 11476.

reporting form and subsequent updates may be filed electronically.[65] Also, in the ULS proceeding, we eliminated the requirement that 800 MHz SMRs provide the Commission "with information regarding the location and technical characteristics of individual transmitter sites."[66] To the extent that any providers believe that these reporting obligations remain unnecessarily burdensome, they may raise these contentions in the context of our upcoming biennial review of telecommunications regulations.[67]

D. Fixed Wireless Service Providers.

25. PCIA, WCA, and RTG urge the Commission to forbear from applying various statutory provisions and Commission regulations to fixed wireless telecommunications carriers.[68] In particular, WCA and RTG argue that the Commission should forbear from applying to fixed wireless service providers all of the provisions as to which it has exercised forbearance with respect to CMRS providers, including Sections 203, 204, 205, 211, 212, and 214 of the Act.[69] In addition, WCA contends that the Commission should forbear from applying to these providers requirements relating to interexchange rate averaging and CPNI, and RTG seeks forbearance with respect to Section 251(b)(1)-(3).[70] PCIA argues broadly that the Commission should consider forbearance from regulation for LMDS and similarly situated fixed wireless service providers, and in particular that it should forbear from applying resale obligations, TOCSIA provisions, and international Section 214 requirements to these providers.[71] These commenters generally argue that forbearance would recognize fixed wireless service providers' lack of market power and promote regulatory symmetry between fixed and mobile carriers, and that it would help promote competition in a nascent industry. RTG further argues that the costs of regulation fall more heavily on rural fixed wireless service providers, and thus that the Commission should, at a minimum, forbear from applying numerous provisions of Title II against rural fixed wireless service providers.[72]

26. Over the past few years, we have taken numerous actions to ensure that all carriers without market power, including fixed wireless service providers, are subject to a streamlined

[65] *Universal Licensing System Report and Order*, 13 FCC Rcd at 21063, ¶ 78.

[66] *Id.* at 21092, ¶ 145.

[67] 47 U.S.C. § 161. Section 161(a) provides that "[i]n every even-numbered year[,] . . . the Commission (1) shall review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and (2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." 47 U.S.C. § 161(a). Further, Section 161(b) provides that "[t]he Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161(b).

[68] PCIA Comments at 18-29; RTG Comments at iii; WCA Comments at 1-4.

[69] WCA Comments at 1-4, 8; RTG Comments at iii.

[70] RTG Comments at 4-9.

[71] PCIA Comments at 18-19.

[72] RTG Comments at 4, 9-11.

regulatory regime that is generally comparable to the regime applicable to CMRS providers. First, we have previously granted forbearance from several of the requirements that commenters identify. For example, we have forborne from requiring providers other than incumbent LECs to file tariffs for the provision of interstate exchange access services under Section 203,[73] and we have forborne from applying the interlocking directorate provisions of Section 212 to all carriers.[74] With respect to various other requirements, while we have not granted forbearance to non-CMRS providers, we have afforded substantial relief by other means. Thus, we have granted blanket entrance authorization to all carriers for domestic services under Section 214,[75] provided for automatic grant of international entrance applications after 14 days in most instances,[76] established automatic grant of domestic exit applications after 31 days for non-dominant carriers,[77] and provided that non-dominant carriers need not file contracts for domestic services under Section 211.[78] In other instances, after fully considering a relevant record in light of the forbearance standards set out in Section 10, we have specifically declined to forbear from applying certain provisions to either competitive LECs or CMRS providers.[79] We further note that we will consider forbearance from applying TOCSIA requirements to fixed wireless service providers, as well as CMRS providers, in a subsequent order in this proceeding.

27. In light of the actions described above, we find that the record does not establish a basis for additional forbearance with respect to fixed wireless service providers. The crux of the arguments in favor of forbearance is that CMRS and fixed wireless services should be treated

---

[73] *Hyperion*, 12 FCC Rcd at 8607-11, ¶¶ 21-29. In so doing, we necessarily also forbore from applying Sections 204 and 205 against carriers that do not file tariffs, since those provisions apply only in the context of a tariff filing under Section 203. We have recently sought comment to refresh the record regarding complete detariffing of these services. *See* Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services, CC Docket Nos. 96-262 and 97-146, *Public Notice*, 15 FCC Rcd 10181 (2000).

[74] *Interlocking Directorates Order*, 14 FCC Rcd 16530.

[75] Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, CC Docket No. 97-11, *Report and Order*, 14 FCC Rcd 11364, 11370-75, ¶¶ 8-18 (1999) (*Section 214 Streamlining Order*).

[76] 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations, IB Docket No. 98-118, *Report and Order*, 14 FCC Rcd 4909, 4912-27, ¶¶ 8-40 (1999) (*International Streamlining Order*).

[77] *Section 214 Streamlining Order*, 14 FCC Rcd at 11378-81,¶¶ 26-32.

[78] *See* 47 C.F.R. § 43.51.

[79] *See, e.g., International Streamlining Order*, 14 FCC Rcd at 4916-17, 4926-27, ¶¶ 17-18, 38-39 (declining to forbear from applying Section 214 entry requirements either in general or to CMRS providers in particular); *CPNI Reconsideration and Forbearance Order*, 14 FCC Rcd 14409 (declining to forbear from applying CPNI rules to CMRS providers); *see also* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *First Report and Order*, 11 FCC Rcd 18455 (1996) (applying to certain CMRS providers on a transitional basis resale obligations comparable to those imposed under Section 251(b)(1)), *aff'd sub nom. Cellnet Communications v. FCC*, 149 F.3d 429 (6th Cir. 1998), *recon.*, 17 Communications Reg. (P&F) 518 (1999), *further recon. denied*, FCC 00-307 (rel. Aug. 22, 2000).

similarly for regulatory purposes. With respect to many of the provisions that the commenters identify, however, we have already granted forbearance or substantially similar relief to both wireless and wireline competitive LECs. In other instances, we have declined to forbear for CMRS providers and competitive LECs alike. Because the commenters do not identify any instance in which fixed wireless service providers without market power and CMRS providers remain subject to meaningfully different regulation, and because they make no other argument for forbearance that we have not previously considered and rejected, the record does not establish a basis for additional forbearance. For similar reasons, the record does not support forbearance from applying any provision specifically in the context of rural fixed wireless service providers. We also find no basis for issuing a Further Notice of Proposed Rulemaking with respect to any specific provisions. [80] We note, however, that our forthcoming biennial review under Section 11 of the Communications Act will provide another opportunity for parties to develop a specific and comprehensive case for forbearance from any particular requirement.

E. Carriage of Common Carrier Traffic by Private Operational Fixed Licensees.

28. UTC urges the Commission to amend its rules governing private wireless microwave sharing to allow private microwave licensees to act as providers to other carriers.[81] In the *Part 101 Reconsideration Order and NPRM*, we recently rejected a similar argument by UTC on the ground that the record was insufficient to justify deleting the existing rule, and we requested comment on whether private operational fixed licensees should be permitted to carry common carrier traffic.[82] We find that the record here is similarly insufficient, and we defer consideration of this issue to the pending Notice. In addition, we note that the three-prong forbearance test is inapplicable to UTC's request because the Commission lacks forbearance authority over non-common carriers such as UTC.[83]

F. The PCIA Letters.

29. On July 31, 1998, PCIA submitted a letter identifying approximately 71 regulatory requirements applicable to wireless licensees that it believed were administratively

[80] *See* RTG Comments at 13 (suggesting that the Commission issue a Further Notice of Proposed Rulemaking).

[81] UTC Comments at 2.

[82] 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, WT Docket No. 94-148, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 15 FCC Rcd 3129, 3141, 3149-51, ¶¶ 19, 35-38 (2000) (*Part 101 Reconsideration Order and NPRM*).

[83] *See FCBA Forbearance Order*, 13 FCC Rcd at 6306-07, ¶ 24.

unnecessary and should be eliminated or streamlined.[84] As PCIA acknowledged in its follow-up letter dated May 18, 1999, we subsequently granted many of these requests in the *Universal Licensing System Report and Order*. We have since addressed additional issues raised by PCIA, and streamlined additional wireless regulations, in several other orders, including the *Universal Licensing System Order on Reconsideration*, the *800 MHz Wide Area Licensing Memorandum Opinion and Order on Remand*, the *800 MHz Wide Area Licensing Memorandum Opinion and Order on Reconsideration*, the *Part 101 Order on Reconsideration*, and the *Reframing Third Memorandum Opinion and Order*.[85]

30. Given the substantial relief that has already been afforded in the multitude of areas raised by PCIA, we focus here on three specific issues that PCIA identified as priority issues in its May 18, 1999 letter. We will be considering additional measures to streamline regulations affecting wireless telecommunications carriers in the course of our upcoming biennial review, and we encourage PCIA and other interested parties to participate actively in the biennial review process.[86]

31. Ownership Reporting: PCIA argues that "much of the ownership reporting information now required by Form 602 [FCC Ownership Disclosure Information for the Wireless Telecommunications Services] is burdensome and unnecessary."[87] As discussed *supra*, Section C, we have streamlined many ownership reporting obligations in the ULS proceeding. PCIA fails to offer any additional rationale here that would cause us to reevaluate this issue in the current proceeding.

32. Trafficking Review: Section 1.948(i)(1) of the Commission's rules defines trafficking as follows: "[t]rafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own

---

[84] *See* July 31, 1998 PCIA Letter at 2.

[85] *Universal Licensing System Order on Reconsideration*, 14 FCC Rcd 11476; Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Remand*, 14 FCC Rcd 21679 (1999) (*800 MHz Wide Area Licensing Memorandum Opinion and Order on Remand*); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 17556 (1999) (*800 MHz Wide Area Licensing Memorandum Opinion and Order on Reconsideration*); *Part 101 Reconsideration Order*, 15 FCC Rcd 3129; Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Third Memorandum Opinion and Order*, 14 FCC Rcd 10922 (1999) (*Reframing Third Memorandum Opinion and Order*).

[86] Pursuant to Section 161, in every even-numbered year, the Commission must review its regulations and "determine whether any . . . regulation is no longer necessary in the public interest as the result of meaningful economic competition[,]" and the Commission "shall repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161(a&b).

[87] May 18, 1999 PCIA Letter at 1.

private use."[88] The Commission may review assignments or transfers of authorizations to determine whether trafficking has occurred.[89] PCIA is concerned that, because the trafficking rule "still contains a procedure for FCC review of sales of unbuilt facilities sold for a profit,"[90] this rule "does not reflect the situation whereby a licensee receives its authorization through auction . . . ."[91] PCIA suggests that "[t]he Bureau should either recommend elimination of the rule or create an explicit exception for licenses assigned by auction . . . ."[92]

33. We find that the current rule does not cause the difficulties with which PCIA is concerned. The rules at issue provide that Commission review for the purposes of determining whether trafficking has occurred is discretionary.[93] We would expect that we would rarely need to exercise this discretionary authority to review assignments or transfers of authorizations that were assigned through auction because the auction process, by requiring initial licensees to pay market value for their authorizations, effectively safeguards against such speculation.[94]

34. Geographic Licensing: In addition, PCIA "urges the Bureau to take a second look at the station information requirements for microwave licensees who hold geographic licenses (like LMDS) to the extent that they may be read as to not permit a licensee to maintain information at a central location, rather than at each customer site that maintains a transmitter."[95] PCIA's letter and accompanying Appendix do not provide any reference to the relevant regulations. We presume that PCIA meant to reference some or all of Sections 101.149, 101.215, and 101.217, all of which relate to station record keeping requirements.[96] With respect to

---

[88] 47 C.F.R. § 1.948(i)(1).

[89] 47 C.F.R. § 1.948(i).

[90] May 18, 1999 PCIA Letter at 1.

[91] *Id.*

[92] *Id.*

[93] Section 1.948(i) provides that "[a]pplications for approval of assignment or transfer *may* be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations." 47 C.F.R. § 1.948(i) (emphasis added). Further, Section 1.948(i)(2) provides that "[t]he Commission *may* require submission of an affirmative, factual showing . . . to demonstrate that the assignor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization." 47 C.F.R. § 1.948(i)(2).

[94] In addition, the Commission's unjust enrichment rules ensure that parties that acquire auctioned licenses pursuant to set-asides, installment financing, or bidding credits do not obtain unjust enrichment upon an assignment or transfer of control. *See* 47 C.F.R. § 1.2111.

[95] May 18, 1999 PCIA Letter at 2.

[96] The relevant portions of the applicable regulations are as follows: Section 101.149(b) provides that "[e]ach operating station must have posted a copy of the service area authorization." 47 C.F.R. § 101.149(b). Section 101.215(a) provides that "[e]ach licensee shall post at the station the name, address and telephone number of the custodian of the station license or other authorization if such license or authorization is not maintained at the station." 47 C.F.R. § 101.215(a). Finally, Section 101.217 provides:

Footnote continued on next page

Sections 101.149 and 101.215, we have required that information such as the station name, address, and telephone number be maintained on-site due to "the public interest in having an [*sic*] readily identifiable contact at each transmitter site . . . ."[97] The requirement ensures that any member of the public or state or local authorities can easily contact the licensee in case problems arise at the transmitter site. However, Section 101.217 does not on its face direct the more detailed information required under that provision to be kept at any particular location, and the Commission has not previously interpreted the regulation in this manner. To the extent clarification is necessary, we therefore declare that information required under Section 101.217 may be kept at a central location consistent with the terms of Section 101.217.

IV. CONCLUSION

35. The Commission has provided significant and dramatic relief from the regulations that commenters identified as overly burdensome. To the extent that any providers believe that the now-existing regulatory regime continues to be overly burdensome, they may raise these contentions in the context of the Commission's upcoming biennial review of telecommunications regulations. As we have indicated, we will address forbearance from enforcing TOCSIA against wireless telecommunications service providers in a subsequent report and order.

V. ORDERING CLAUSE

36. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 10 and 11 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 160, and 161,

---

> Each licensee of a station subject to this part shall maintain records in accordance with the following:
> (a) For all stations, the results and dates of transmitter measurements and the name of the person or persons making the measurements;
> (b) For all stations, when service or maintenance duties are performed, which may affect their proper operation, the responsible operator shall sign and date an entry in the station record concerned, giving:
> (1) Pertinent details of all transmitter adjustments performed by him or under his supervision; and
> (2) His name and address, provided that this information, so long as it remains unchanged, is not required to be repeated in the case of a person who is regularly employed as operator on a full-time basis at the station.
> (c) The records shall be kept in an orderly manner, and in such detail that the data required are readily available. Key letters or abbreviations may be used if proper meaning or explanation is set forth in the record.
> (d) Each entry in the records of each station shall be signed by a person qualified to do so, having actual knowledge of the facts to be recorded.
> (e) No record or portion thereof shall be erased, obliterated, or willfully destroyed within the required retention period. Any necessary correction may be made only by the person originating the entry, who shall strike out the erroneous portion, initial the correction made and indicate the date of correction.
> (f) Records required by this part shall be retained by the licensee for a period of at least one year.

47 C.F.R. § 101.217(a-f).

[97] *Universal Licensing System Report and Order*, 13 FCC Rcd at 21100, ¶ 164.

this First Report and Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX

Parties Filing Comments

1. American Mobile Telecommunications Association, Inc. (AMTA)
2. Bell Atlantic Mobile, Inc. (BAM)
3. Comcast Cellular Communications, Inc. (Comcast)
4. GTE Service Corporation (GTE)
5. Motorola, Inc. (Motorola)
6. Omnipoint Communications, Inc. (Omnipoint)
7. Pennsylvania Public Utility Commission (PaPUC)
8. Personal Communications Industry Association (PCIA)
9. The Rural Telecommunications Group (RTG)
10. Southwestern Bell Mobile Systems, Inc., and Pacific Bell Mobile Services, filing jointly (SBMS)
11. UTC
12. Wireless Communications Association International, Inc. (WCA)

Parties Filing Reply Comments

1. Comcast Cellular Communications, Inc. (Comcast)
2. Nextel Communications, Inc. (Nextel)
3. Personal Communications Industry Association (PCIA)
4. Radiofone, Inc. (Radiofone)
5. Russ Miller Rental (Russ Miller Rental)

Parties Filing Comments to July 31, 1998 PCIA Letter

1. American Mobile Telecommunications Association, Inc. (AMTA)
2. AT&T Wireless Services, Inc. (AT&T Wireless)
3. Fixed Point-to-Point Communications Section, Wireless Communications Division, of the Telecommunications Industry Association (TIA)
4. GTE Service Corporation (GTE)
5. Personal Communications Industry Association (PCIA)
6. UTC
7. Winstar Communications, Inc. (Winstar)