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

In the Matter of	)	
	)	
Interconnection and Resale Obligations Pertaining	)	
to Commercial Mobile Radio Services	)	CC Docket No. 94-54
	)	
	)	
	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: May 1, 2001 **Released: May 9, 2001**

Before the Commission:

I. INTRODUCTION

1. By this order we deny the petition for reconsideration filed by the Association of Communications Enterprises (ASCENT)[1] of the *Fourth Report and Order* in this proceeding.[2] Specifically, we affirm the decision reached in that Order that facilities-based commercial mobile radio service (CMRS) providers are not required to interconnect with resellers' switches. This decision will permit CMRS providers to continue to compete and provide innovative services without unnecessary regulatory restrictions, but gives the Commission flexibility to consider specific requests for interconnection on a case-by-case basis.

II. BACKGROUND

2. In the *Fourth Report and Order*, we determined that facilities-based CMRS providers are not required to interconnect with each other or to permit resellers to interconnect their switches between the CMRS mobile telephone switching office (MTSO) and the facilities of LECs. Specifically, we determined that (1) neither the Communications Act nor precedent requires the Commission to mandate reseller switch interconnection; and (2) the public interest does not require mandatory reseller switch interconnection.[3] Subsequently, the Wireless Telecommunications Bureau (WTB) released an order dismissing two 1995 reseller complaints that alleged that cellular carriers had refused to discuss interconnection proposals made by the resellers, and that resellers were entitled to physical interconnection so long as no public detriment

[1] Petition for Reconsideration of the Association of Communications Enterprises, filed September 13, 2000.

[2] Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Fourth Report and Order*, CC Docket No. 94-54, 15 FCC Rcd 13523 (2000)(*Fourth Report and Order*).

[3] *Fourth Report and Order* at 13527-28, 13531-32.

was occasioned thereby.[4] WTB dismissed the complaints partly on the ground that the *Fourth Report and Order* held that Sections 201 and 332 do not require mandatory interconnection between CMRS networks and the resellers' switches and that resale switch interconnection would not be necessary or desirable in the public interest.[5]

3. ASCENT filed a petition for reconsideration, primarily on the grounds that the Commission determined that no possible request by a wireless reseller for interconnection of its switch could ever be considered to be in the public interest.[6] ASCENT requests that, assuming that the Commission upholds its ruling that there should be no general requirement for mandatory interconnection of a reseller's switch with a CMRS provider's network, the Commission make clear that it will consider future requests for interconnection on the facts presented.[7] Alloy, CTIA and Verizon filed oppositions, in whole or in part, to ASCENT's reconsideration request. Alloy argues that resellers' requests for interconnection of their switches with a CMRS provider's network should be precluded.[8] Verizon and CTIA contend that the Commission correctly determined that there should be no general requirement for interconnection, but disagree with ASCENT that the Commission's order precludes consideration of future interconnection requests on a case-by-case basis.[9] In their view, case-by-case interconnection determinations are permitted under the *Fourth Report and Order*. WorldCom filed comments in support of ASCENT's petition;[10] and ASCENT filed a reply.[11]

III. DISCUSSION

A. The Commission Did Not Preclude Future Requests for Interconnection That Show They Are Necessary or Desirable in the Public Interest

4. **Background.** The *Fourth Report and Order* determined, based on the Commission's analysis of the record, that the public interest does not support the establishment of a rule requiring that facilities-based CMRS carriers interconnect with resellers'switches.[12] ASCENT contends that the

[4] The reseller proposals would have established reseller switches between the CMRS carrier's mobile telephone switching office (MTSO) and the landline telephone network, and would assume all switching and administrative functions with respect to the resellers' customers. Cellnet Communications, Inc. v. New Par, Inc. d/b/a Cellular One and Nationwide Cellular Service, Inc. v. Comcast Cellular Communications, Inc., *Order*, File Nos. WB/ENF-F-95-010 and WB/ENF-F-95-011, 15 FCC Rcd 13814, 13815 (2000) (*Complaint Order*).

[5] 15 FCC Rcd at 13817.

[6] ASCENT Petition at 2.

[7] *Id.* at 14.

[8] Opposition to Petition for Reconsideration of Alloy LLC (Alloy), filed October 11, 2000.

[9] Opposition to Petition for Reconsideration of the Cellular Telecommunications Industry Association (CTIA), filed October 11, 2000; and Opposition of Verizon Wireless (Verizon), filed October 11, 2000.

[10] Comments of WorldCom, Inc.(WorldCom), filed October 11, 2000.

[11] Reply to Oppositions to Petition for Reconsideration filed October 23, 2000.

[12] 15 FCC Rcd at 13531.

Commission effectively determined that no possible request by a wireless reseller for interconnection of its switch with a CMRS provider's network could ever be considered in the public interest, and requests that the Commission make clear that it would consider future requested on the facts presented.[13] WorldCom agrees with ASCENT.[14] CTIA and Verizon argue, on the other hand, that the Commission did not preclude such requests.[15] Alloy does not contend that the Commission precluded such requests, but argues that such requests should be barred.[16]

5. **Discussion.** We conclude that the *Fourth Report and Order* did not preclude future requests for interconnection based on different facts than were shown in the record in this proceeding. ASCENT contends that (1) Sections 201 and 332 of the Act require the Commission to consider reasonable individual requests for interconnection in a hearing, (2) the Bureau's denial of the complaints in the *Complaint Order* shows that the Commission intended to preclude the consideration of such individual requests, and (3) there will be many interconnection requests which have merit, including those arising from the "networks of networks" concept discussed in the *Competitive Networks NPRM*.[17] ASCENT requests that the Commission make clear that it will consider future interconnection requests upon the facts presented.[18]

6. Contrary to ASCENT's contention, the *Fourth Report and Order* does not preclude the Commission from considering other requests for interconnection, but, as Verizon and CTIA recognize, merely rejected a rule requiring mandatory interconnection based on the record in this proceeding.[19] This decision was based on a proposal under which the resellers would place their switches between the MTSO of the CMRS carrier and the facilities of the local exchange carrier (LEC)) or interexchange carrier (IXC).[20] We found that such a proposal was distinguishable from long distance resale. In long distance resale, a reseller configures its service so that its customers originate resale calls without any action on the part of the facilities-based provider.[21] By contrast, under the CMRS reseller proposal, the reseller's facilities would be interconnected between the CMRS provider and the LEC or IXC, to provide additional switching and allow the reseller to offer value-added services. Thus, the proposal would require the

[13] ASCENT Petition at 2, 14.

[14] WorldCom Comments at 2.

[15] CTIA Opposition at 4; Verizon Opposition at 4.

[16] Alloy Opposition at 7.

[17] ASCENT Petition at 3-8; Promotion of Competitive Networks in Local Telecommunications Markets, *Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-2217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98*, CC Docket No. 96-98, 14 FCC Rcd 12673 (1999).

[18] ASCENT Petition at 14.

[19] Verizon Opposition at 4-6; CTIA Opposition at 4-5.

[20] 15 FCC Rcd at 13524.

[21] For instance, a reseller can have its customers dial to connect to its switch, and then dial a second number to designate the call's desired end point. The reseller's switch uses the second number to dial the call pursuant to a facilities-based carrier's bulk discount plan.

facilities-based provider to take affirmative action to switch the call. We further found, among other things, that this proposal would raise a number of technical issues relating to possible degraded service to consumers, and would require the Commission to be embroiled in cost and rate issues.

7. Furthermore, we disagree with ASCENT's contention that the *Complaint Order* shows that the Commission intended to preclude all resale switch interconnection requests. The *Complaint Order* concerned allegations that CMRS carriers had refused to discuss interconnection proposals made by the resellers, and that resellers were entitled to physical interconnection so long as no public detriment was occasioned thereby. The reseller proposals would have established reseller switches between the CMRS carrier's MTSO and the landline telephone network, and would assume all switching and administrative functions with respect to the resellers' customers.[22] The *Complaint Order* properly dismissed the complaints because, as Verizon states, the record in that case was based on the identical proposal as was the basis of our finding in the *Fourth Report and Order* that there was no right to mandatory interconnection and the proposals were not in the public interest.[23] In fact, the positioning of the reseller's switch between the MTSO and the IXC or LEC, as shown in the record of the *Complaint Order,* was the basis of several of the Commission's findings in the *Fourth Report and Order* that the proposal would not be in the public interest.[24]

8. Should other requests for interconnection be submitted to the Commission, they would have to be evaluated based on whether it would be necessary or desirable in the public interest. However, any such request would have to be distinguishable from the proposals that were the basis of the record in this proceeding.[25] In sum, the *Fourth Report and Order* does not prevent the consideration of future interconnection requests on a case-by-case basis.

B. Neither the Communications Act nor Commission Precedent Requires the Commission to Mandate Reseller Switch Interconnection

9. **Background.** ASCENT also takes issue with the finding in the *Fourth Report and Order* that neither the *Hush-A-Phone*[26] case nor other Commission precedent required mandatory resale switch interconnection. Following the reasoning of the U.S. Court of Appeals for the Sixth Circuit in the *Cellnet*

[22] 15 FCC Rcd at 13815, 13817.

[23] Verizon Opposition at 6; Complaints Order at paras. 2-4.

[24] 15 FCC Rcd at 13531-32.

[25] To the extent that ASCENT implies at page 6 of its petition that we may not dispose of interconnection requests in rulemaking proceedings, that implication is without merit. The Commission and the courts have long held that the Commission may rule on interconnection requests in rulemaking proceedings. *See Bell Telephone Company of Pennsylvania v. FCC*, 503 F. 2d 1250 (3d Cir. 1974), cert. denied, 422 U.S. 1026, reh. denied, 423 U.S. 886 (1975); Joint Petition of CPI Microwave, Inc. and Midwestern Relay Co. for an Order to Show Cause with Respect to American Telephone & Telegraph Co., Illinois Bell Telephone Co., and Southwestern Bell Telephone Co., *Memorandum Opinion and Order,* Docket No. 20199, 49 FCC 2d 778 (1974); ITT World Communications v. The Western Union Telegraph Company and RCA Global Communications, Inc. v. The Western Union Telegrtaph Company, *Memorandum Opinion and Order*, File Nos. TS-8-77 and TS-15-77, 87 FCC 2d 624 (1981)

[26] *Hush-A-Phone Corp. v. United States*, 238 F. 2d 266, 269 (D.C. Cir. 1956) (*Hush-A-Phone).*

case,[27] the Commission determined that *Hush-A-Phone* was limited to restrictions on a customer's use of his telephone.[28] Further, we determined that Commission cases upon which petitioners relied were inapplicable because (1) they also involved the right of end users to connect their private equipment to the network,[29] (2) there had been a previous Commission finding that the interconnection in question was in the public interest,[30] and (3) they involved a dominant carrier.[31] ASCENT argues that the cases relying on *Hush-A-Phone* did not focus on the fact that the carrier was dominant, and implies that *Cellnet* was wrongly decided.

10. **Discussion.** We conclude that our interpretation of the precedents is correct, and that *Hush-A-Phone* and other cases cited by ASCENT did not involve inter-carrier interconnection, especially where there is no dominant carrier involved. In relevant part, Section 201 requires interconnection only after the Commission has found such action reasonable or desirable in the public interest.[32] ASCENT relies on a number of cases regarding the right of the telephone subscriber to use its telephone equipment in ways that are "privately beneficial without being publicly detrimental."[33] However, these cases all involved the ability of private subscribers to attach their telephone equipment to the dominant telephone network, not the inter-carrier connection to the networks of competitive CMRS providers that the resellers sought in this proceeding. The Sixth Circuit in *Cellnet* properly ruled that the *Hush-A-Phone* case only involved "an unwarranted interference with a person's use of their telephone."[34] There is no basis for ASCENT's argument that *Cellnet* was wrongly decided, and we find that ASCENT has provided no new arguments that warrant the expansion of *Hush-A-Phone* that it advocates. We therefore deny ASCENT's petition for reconsideration.

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[27] *Cellnet Communications, Inc. v. FCC*, 149 F. 3d 429, 437 (6th Cir. 1998)(*Cellnet).*

[28] 15 FCC Rcd at 13527.

[29] Use of the Carterphone Device in Message Toll Telephone Service, *Memorandum Opinion and Order*, Docket Nos. 16942 and 17073, 13 FCC 2d 420 (*Carterphone), recon. denied,* 14 FCC 2d 571 (1968).

[30] American Telephone and Telegraph Company Restrictions on Private Line Service, *Memorandum Opinion and Order*, Transmittal Nos. 12171 and 12306, 60 FCC 2d 939 (1976) (*AT&T Piece Out Order).*

[31] 15 FCC Rcd at 13527-28.

[32] 47 U. S.C. § 201(a). ("It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio…in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers….")

[33] ASCENT Petition at 12-13, citing *Fort Mill Telephone Company v. FCC*, 719 F. 2d 89 (4th Cir. 1983); *Public Utility Commission of Texas v. FCC*, 886 F. 2d 1325 (D.C. Cir. 1989); *American Telephone and Telegraph Company*, 71 FCC 2d 1 (1979).

[34] 149 F. 3d at 437.

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by ASCENT is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary