

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers)	CC Docket No. 95-185
)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers)	CC Docket No. 94-54
)	
)	

NOTICE OF PROPOSED RULEMAKING

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Comments and Reply Comments are to be filed in CC Docket No. 95-185 only.

By the Commission: Commissioners Barrett, Ness, and Chong issuing separate statements.

TABLE OF CONTENTS

I.	INTRODUCTION	1
	A. Summary	1
	B. Overview	4
	1. Goals	4
	2. Need for Reform	8
	3. Scope of This Notice	15
II.	BACKGROUND	19
III.	COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS AND CMRS PROVIDERS' NETWORKS	25
	A. Overview	25

B.	Compensation Arrangements	26
1.	Positions of the Parties	26
2.	Discussion	39
a.	Existing Compensation Arrangements	40
b.	General Pricing Principles	42
(1)	Rate Structure	42
(2)	Rate Levels	47
(a)	Long Run Incremental Costs	47
(b)	Recovering Costs in Excess of Long Run Incremental Costs	49
(3)	Practical Considerations Regarding Cost-Based Pricing	56
c.	Pricing Options	58
(1)	Interim Approach	58
(a)	Tentative Conclusions	60
(b)	Other Options	66
(2)	Long Term Approach	76
(3)	Symmetrical Compensation Arrangements	78
C.	Implementation of Compensation Arrangements	82
1.	Negotiations and Tariffing	82
a.	Positions of the Parties	82
b.	Discussion	88
2.	Jurisdictional Issues	96
a.	Statutory Background	96
b.	Positions of the Parties	98
b.	Discussion	107
IV.	INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC	115
V.	APPLICATION OF THESE PROPOSALS	118
VI.	PROCEDURAL ISSUES	122
A.	<i>Ex Parte</i> Presentations	122
B.	Initial Regulatory Flexibility Analysis	123
C.	Comment Filing Procedures	132
D.	Ordering Clauses	134

I. INTRODUCTION

A. Summary

1. In this Notice, the Commission continues its examination of whether our policies related to interconnection between commercial mobile radio service (CMRS) providers and local exchange carriers (LECs) are sufficient to advance the public interest.¹ We currently require LECs to offer interconnection to CMRS providers on reasonable terms and conditions, and to do so under the principle of mutual compensation.² We have not, however, set specific limits on the price of such interconnection, nor have we required that interconnection agreements be filed with regulatory authorities or that interconnection be provided pursuant to tariff.

2. We are concerned that existing general interconnection policies may not do enough to encourage the development of CMRS, especially in competition with LEC-provided wireline service. LECs unquestionably still possess substantial market power in the provision of local telecommunications services. If commercial mobile radio services, such as broadband personal communications services (PCS), cellular telephone services, satellite telephony, and interconnected specialized mobile radio (SMR) services, are to begin to compete directly against LEC wireline services, it is important that the prices, terms, and conditions of interconnection arrangements not serve to buttress LEC market power against erosion by competition.

¹ We note that, as a matter of convenience, we refer elsewhere in this Notice generically to "CMRS providers." This usage is not intended to exclude the possibility of applying our policies more narrowly. Indeed, as discussed below, we are requesting comment on whether we should consider in this Notice interconnection arrangements between LECs and: (1) broadband PCS providers only; (2) broadband PCS, cellular telephone, satellite telephony, interconnected SMR, and other CMRS service providers that offer two-way, point-to-point voice communications, which could compete with LEC landline telecommunications services; or (3) all CMRS providers. These CMRS services are described in *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report*, 10 FCC Rcd 8844, 8847-61, 8863-68 (1995) ("*First CMRS Competition Report*").

² See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1497-98 (1994) ("*CMRS Second Report*"). In general, the obligation to interconnect flows from the statutory common carrier obligation of LECs "to establish physical connections with other carriers." See 47 U.S.C. § 201.

3. This Notice therefore considers the policy issues involved in establishing compensation arrangements for LEC-CMRS interconnection. We tentatively conclude that in order to ensure the continued development of wireless services as a potential competitor to LEC services, we should move expeditiously to adopt interim policies governing the rates charged for LEC-CMRS interconnection. We further tentatively conclude that, at least for an interim period, interconnection rates for local switching facilities and connections to end users should be priced on a "bill and keep" basis (*i.e.*, both the LEC and the CMRS provider charge a rate of zero for the termination of traffic), and that rates for dedicated transmission facilities connecting LEC and CMRS networks should be set based on existing access charges for similar transmission facilities. We seek comment on these tentative conclusions and on a number of alternative pricing options for LEC-CMRS interconnection arrangements. We also tentatively conclude that information about interconnection compensation arrangements should be made publicly available, and seek comment on what method to use to achieve this objective, such as tariffing, public disclosure, or some other approach. We also seek comment on how we should implement both interim and permanent interconnection policies (*i.e.* a non-binding model, or mandatory general or specific federal requirements), and we tentatively conclude that we have authority to adopt these approaches. In addition, we propose compensation arrangements that should apply to interstate, interexchange traffic traversing interconnections between LECs and CMRS providers, which typically involve an interexchange carrier (IXC).

B. Overview

1. Goals

4. In developing policies regarding LEC-CMRS interconnection, our overriding goal is to maximize the benefits of telecommunications for the American consumer and for American society as a whole.³ As with other areas of common carrier policy, we adopt policies that are intended to create or replicate market-based incentives and prices for both suppliers and consumers. By relying on market-based incentives and prices, where possible, and replicating them, where necessary, our policies have sought to ensure the availability to consumers of goods and services at the lowest overall cost. With the most efficient firms producing goods and services at the lowest cost, consumers benefit from lower prices. With consumers receiving cost-based pricing signals, they purchase communications goods and services only when they receive value greater than or equal to the cost of producing them. In general, reasonable and non-discriminatory rates should give consumers incentives to purchase the combination of services that they most value. As a matter of long-term policy, functionally equivalent services -- including services related to network interconnection -- should be available to all classes of consumers at the same prices, unless there are cost differences or policy considerations that justify different rates. In addition, these policies, over time, should ensure an efficient level of innovation in terms of the development of new

³ 47 U.S.C. § 151.

services and the deployment of new technology, as well as the efficient entry of new firms. Service providers should make optimal levels of investments in developing new technologies and new services, and consumers should receive the maximum benefit from their purchases of telecommunications services.

5. Our policies also have sought to ensure and advance universal basic telephone service. For individual households, being connected to telecommunications networks -- whether wireline LEC networks or wireless CMRS networks -- facilitates access to emergency services, employment and educational opportunities, and social interaction. We recognize that not all the societal benefits accrue to the individual being connected with the network. Thus, we have pursued our mandate under the Communications Act by adopting specific programs designed to advance universal service in areas and for individuals where special needs exist.

6. Our primary means for achieving these public interest goals has been competition. Competition drives prices toward cost: in a competitive market, rival service providers will have strong incentives to reduce their prices to attract customers until prices approach their costs. The cost-based prices achieved in competitive markets ensure optimal utilization of the network by consumers and give service providers accurate information regarding the benefits and costs of introducing new services and incentives for investing in technological innovations. In addition, competition gives producers strong incentives to stimulate demand and reduce costs. By forcing producers to minimize the per-unit costs of providing service, competition generally advances, rather than hinders, universal service. It increases the number of consumers willing and able to connect to the nation's telecommunications networks.

7. Of course, full competition does not exist in many areas of telecommunications, and, because of the general benefits society derives from universal service, even full competition by itself may not be sufficient to further our public interest goals. In those circumstances, policymakers may need to intervene. Regulatory policies should be capable of implementation in a timely manner, cost-effective to both regulators and industry, and enforceable.

2. Need for Reform

8. The Communications Act provides that carriers shall offer interconnection when it is determined to be in the public interest.⁴ The ability to interconnect has become more important because today telecommunications is increasingly provided by a system of

⁴ 47 U.S.C. § 201(a).

independent, interconnected networks, often referred to as a "network of networks."⁵ In this environment, the ability of communications to move seamlessly from one network to another is becoming increasingly vital. Uneconomic and unnecessary barriers to the flow of communications between the increasing number of diverse networks would seriously undermine the benefits of telecommunications to consumers and the American economy and would impede the development of competition between network providers.

9. Efficient interconnection with LEC networks, which reach, on a nationwide basis, 93.8% of all households, benefits both subscribers and providers of services.⁶ First, interconnection enables new providers to compete with incumbent LECs on the basis of the services they offer the public and the prices, quality, and features of those services. In the complete absence of interconnection, prospective new entrants would have to attract enough capital to build and provide origination, transport, and termination services for an entire geographic area, such as a metropolitan area. Second, interconnection allows subscribers of one network to obtain access to subscribers of all other interconnected networks. In a market with multiple and possibly competing networks, it is unlikely that all people would subscribe to all networks. Thus, without interconnection, subscribers to one network may be unable to reach people who subscribe only to some other network.

10. The availability of interconnection cannot, however, be divorced from its price. Interconnection that is priced too high can be the marketplace equivalent of no interconnection. An interconnection obligation is undermined if the charges imposed for interconnection are excessive, and society will not enjoy the benefits described above. On the other hand, if interconnection is available at an unreasonably low price, service providers that otherwise may have built their own facilities to serve part of a LEC's service territory in competition with the LEC may decline to do so. Facilities-based competition can confer benefits on customers such as lower prices, accelerated innovation, and deployment of new technologies. Interconnection at efficient prices should lead to the highest and best use of the existing telecommunications infrastructure, as well as the expansion of this infrastructure, because proper pricing will send economically efficient signals to firms to decide whether the costs of interconnection in a particular case are less than or greater than the benefits of interconnection.

11. In the absence of market power or other distortions, efficient forms of interconnection may develop through private negotiation. For example, small interexchange carriers interconnect with one another, and purchase and resell one another's services, with

⁵ See, e.g., Lee McKnight and Russel Neuman, *The New Information Infrastructure: Strategy for U.S. Policy*, "Technology Policy and the National Information Infrastructure" (1995).

⁶ FCC, Com. Car. Bur., Industry Analysis Div., *Monitoring Report*, CC Docket No. 87-339, Table 1.1 (May 1995).

little or no outside involvement. Similarly, Internet service providers have developed interconnection arrangements without intervention by outside parties.⁷

12. LECs, however, unquestionably still possess substantial market power in the provision of local telecommunications services. Thus, a LEC may have the incentive and the ability to prevent or reduce the demand for interconnection with a prospective local competitor, such as a CMRS provider, below the efficient level by denying interconnection or setting interconnection rates at excessive levels. Such abuse of market power could lead to at least two problems. First, a LEC may extract monopoly rents for interconnection. Excessive prices for termination of CMRS-originated traffic would lead to retail prices (charged to CMRS customers) that are above the efficient level and thus discourage CMRS customers from placing calls to wireline customers that would be made if LEC interconnection rates were set at efficient levels. Second, a LEC may attempt to restrict the entry of potential competitors. To the extent that certain CMRS providers are potential competitors to a LEC's local telephone service, or to the extent that a LEC may wish to provide certain wireless services, a LEC may have an incentive to withhold interconnection from some CMRS providers. Even where interconnection is mandated, a LEC still could potentially restrict entry either by setting the interconnection rates prohibitively high or by specifying technical requirements for interconnection that are disadvantageous for the connecting network.⁸

13. Another potential problem is that a LEC and an interconnecting CMRS provider may have the incentive and the ability to engage in collusive behavior. If the CMRS provider constitutes a substitute for the LEC network, the two networks could negotiate a high per minute charge to terminate each other's traffic as a means of giving each incentives to charge customers supra-competitive rates for local exchange service. It may be particularly likely that such collusive behavior could occur in cases where the CMRS provider is an affiliate of the LEC. Negotiation of interconnection arrangements could be used as a vehicle to keep the retail price of their respective retail services uneconomically high at the expense of customers. Depending on market structure developments, intervention may be necessary to prevent such outcomes.

⁷ See *Ex parte* letter from Robert F. Roche, CTIA, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, December 8, 1995, filed in CC Docket No. 94-54, Gerald W. Brock, *The Economics of Interconnection: Price Structure Issues in Interconnection Fees*, at 1-2 (April 1995)(Brock Paper No. 1).

⁸ T. Krattenmaker & S. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, Yale L.J., 234, 243 (1986).

14. As set forth below, we have recognized LEC market power by requiring that LECs interconnect with CMRS providers.⁹ Under our rules, LECs must negotiate in good faith to provide the type of interconnection arrangement desired by CMRS providers under the principle of mutual compensation, and to furnish interconnection for interstate traffic at reasonable and non-discriminatory rates. In response to an earlier Notice relating to CMRS interconnection issues, many commenters strongly argued, however, that our current policy can be and is being used by LECs to reduce competition.¹⁰ LECs typically terminate many more calls that originate from the cellular network than an interconnecting cellular network terminates LEC-originated calls. This is due, in part, to cellular customers' reluctance to give out their wireless telephone numbers (since they generally are charged for incoming calls), charges for cellular air time, or technical limitations on cellular telephones (*e.g.*, limited battery life). Because of this imbalance, LECs clearly would benefit competitively from maintaining high, even if symmetrical, interconnection charges. With the growing significance of interconnection and competition in today's telecommunications environment, we believe that a reexamination of our policies addressing compensation arrangements for LEC-CMRS interconnection is essential.

3. Scope of This Notice

15. In this proceeding, we focus on the compensation arrangements regarding interconnection between LECs and CMRS providers. In Part II below, we summarize our current LEC-CMRS interconnection requirements and the mutual compensation policies that some states have considered for interconnecting local carriers that compete with one another. In Parts III and IV of this Notice, we address the compensation arrangements associated with the interchange of two types of traffic between LECs and CMRS providers. In Part III, we consider compensation issues with respect to traffic between LEC customers and the customers of an interconnected CMRS provider. We tentatively conclude that, at least for an

⁹ 47 U.S.C. § 332(c)(1)(B); *CMRS Second Report*, 9 FCC Rcd 1411, 1497-98 (1994); *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion & Order*, 59 RR 2d 1275, 1283 (App. B) (1986) ("*Interconnection Order and Policy Statement*"); clarified, *Declaratory Ruling*, 2 FCC Rcd 2910 (1987), *aff'd on recon.*, 4 FCC Rcd 2369 (1989).

¹⁰ *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408 (1994) ("*Equal Access and Interconnection NPRM and NOI*"); *see, e.g.*, Cox Comments at 2. In the *Equal Access and Interconnection NPRM and NOI*, we also sought comment on a few of the issues discussed in the instant notice, such as whether interconnection arrangements should be tariffed. We incorporate the record generated on these issues in the *Equal Access and Interconnection NPRM and NOI* into the record in this proceeding. *See* Appendix A for a list of parties filing comments and reply comments, including the abbreviations used for those parties.

interim period, interconnection rates for local switching facilities and connections to end users should be priced on a "bill and keep" basis, and that rates for dedicated transmission facilities provided by LECs to connect LEC and CMRS networks should be set based on existing access charges for similar transmission facilities. We seek comment on these tentative conclusions and on a number of alternative pricing options for LEC-CMRS interconnection arrangements. We also tentatively conclude that information about interconnection compensation arrangements should be made publicly available, and seek comment on what method to use to achieve this objective, such as tariffing, public disclosure, or some other approach. We also seek comment on how we should implement these tentative conclusions (*i.e.* a non-binding model, or mandatory general or specific federal requirements) and we tentatively conclude that we have authority to adopt these approaches.

16. In Part IV, we examine the compensation arrangements that should apply to interstate interexchange traffic traversing interconnections between LECs and CMRS providers. Such traffic typically involves an additional carrier -- the interexchange carrier.¹¹ We tentatively conclude that, as with traffic between neighboring LECs or between LECs and competitive access providers (CAPs), CMRS providers should be entitled to charge for their provision of interstate access services as part of interstate interexchange traffic that originates from (or terminates to) CMRS customers, passes over LEC networks, and is connected with IXCs.

17. Decisions in this proceeding are clearly related to those in other ongoing rulemakings that address interconnection and related issues between various telephone service providers. In particular, we note that the policy changes discussed in this item are closely related to our upcoming Access Reform proceeding. Interstate access is essentially another form of interconnection between networks, that between LECs and IXCs. In the upcoming Access Reform proceeding, we will consider changes in our access charge rules, which govern the pricing and rate structures applicable to interstate access services provided by LECs to IXCs to originate and terminate long distance calls. We believe that, as a matter of long-term policy, there may be important reasons why the regulatory regime for interstate access charges should not vary dramatically from the rules relating to LEC-CMRS interconnection, to the extent that LEC-CMRS and LEC-IXC interconnections use similar features and functions. We also acknowledge, however, that there may be significant reasons, including our interest in facilitating the competitive development of CMRS and

¹¹ For example, when a party in New York places a call to the customer of a CMRS provider in California, an interexchange carrier would typically carry the call from New York to a LEC in California, and the LEC would transmit the call to the CMRS provider for termination to the customer. Similarly, if the CMRS customer in California were to call the party in New York, the call would, in many cases, pass from the CMRS provider's network to the LEC's network to the IXC, which would transmit the call to New York.

considerations relating to the Part 36 jurisdictional separations rules, that may necessitate differences in regulatory regimes.

18. We note that two other pending proceedings involve interconnection issues relating to CMRS providers. First, petitions for reconsideration have been filed on the *CMRS Second Report and Order*.¹² Second, pending notices of proposed rulemaking in CC Docket No. 94-54 raise issues of whether we should impose equal access obligations on CMRS providers, and what resale obligations should apply to CMRS providers.¹³ Recognizing that none of these proceedings, including this one, can be viewed in a vacuum, we are mindful of the issues raised in these proceedings as we formulate policy changes in the rules regarding LEC-CMRS interconnection. We also seek comment on the interrelationship between each of these proceedings and this Notice.

II. BACKGROUND

19. In 1994, as part of its implementation of Sections 3(n) and 332 of the Communications Act of 1934, as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (Budget Act),¹⁴ the Commission released the *CMRS Second Report and Order*, establishing the regulatory treatment of mobile services.¹⁵ The Budget Act mandated that mobile service providers offering similar services would be subject to consistent regulatory classification. This objective was accomplished by replacing the common carrier and private carrier classifications with the new categories of Commercial Mobile Radio Services (CMRS) and Private Mobile Radio Services (PMRS).¹⁶ The *CMRS*

¹² See *CMRS Second Report*, 9 FCC Rcd 1411 (1994).

¹³ *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd 5408 (1994); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666 (1995) ("*Resale NPRM*").

¹⁴ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993). The Budget Act also required the Commission to submit the *First CMRS Competition Report*.

¹⁵ *CMRS Second Report*, 9 FCC Rcd 1411 (1994). In an earlier action in this proceeding, we established filing procedures for foreign ownership waivers pursuant to the Budget Act. See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, First Report and Order, 9 FCC Rcd 1056 (1994).

¹⁶ CMRS is defined as "any mobile service (as defined in section 3(n)) 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." PMRS means "any mobile service (as defined in section 3(n)) that is not a commercial mobile service or the functional equivalent of a commercial mobile service." *CMRS Second Report*, 9 FCC Rcd at 1417, para. 11.

Second Report also implemented the Budget Act's requirement that the Commission order a common carrier, pursuant to the provisions of Section 201 of the Act, to establish physical interconnections with any CMRS provider that requests reasonable interconnection.

20. In the *CMRS Second Report*, we found that there is no distinction between a LEC's obligation to offer interconnection to cellular carriers and all other CMRS providers, including PCS providers, and thus we required LECs to provide reasonable and fair interconnection for all commercial radio services.¹⁷ We determined that it is in the public interest to require LECs to provide the type of interconnection reasonably requested by all CMRS providers. We also applied the same jurisdictional principles to CMRS as we had for cellular carriers prior to the passage of the Budget Act: we asserted plenary jurisdiction over the physical plant used in the interconnection of CMRS carriers, but we declined to preempt state regulation over the rates for intrastate interconnection, unless the charge for the intrastate component of interconnection was so high that the price effectively precluded interconnection.¹⁸

21. We also established three requirements applicable to LEC provision of reasonable interconnection to CMRS providers. First, we applied the same principle of mutual compensation that we had already adopted for LEC-cellular interconnection.¹⁹ This principle requires LECs to compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities. Similarly, CMRS providers are required to provide such compensation to LECs in connection with wireless-originated traffic terminating on LEC facilities.²⁰ Second, we required LECs to establish reasonable charges for interstate interconnection provided to CMRS licensees, which should not vary from the charges established by LECs for interconnection provided to other mobile service providers.²¹ Third, in determining the type of interconnection that is reasonable for a CMRS system, we held that the LEC may not deny to a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or other customer, unless the LEC meets its burden of demonstrating that the provision of such interconnection is either not technically feasible or economically reasonable.

22. In July 1994, we issued a *Notice of Proposed Rulemaking and Notice of Inquiry* to address the interconnection obligations of LECs to CMRS providers and CMRS providers

¹⁷ *Id.* at 1497-98, para. 230.

¹⁸ *Id.* at 1498, para. 231.

¹⁹ *Declaratory Ruling*, 2 FCC Rcd at 2915.

²⁰ *CMRS Second Report*, 9 FCC Rcd at 1498, para. 232.

²¹ *Id.* at 1498, para. 233.

to one another.²² Relying on our authority under Section 201(a) of the Communications Act, we sought comment on whether we should require LECs to offer interconnection to CMRS providers under tariff pursuant to Section 203, or alternatively, whether we should retain our current requirement that LECs establish, through good faith negotiations with CMRS providers, the rates, terms, and conditions of interconnection.²³ We also sought comment on whether, in lieu of imposing a tariff filing obligation, we should revise the good faith negotiation requirement by adding new safeguards against unreasonably discriminatory rates, terms, and conditions. Specifically, we asked whether we should require that negotiated interconnection arrangements contain a "most favored nation" clause that would guarantee that the most favorable terms, conditions, and rates provided by the LEC to one CMRS provider would be offered to all similarly situated parties, or whether we should require LECs to file with the Commission all carrier-to-carrier interconnection agreements so that the terms, conditions, and rates are available for public inspection.²⁴ Early in the summer of 1995, members of the staffs of the Common Carrier Bureau and the Wireless Telecommunications Bureau convened some informal meetings with pioneers' preference PCS licensees Cox and APC and the LECs with whom the pioneers preference PCS licensees will interconnect (NYNEX, Pacific Telesis, and Bell Atlantic). The purpose of these meetings was to discuss in more detail the interconnection issues raised in the written comments previously filed by these parties in this proceeding, in particular the appropriate pricing of interconnection.

23. *State Proceedings.* States have taken a wide variety of actions with regard to interconnection arrangements between incumbent LECs and competitors, including CMRS providers. State regulation of interconnection between LECs and CMRS providers varies widely. In most states, interconnection arrangements are negotiated between the service provider and the LEC, with virtually no government involvement. In other states, including California, Connecticut, and New York, CMRS providers and other prospective entrants must satisfy certain universal service requirements and meet other specified service obligations to qualify for low interconnection rates.²⁵

²² *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd 5408 (1994). We also tentatively concluded that, in concept, equal access obligations should be imposed on cellular licensees, but that the full panoply of equal access requirements that apply to landline LECs should not apply to CMRS providers. Accordingly, we sought comment on whether equal access requirements should be tailored to meet the individual circumstances of particular CMRS providers. *Id.* at 5411, para. 3.

²³ *Id.* at 5455, para. 113.

²⁴ *Id.* at 5457, para. 119.

²⁵ See, e.g., State of Connecticut, Department of Public Utility Control, *Investigation Into Wireless Mutual Compensation Plans*, at 15 (Sept. 22, 1995).

24. With respect to state regulation of interconnection arrangements between LECs and competitive local service providers that predominantly use wireline technology, a large number of states have removed many of the legal barriers to competition for local services. Other states are considering allowing competition for LEC services. In the states that allow competition for local exchange services, there are at least three different systems in place to allow for interconnection compensation between competing local networks. Many of these arrangements are interim pending the establishment of permanent rules.²⁶ Some states have adopted mutual compensation policies with rates for termination of traffic subject to tariff regulation by the state commission.²⁷ Other states have required "bill and keep" arrangements, under which neither of the interconnecting carriers recovers any revenues from the other carrier for terminating the other's traffic, but instead recovers all its costs from its own end user customers. For example, the Washington Utilities and Transportation Commission has adopted the bill and keep method for interconnection compensation between LECs and new entrants as an interim measure, to be replaced by a capacity-based charge when the details are worked out.²⁸ Third, a substantial number of states have directed LECs and prospective competing carriers to negotiate arrangements, but have not imposed detailed regulatory requirements with respect to those agreements.

III. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS AND CMRS PROVIDERS' NETWORKS

A. Overview

25. In the following section, we consider a number of alternative compensation arrangements that could apply to traffic passing between LECs and CMRS providers' networks. After summarizing the parties' positions on these two-carrier calls, we discuss existing compensation arrangements for such interconnection and economic pricing principles applicable to interconnection compensation arrangements. We tentatively conclude that, to advance our overriding policies with respect to LEC-CMRS interconnection arrangements, a "bill and keep" approach (*i.e.*, a zero rate for terminating traffic) should be applied with respect to local switching facilities and connections to end users during an interim period. We seek comment on whether we should adopt these tentative conclusions as a non-binding model for state regulators and/or negotiating parties, or whether we should mandate either

²⁶ For example, California adopted a bill and keep arrangement for 1 year, Connecticut for 18 months, Texas for 9 months, and Pennsylvania for an unspecified interim period. After these initial periods, the interconnecting firms will be expected to pay LECs for call termination.

²⁷ For specific examples, *see* para. 72, *infra*.

²⁸ *See Washington Utilities and Transportation Commission v. U S West*, Docket Nos. UT-941464-65, UT-950146, UT-950265, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, In Part (Oct. 31, 1995).

broad, general parameters or specific, detailed prescriptions and we tentatively conclude we have authority to adopt these approaches.

B. Compensation Arrangements

1. Positions of the Parties

26. While a few LEC commenters are content with the existing guidelines governing LEC-CMRS interconnection,²⁹ many wireless carriers urge the Commission to establish more specific compensation requirements.³⁰ Most of these parties argue that the Commission's existing mutual compensation policy, under which wireless carriers are compensated for traffic that terminates on their wireless networks on the same terms as LECs are compensated for traffic terminating on their networks -- is not being enforced. These parties suggest three possible approaches for modifying the current mutual compensation policy, which are described below.

27. *Reciprocal Compensation.*³¹ Some CMRS providers assert that, although the Commission has repeatedly affirmed its long-standing policy of "mutual compensation" for LEC-cellular interconnection, and extended this to LEC-CMRS interconnection, the policy is, in Comcast's words, "long standing, but largely ignored."³² PCIA asserts that, not only have LECs declined to pay compensation to cellular and paging companies for terminating their traffic, but some LECs have actually imposed originating access charges on those carriers for delivering traffic to them.³³ Point contends that this lack of reciprocal treatment is particularly unfair because, Point claims, it is more expensive for a CMRS carrier to terminate a call than it is for a LEC to terminate a call.³⁴ PageNet claims that LECs' refusal

²⁹ See, e.g., NYNEX Comments at 6; Pacific Bell Comments at 5-11.

³⁰ APC Comments at 4-5; Columbia PCS Comments at 5-7; Comcast Comments at 1-8; Cox Comments at 2-3; GCI Reply Comments at 3; MCI Comments at 12; McCaw Comments at 25; Nextel Comments at 17-18; PageNet Comments at 9-10; PCIA Comments at 13-14; Point Comments at 6-8; Time Warner Reply Comments at 7-8; Western Wireless Comments at 7.

³¹ The synonymous terms "reciprocal compensation" and "mutual compensation," strictly speaking, mean only that compensation flows in both directions between interconnecting networks -- the LEC compensates the CMRS provider and the CMRS provider compensates the LEC -- but do not specify the amount of such compensation in either direction. Many of the parties, however, use these terms to refer to what we call "symmetrical" compensation arrangements, in which the compensation amount per unit of traffic is equal in both directions. See *infra* ¶¶ 78-81.

³² Comcast Comments at 5; see PCIA Comments at 13-14, PageNet Comments at 10.

³³ PCIA Comments at 13-14.

³⁴ Point Comments at 7.

to pay compensation is particularly egregious in the context of paging, because a majority of pages originate on the LECs' facilities and terminate on the paging carriers' facilities.³⁵ In addition, Cox warns that a failure to examine LEC-CMRS interconnection issues comprehensively at the outset could hinder the ability of PCS to be a full service substitute for the local exchange carrier monopoly.³⁶

28. CMRS providers request that the FCC take further action to ensure that they receive reciprocal compensation for LEC-CMRS traffic, including both the level of compensation for inter-carrier traffic and when it should be paid.³⁷ They assert that, because of their relative lack of market power compared with LECs, they do not have the ability to enforce compensation by LECs for terminating their calls.³⁸ PageNet requests that the Commission require LECs to begin negotiating reciprocal compensation agreements with CMRS carriers within 60 days of the order issued in this proceeding.³⁹ Point and Western Wireless argue that the Commission must require LECs to compensate CMRS carriers at rates no less than they receive from CMRS carriers for the traffic originated by CMRS providers that LECs terminate, and Point also requests compensation from LECs for their fair proportionate share of the fixed line rates that they are charging CMRS carriers.⁴⁰ Columbia PCS asks the Commission to recognize that the greater leverage that large CMRS providers have compared to smaller firms enables them to negotiate discriminatory interconnection agreements. Columbia asserts that the Commission should therefore impose an "equal charge per minute of use" requirement on all LECs for providing interconnection to CMRS providers.⁴¹

³⁵ PageNet Comments at 10.

³⁶ Cox Comments at 2.

³⁷ *See, e.g.*, Nextel Comments at 17-18; APC Comments at 4-5; Columbia PCS Comments at 7.

³⁸ *See, e.g.*, Century Reply Comments at 15-18; Columbia PCS Comments at 6; Point Comments at 7; Nextel Comments at 17; Western Wireless Comments at 7.

³⁹ PageNet Comments at 10.

⁴⁰ Point Comments at 7; Western Wireless Comments at 7; *see* PageNet Comments at 9-10.

⁴¹ Columbia PCS Comments at 7-8 (describing requirement as "equal per unit of traffic"); *Ex parte* Letter in CC Docket No. 94-54 from J.A. Molloy, GO! Communications Corporation (successor to Columbia PCS, Inc.) to W.F. Caton, Acting Secretary, Federal Communications Commission (clarifying that terms referred to an "equal charge per minute of use" as contained in the original Modification of Final Judgment and subsequent Commission rules reflecting that requirement for all LECs [local transport access service]).

29. *Cost-Based Compensation.* Comcast, Cox, and Time Warner all acknowledge that the mutual compensation model (presumably with symmetrical charges paid by the LEC and the CMRS provider) works well when there are roughly balanced volumes of traffic going back and forth between two carriers. They assert, however, that when one party receives significantly more traffic than the other -- in this case the LEC in the near term -- it can exercise its market power by setting an unreasonably high compensation rate. Citing a 1984 FCC working paper on the exchange of traffic between international carriers as a comparison, these parties assert that, because the competitive carrier will likely originate more traffic than it terminates, the monopoly carrier has the incentive and the ability to hold out for a high mutual compensation rate. They declare that this same rationale will lead LECs to set artificially high interconnection rates since, for the foreseeable future, there will be a substantially greater amount of traffic going to LECs than to PCS carriers.⁴² In addition to the problem of unbalanced traffic, Cox adds that mutual compensation does not account for potential discrimination: a LEC could negotiate a high interconnection rate with its cellular affiliate, since the LEC's shareholders would not care which corporate entity was accruing the profit. The unaffiliated CMRS firm, however, would be forced to pay the same high rate and thereby be inhibited from competing with the LEC in its local exchange. Thus, while Comcast, Cox, and Time Warner maintain that a non-discriminatory mutual compensation requirement is a necessary component of any interconnection system, they argue that it is not sufficient to ensure that CMRS providers will be able to compete with the LEC in the local service market.⁴³

30. Thus, Cox asks the Commission to ensure that interconnection rates are cost-based, as well as non-discriminatory, and that the LECs offer unbundled access to LEC databases and other network capabilities, as well as termination of traffic. It notes that the Commission recognized that reasonable interconnection rates were the key to the development of competition in the interstate access market, but argues that, despite the Commission's best intentions, LECs' initial expanded interconnection tariffs illustrate the intransigence of LECs when their position in the market is threatened.⁴⁴ Cox and Comcast argue that the lack of cooperation and compliance by LECs has been effective in delaying the timing and minimizing the significance of expanded interconnection. Thus, Cox also proposes that the Commission establish a mechanism for prompt review of LEC

⁴² Comcast Comments at 11-16; Cox Comments at 6-10; Time Warner Reply Comments at 8 (citing *Promoting Competition Piecemeal in International Telecommunications*, FCC Office of Plans and Policy Working Paper No. 13, at 26 (1984).

⁴³ Comcast Comments at 4-12; Cox Comments at 2-15; Time Warner Reply Comments at 7-9.

⁴⁴ Cox Comments at 10, citing *Local Exchange Carrier Rates, Terms and Conditions for Expanded Interconnection for Special Access*, First Report and Order, 8 FCC Rcd 8344, 8346 ("either requiring removal of expanded interconnection service because of the LEC's failure to justify their rates, or alternatively, allowing apparently unreasonably high rates to take effect, would frustrate the competitive goals of our expanded interconnection proceeding").

interconnection rates upon request of a CMRS provider, in order to ensure that the LEC unbundled its network sufficiently and did not include excessive overhead loadings in its rates.⁴⁵

31. Pacific Bell responds that, at present, interconnection compensation rates are appropriately based on costs, but that the costs of terminating traffic on CMRS and LEC networks may well differ and justify different compensation rates. Thus, Pacific concludes that "traffic imbalance is completely irrelevant" since the issue of appropriate compensation should be based on costs. It also states that access to databases and other unbundled network capabilities is being considered in the Advanced Intelligent Network proceeding and is clearly beyond the scope of our CMRS Equal Access and Interconnection proceeding (CC Docket No. 94-54).⁴⁶

32. *Bill and Keep*. Comcast, Cox and Time Warner advocate an alternative compensation model referred to as "Bill and Keep" or "Sender Keep All," under which the carrier interconnecting and delivering traffic to another would not compensate the terminating carrier for terminating calls. With its comments, Comcast submits a paper by Dr. Gerald W. Brock, Director of the Graduate Telecommunication Program, George Washington University, examining the economic characteristics of a mutual compensation scheme for LEC-CMRS interconnection. Brock contends that, when a market is composed of segments that are monopolized and segments subject to competition, interconnection and compensation arrangements are critical to the development of effective competition. Brock argues that, if there are no regulatory controls on compensation for interconnection, the monopolist can extend its power to the entire market. He states that the level of rates under mutual compensation is irrelevant only if the level of incoming and outgoing traffic is exactly balanced, but that this situation rarely, if ever, occurs. Brock adds that the interconnection rules governing traffic to and from monopoly networks should not be dependent on technology and should apply to both wireline and wireless services.⁴⁷

33. Brock states that, although existing policy toward international settlement rates and theoretical analysis support the goal of cost-based compensation rates for jointly provided services, the actual definition and measurement of costs are not simple tasks. For example, Brock states that most telecommunications equipment is engineered for peak period usage. Because most of the cost of service is related to the capacity of the plant rather than the actual number of minutes used, however, the true cost for peak period usage is much greater

⁴⁵ Comcast Comments at 9; Cox Comments at 7-13. *Accord*, New Par Comments at 22 (LECs must not charge CMRS providers for elements or services that (i) are not needed or wanted by the interconnecting CMRS carrier or (ii) are not charged to interconnecting landline LECs).

⁴⁶ Pacific Reply Comments at 6-7, 10.

⁴⁷ Attachment to Comcast Comments, Gerald W. Brock, "Interconnection and Mutual Compensation With Partial Competition," at 2-6 (Brock-Comcast Paper).

than the cost for off-peak usage. In fact, Brock states that the cost of carrying off-peak traffic may be very near zero.⁴⁸ Based on these findings, Brock recommends two practical approaches to consider in applying the principle of cost-based mutual compensation: (1) "sender keep all" and (2) "peak usage measurement."

34. According to Brock, sender keep all is an economically efficient approach as long as the real cost of terminating traffic is approximately zero. He explains further that, under this model, each carrier has an incentive to increase the efficiency of its operations and reduce its costs so as to maximize the volume of its outgoing traffic.⁴⁹ Brock claims that, although sender keep all departs from the theoretical goal of cost-based compensation by setting below-cost prices for terminating traffic, there is less opportunity for manipulation than if prices were set above cost because, if traffic is balanced, price is irrelevant. According to Brock, decreasing the incentives for traffic manipulation will tend to increase the balance of the traffic and reduce the significance of the difference between the cost and the zero compensation rate. Thus, Brock contends that, with mutual compensation rates above cost, the monopolist has an incentive to send as much traffic as possible to its own affiliate and as little as possible to the competitors of its affiliate. Brock states that, although under sender keep all the monopolist has no incentive to send traffic to an affiliate, the monopolist does have an incentive to refuse to accept terminating traffic, but the interconnection requirement implies an obligation to terminate any traffic that is presented.

35. Brock states that the NYNEX-Teleport interconnection agreement provides an example of a combination of usage charges and sender keep all arrangement. Generally, the agreement establishes a particular charge for a two-way channel of given capacity between the two companies. Traffic is measured at the busy hour each month and the relative measurements are used as an allocation factor for the established channel rate. When traffic is exactly balanced, the payments to each company cancel out and the established rate is irrelevant. Brock states that this type of arrangement is essentially a sender keep all arrangement for non-peak traffic, because relative traffic is only measured at the peak hour and thus either company can increase its traffic to the other at non-peak times without affecting the charges due. Brock notes that the difference between peak and off-peak traffic is beneficial for administrative simplicity and economic efficiency: because the incremental cost of terminating traffic during off-peak periods is virtually zero it is administratively easier simply to ignore off-peak periods. He asserts that capacity charges, rather than per minute charges, allow attention to be focused on the cost of service at the peak load, which is generally the real cost of service.⁵⁰ Brock concludes that, while the structure of the NYNEX-Teleport agreement is beneficial for equating termination charges to cost during the

⁴⁸ Brock-Comcast Paper at 23-27.

⁴⁹ Comcast Comments at 14-15; Brock-Comcast Paper at 23-27.

⁵⁰ Brock-Comcast Paper at 23-27.

off-peak period, it does not solve the problem of increasing market power through high charges.

36. In response to LECs' arguments against bill and keep, Cox states that LEC arguments that the costs of terminating traffic are higher than the costs of originating traffic appear to be based on the erroneous assumption that the terminating carrier will route the call through most of its network, and the originating carrier will transfer the call to the terminating carrier at the tandem or higher. Cox states, however, that it is asking only that bill and keep be used for traffic terminated at the end office, where the cost of termination is *de minimis* (on average about \$0.002 per minute, according to Cox) and that LECs would be compensated for calls terminated at the tandem. Because the cost of end office termination is so small, Cox argues that the fact that traffic flows between LECs and CMRS providers may be imbalanced at the outset of competition is irrelevant. Cox adds that studies using the LECs' own data reveal that the transaction costs of measuring and charging for terminating traffic at the end office are probably higher than the *de minimis* cost of terminating traffic, thus making bill and keep for end office termination an economically efficient result.⁵¹

37. In considering whether a bill and keep approach would constitute a taking for Fifth Amendment purposes, CTIA contends that such a finding would require that the property at issue be rendered worthless, that the loss would involve more than merely anticipated profits, or that a physical invasion occurred, none of which is the circumstance in this case. CTIA also cites to a recent decision by the Washington Utilities and Transportation Commission, which ordered bill and keep on an interim basis, to support its position that bill and keep is not a system of interconnection for "free." CTIA states that bill and keep is a system of reciprocal exchange of traffic in which each company receives something of value and can recover the costs for termination from its own end users in flat monthly charges.⁵² CTIA adds that bill and keep is fair compensation based on the fact that it is the dominant practice between adjacent LECs around the country for terminating local extended area service traffic between adjacent exchanges.⁵³

38. Only NYNEX and Pacific Bell responded in opposition to Comcast's proposal. NYNEX opposes the proposal on the grounds that the Commission's mutual compensation policy is designed to ensure that both LECs and CMRS providers receive compensation for

⁵¹ *Ex parte* letter from J.G. Harrington, Counsel for Cox Enterprises, Inc., to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, October 19, 1995.

⁵² *Ex parte* letter from Randall S. Coleman, Vice President for Regulatory Policy and Law, CTIA, to Ms. Regina Keeney, Chief, Common Carrier Bureau, Federal Communications Commission, December 8, 1995 (citing *Washington Utilities and Transportation Commission v. U S West*, Docket Nos. UT-941464-65, UT-950146, UT-950265, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, In Part (October 31, 1995)).

⁵³ *Id.*; see also Cox *Ex Parte* letter, October 19, 1995, at 3.

the reasonable costs incurred in terminating traffic on each other's networks. By contrast, NYNEX contends, these costs would not be recovered by either party under Comcast's proposal. NYNEX argues that Comcast has not offered a sound policy basis that would justify a change in the Commission's mutual compensation policy at this time.⁵⁴ Pacific Bell contests the characterization of interconnection charges between affiliates as simple "pocket to pocket" transfers. Pacific claims that an affiliate desires an appropriate interconnection rate to the same extent as any other CMRS provider because it will affect the price charged to customers, and too high a price will put the affiliate in a less competitive position.⁵⁵ Finally, Pacific contends generally that the comments provide no basis for changing the Commission's current policies regarding interconnection.⁵⁶

2. Discussion

39. In the following sections, we consider what types of compensation arrangements for interconnection between CMRS networks and LEC networks would best serve the public interest. First, we discuss existing compensation arrangements and seek additional information about these arrangements. Second, we consider general principles of cost causation that we believe should govern LEC-CMRS interconnection arrangements. We address the rate structure implications of the different components of network costs, and explain our belief that the cost of fixed facilities dedicated to a particular party should be recovered through non-traffic sensitive (NTS) charges to that party, while the costs of certain shared network facilities should be recovered through prices reflecting parties' use of network capacity. We also discuss economic theories that optimally should govern rate levels in LEC-CMRS interconnection arrangements. Third, we discuss our tentative conclusions that, during an interim period, "bill and keep" arrangements (*i.e.*, a zero rate) should apply to the termination of traffic from end offices to end-users, and that flat rates should apply to dedicated transmission facilities connecting LEC and CMRS networks. We also seek comment on a number of alternative options that could be used to set LEC-CMRS interconnection rates in the near term. We note that our analysis below assumes that LECs and CMRS providers are likely to continue using existing technical forms of interconnection, and we seek comment on whether our analysis should change if different technical forms of interconnection are used. We invite commenting parties to address our analysis of these and other issues regarding interconnection pricing that are discussed at length below.

a. Existing Compensation Arrangements

40. According to the comments received in this proceeding, at present, cellular carriers typically pay LECs three types of usage-sensitive charges for local calls from cellular

⁵⁴ NYNEX Reply Comments at 6.

⁵⁵ Pacific Reply Comments at 6.

⁵⁶ Pacific Reply Comments at 8.

subscribers to LEC subscribers, regardless of the physical interconnection facility used:⁵⁷ (1) per-call charges for call set-up; (2) per-minute charges for usage; and (3) per-minute, per-mile charges for transport between the cellular carrier's mobile telephone switching office (MTSO) and the LEC's tandem or end-office switch.⁵⁸ Some cellular carriers contend that, notwithstanding our mutual compensation requirement, they typically are forced to pay LECs these charges for calls originating from cellular customers and terminating to LEC wireline customers, as well as for calls originating from LEC customers and terminating to cellular customers.⁵⁹ Commenters also submit that, typically, substantially more traffic flows from cellular carriers to LECs than *vice versa*.⁶⁰ This may be due to cellular customers' reluctance to give out their wireless telephone numbers, because of charges for cellular air time, technical limitations on cellular telephones (*e.g.*, limited battery life), or other factors. On the other hand, for services such as paging, most (or all) of the interconnected traffic flows from LECs to CMRS providers, rather than *vice versa*, because most pager devices are incapable of originating calls.

41. We invite commenting parties to provide more detailed information about existing LEC-CMRS interconnection arrangements. Specifically, we are interested in data regarding the rate structures and price levels in those arrangements. We also request comment on what facilities and technical arrangements are used in providing LEC-CMRS interconnection, what rate elements are applicable to providing the services, and the functions that are associated with each rate element. To what extent are these arrangements filed in tariffs before state commissions, or are otherwise publicly disclosed? To what extent do these arrangements make use of provisions in FCC tariffs? We also seek comment on the extent of, and reasons for, the imbalance of traffic flowing between LECs and CMRS providers. Are traffic flows likely to be more balanced in the future for existing commercial mobile radio services or new services such as PCS? Do LECs' current charges/tariffs differ depending on the flow of traffic? We also invite parties to submit data on the extent to which existing LEC-CMRS interconnection arrangements involve both interstate and intrastate traffic. In particular, we seek empirical data and analysis on the extent to which significant levels of interstate wireless traffic are being carried under such arrangements. We

⁵⁷ See *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd 5408, 5451, para. 105 for a description of Type 1, Type 2A, and Type 2B interconnection facilities.

⁵⁸ *Ex parte* letter from Kathleen Q. Abernathy, Counsel for Air Touch Communications to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, October 11, 1995, at 4.

⁵⁹ *Id.*; see PCIA Comments at 13-14.

⁶⁰ According to Pacific Telesis, 94% of LEC-CMRS exchange traffic terminates on its network and 6% terminates on wireless networks, and wireless traffic is growing at about 20% per year in California, although the termination ratio remains about the same. *Ex Parte* Letter from Alan Ciamporcero, Vice President, Pacific Telesis, to Michele Farquhar, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, December 7, 1995.

also seek comment on the extent to which our mutual compensation requirement is not being observed in the marketplace.

b. General Pricing Principles

(1) Rate Structure

42. In general, we believe that costs should be recovered in a manner that reflects the way they are incurred. Network providers incur costs in providing two broad categories of facilities, dedicated and shared. Dedicated facilities are those that are used by a single party -- either an end user or an interconnecting network. Shared facilities are those that are used by multiple parties. Shared facilities can be further divided into two sub-categories, those that need to be augmented to increase the network's capacity and those that need not. In the first such sub-category are facilities, such as switches and multiplexing electronics, for which incremental investments can increase the volume of traffic that the network can handle during peak periods. In the second such sub-category are facilities, such as telephone poles and buildings that house equipment, whose capacity will not restrict the volume of traffic that the network can handle during peak periods.

43. The cost of a dedicated facility can be attributed directly to the party ordering the service that uses that facility. To the extent that the benefits of a dedicated facility accrue to the party to whom it is dedicated, it is efficient for that party to pay charges that recover the full cost of the facility. To ensure that the party pays the full fixed cost of the facility, the cost should be recovered on a non-traffic sensitive (NTS) basis (*i.e.*, without regard to actual usage). Charging a flat, cost-based rate ensures that a customer will pay the full fixed cost of the facility, and no more; this ensures that the customer will, for example, add additional lines if and only if the customer believes that the benefits of the additional lines will exceed their cost. An additional advantage of a flat fee is that it does not distort usage. The alternative, a usage-based charge, would cause parties with high traffic volumes to overpay (*i.e.*, pay more than the fixed cost of the facility), while parties with low traffic volumes would underpay (*i.e.*, pay less than the fixed cost of the facility). In addition, a usage-based charge would give all parties an uneconomic incentive to reduce their traffic volumes or to avoid connecting with networks that impose such charges. It would also give parties with low volumes of traffic, who face below-cost prices, an incentive to add lines that they valued below their cost.

44. The costs of shared facilities whose cost varies with capacity, such as network switching, should be recovered in a manner that efficiently apportions costs among users. Since the cost of capacity is a function of the volume of traffic the facilities are able to handle during peak load periods, we believe, as a matter of economic theory, that network capacity costs should primarily be recovered through traffic-sensitive (TS) rates charged for peak period traffic, with lower rates for non-peak usage. The peak load price should be designed to recover at least the cost of the incremental network capacity added to carry peak period traffic. Pricing traffic during peak periods based on the cost of the incremental

capacity needed to handle additional traffic is economically efficient because additional traffic will be placed on the network if and only if the user or interconnecting network is willing to pay the cost of the incremental network capacity required to handle this additional traffic. Such pricing also ensures that a call made during the peak period generates enough revenue to cover the cost of the facilities expansion it requires, and it thus gives carriers an incentive to expand and develop the network efficiently. In contrast, off-peak traffic imposes relatively little additional cost because it does not require any incremental capacity to be added, and consequently, the price for carrying off-peak traffic should be lower.

45. We recognize that there may be practical problems in implementing a peak sensitive pricing system. For example, different parts of a given provider's network may experience peak traffic volumes at different times (*e.g.*, in LEC networks, business districts may experience their peak period between 10:00 and 11:00 a.m., while suburban areas may have their peak periods between 7:00 and 8:00 p.m.). Moreover, peak periods may change over time. For instance, charging different prices for calls made during different parts of the day may cause some customers to shift their calling to the less expensive time periods, which could potentially shift the peak or create new peaks.⁶¹ We seek comment on whether a system with a long peak period (*e.g.*, 8:00 a.m. to 9:00 p.m.) and with peak and off-peak rates that reflect both the difference in costs across these periods and customers' propensity to substitute across time periods would improve the utilization rates of the network and would be administratively simple. We seek comment on this analysis, and on possible methods for implementing peak-load pricing or other schemes to recover shared network capacity costs. We also seek comment on possible administrative costs associated with peak-load pricing or other schemes to recover shared network capacity costs.

46. There are also certain shared facilities, such as land, buildings, and telephone poles, whose costs do not vary with capacity (or peak period traffic volumes). As we discuss in the following section on rate levels, there are theoretical and practical problems associated with recovering these shared costs and overheads. We seek comment on how these costs should be recovered and, in particular, on whether they should be recovered entirely through peak rate charges, or through off-peak rates as well. Finally, we note that a carrier may incur varying costs to provide a given service in different geographic areas. We seek comment on how this should be taken into account.

⁶¹ Compare United Kingdom Office of Telecommunications, *A Framework for Effective Competition: A Consultative Document on the Future of Interconnection and Related Issues*, ¶ 14.17 (Dec. 1994).

(2) Rate Levels

(a) Long Run Incremental Costs

47. The long run incremental cost (LRIC) of a service is the theoretical foundation for efficient pricing of interconnection and other network services.⁶² Economists generally agree that prices based on LRIC reflect the true economic cost of a service and give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure.⁶³ Since customers will buy a good only if the benefit to the customer exceeds the price, prices based on LRIC ensure that customers purchase a good only when the benefit exceeds the cost. Similarly, since firms will offer a service when the revenue exceeds the cost, prices based on LRIC ensure a firm has an incentive to offer a service when customers' willingness to pay for the service exceeds the cost of providing it.

48. Pricing at LRIC raises some difficulties, however. First, attempting to determine the LRIC of a specific service for a particular LEC is likely to raise significant practical and administrative problems. In addition, given that services are provided over shared facilities and there are economies of scale and scope, setting the price of each discrete service based on the LRIC of that service will not recover the total costs of the network. Similarly, where technological developments are reducing the costs of providing service, setting the price of discrete services equal to the forward-looking LRIC of each service is not likely to recover the historical, embedded costs of the network (or the interstate share of such costs assigned by our Part 36 separations rules). We seek comment on the empirical magnitude of these cost differentials.

(b) Recovering Costs in Excess of Long Run Incremental Costs

49. The fact that pricing based on the LRIC of specific services may not cover all common costs raises difficult issues for pricing interconnection. In particular, this problem means that, if all costs are to be recovered, some services must be priced above LRIC, which will cause some distortions. It is therefore necessary to consider whether terminating

⁶² We have defined long-run incremental cost as including "the full amount of incremental investment and expenses which would be incurred by reason of furnishing additional quantities of service, whether in a new or an existing service category." We added that, in estimating LRIC, one "determine[s] prospectively the effect on total costs, including the effect on common costs, . . . of adding units of service." *American Telephone & Telegraph Co.*, 55 FCC 2d 224, 231 n.18 (1975) (citing *American Telephone & Telegraph Co.*, 18 FCC 2d 761, 766 (1969)).

⁶³ See generally Alfred E. Kahn, I *The Economics of Regulation: Principles and Institutions* 85 (1970). See also Stephen Breyer, *Regulation and Its Reform* 52 (1982); Harold Hotelling, "The General Welfare in Relation to Problems of Taxation and of Railway and Utility Rates." 6 *Econometrica* 242 (1938).

carriers should be allowed to recover such costs in excess of LRIC, and if so, to address the method of recovering such costs that would minimize economic distortions and best advance our goals. We seek comment on how best to deal with this recovery issue and, in particular, on the following approaches.

50. One approach would be to allow carriers to set LEC-CMRS interconnection rates equal to the LRIC of the individual services associated with interconnection, and to recover common costs by having the rates for other services, such as vertical calling features (e.g., call waiting, call forwarding, or caller ID), exceed LRIC. This would clearly benefit those CMRS and LEC networks that seek to interconnect with one another's network. We seek comment on whether, and on what basis, LEC-CMRS interconnection offerings should be treated differently from a carrier's other service offerings, which generally are priced to recover some portion of shared costs and overheads.

51. Another approach would be to allocate shared costs and overhead among services in an inverse relationship to the sensitivity of demand for each of the services.⁶⁴ Under this "Ramsey rule," a higher percentage of shared costs and overheads would be allocated to services for which the quantity demanded declines less as the price increases, than to services for which demand is more sensitive to changes in price. In theory, this approach has the advantage that it efficiently minimizes reductions in the quantities of services demanded due to prices above LRIC.⁶⁵ While demand sensitivity is clearly relevant to setting efficient prices, there is some concern about how Ramsey principles should be applied to markets subject to actual or potential competition. We recognize that Ramsey pricing principles were developed in the context of a regulated monopoly and not for markets subject to existing or potential competition.⁶⁶ We seek comment on whether such an approach is desirable for markets in which competition is developing. We also seek comment on whether such a pricing rule is in the public interest, given that it may result in imposing the greatest burdens on those customers who have the fewest alternatives.

⁶⁴ The sensitivity of demand is measured by the elasticity of demand, which is defined as the percentage change in the quantity of a service demanded for a given percentage change in price.

⁶⁵ See Frank P. Ramsey, *A Contribution to the Theory of Taxation*, 37 *Econ. J.* 47 (1927); see generally Kenneth E. Train, *Optimal Regulation: The Economic Theory of Natural Monopoly* 115-40 (1992) (discussing efficiency properties of Ramsey prices); Bridger M. Mitchell & Ingo Vogelsang, *Telecommunications Pricing: Theory and Practice* 43-61 (1991) (same).

⁶⁶ Alfred E. Kahn & William B. Shew, *Current Issues in Telecommunications Regulation: Pricing*, 4 *Yale J. on Reg.* 191, 248 (1987) ("The standard formula for Ramsey pricing assumes a monopoly supplier. The competition in telecommunications markets is likely to alter the prices that satisfy the Ramsey principle. How it alters them will depend on whether regulation is confined to the incumbent firm or extended to competitive entrants as well.").

52. A third commonly employed alternative would be to allocate shared costs and overheads among all services based on some specified allocator. For example, shared costs and overheads could be allocated among services uniformly in proportion to each service's LRIC or direct costs, or could be apportioned based on some measure of usage.⁶⁷ The advantages of these allocators are that they are relatively simple to administer and result in full recovery of all shared and overhead costs. A principal drawback of this approach, however, is that it may have undesirable effects on demand for particular services. More specifically, such allocators do not minimize the distortions in demand caused by divergences between price and LRIC, and may induce inefficient investment by incumbents and entrants. In addition, or in the alternative, we could limit the permissible overhead loading factor a LEC could collect from an interconnecting CMRS provider to the overhead loading factor that the LEC uses for some comparable service or services that compete with CMRS offerings.⁶⁸

53. A fourth approach would be to allow incumbent carriers such as LECs to employ the "efficient component pricing rule" (ECPR) proposed by economist William Baumol and others.⁶⁹ Under this approach, an incumbent carrier that sells an essential input service, such as interconnection, to a competing network would set the price of that input service equal to "the input's direct per-unit incremental cost plus the opportunity cost to the input supplier of the sale of a unit of input."⁷⁰ The ECPR essentially guarantees that the incumbent will recover not only all of its overheads, but also any profits that it would otherwise forego due

⁶⁷ Compare United Kingdom Office of Telecommunications, *A Framework for Effective Competition: A Consultative Document on the Future of Interconnection and Related Issues*, ¶ 4.32 (Dec. 1994).

⁶⁸ In our *Virtual Collocation Order*, we reaffirmed that, in the context of expanded interconnection, LECs may include no more than uniform overhead loadings in their interconnection rates unless they provided justification for a greater loading factor. *Expanded Interconnection with Local Telephone Companies*, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5189 (1994) (*Virtual Collocation Order*), *pet. for review pending*. Furthermore, in our *Virtual Collocation Overhead Prescription Order*, we specified that LECs may recover overhead loadings on their virtual collocation charges as long as these loadings do not exceed the lowest overhead loadings assigned to their comparable DS1 and DS3 services. *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, Report and Order, 10 FCC Rcd 6375, 6406-07 (1995) (*Virtual Collocation Overhead Prescription Order*).

⁶⁹ See William J. Baumol, *Some Subtle Issues in Railroad Deregulation*, 10 Int'l J. Trans. Econ. 341 (1983); William J. Baumol & Gregory Sidak, *Toward Competition in Local Telephony* (1994); William Baumol & Gregory Sidak, *The Pricing of Inputs Sold to Competitors*, 11 Yale J. on Reg. 171 (1994).

⁷⁰ William Baumol & Gregory Sidak, *The Pricing of Inputs Sold to Competitors*, 11 Yale J. on Reg. at 178.

to the entry of the competitor. Proponents of the ECPR argue that the ECPR creates an incentive for services to be provided by the least-cost provider and that it makes the incumbent indifferent between selling an input service to a competitor or a final service to an end user. Critics, however, have shown that these properties only hold in special circumstances.⁷¹ On the other hand, some express concern that the ECPR may inhibit beneficial entry.⁷² In addition, because the ECPR would permit an incumbent carrier to recover its opportunity costs, including any monopoly profits in the sale of the final service, the use of this rule may prevent competitive entry from driving prices towards competitive levels. These arguments cast significant doubts on claims that the rule will yield efficient outcomes. Finally, as an administrative matter, it would be difficult for a regulatory agency to determine the actual level of a carrier's opportunity cost.

54. Finally, we might adopt an approach that permits a range of permissible rates (and implicitly of overhead allocations). We note, for example, that the Commission has repeatedly expressed concern about preventing cross-subsidies. Some economists have defined the following alternative tests for cross-subsidy: (1) the price of each individual service, and of any group of services, must be less than the stand-alone cost of that service (*i.e.*, the cost of providing that service alone but no other services); or (2) the revenue from each service and from all subsets of services must exceed the incremental cost of the service or the subset of services.⁷³ According to these definitions, if either of the two tests is satisfied, there is no cross-subsidy. This test effectively requires that the revenues generated by any group of services that share a common facility recover at least the incremental cost of that facility. We seek comment on this theory, and on whether it reduces the range of acceptable prices, and hence, implicitly, the range of acceptable allocation schemes.

55. We seek comment on the foregoing approaches to determining rate levels, how they might apply in the context of LEC-CMRS interconnection, the extent to which they are administratively feasible, and how they will affect rates for other services including intrastate services. We also seek comment on how these LEC-CMRS interconnection rate levels could affect telecommunications network subscribership and universal service. We also ask parties to address the extent to which these approaches could be implemented in the context of the specific pricing options discussed in the following section.

(3) Practical Considerations Regarding Cost-Based Pricing

⁷¹ See, *e.g.*, Jean-Jacques Laffont & Jean Tirole, *Access Pricing and Competition*, 38 Eur. Econ. Rev. 1673 (1994).

⁷² Jean-Jacques Laffont and Jean Tirole, "Creating Competition Through Interconnection: Theory and Practice," MIT Mimeo at 3 (1994).

⁷³ William J. Baumol, John C. Panzar & Robert D. Willig, *Contestable Markets and the Theory of Industry Structure* 351-56 (1982).

56. LEC-CMRS interconnection rates could be based on a specific demonstration of the costs of providing service, much as we do for establishing rates for new services under our price cap rules. The new services test requires price cap LECs to demonstrate that the rates for a new service recover the direct costs of that service plus a reasonable share of overhead loadings.⁷⁴ We seek comment on whether we should provide guidance with respect to such a cost showing similar to our interpretation of the new services test in the *Video Dialtone Reconsideration Order*.⁷⁵ In addition, we seek comment on how we should deal with overhead loadings and whether we should employ any of the alternative approaches discussed in the previous section. We also note that similar cost justification requirements could be enforced by state commissions.

57. The approaches described in the preceding paragraph have a number of advantages, in that they result, at least in theory, in cost-based rates for particular services. On the other hand, these approaches have the disadvantage, typically, of requiring contentious, and time-consuming administrative proceedings to resolve the complex issues raised by cost studies.

c. Pricing Options

(1) Interim Approach

58. Any significant delays in the resolution of issues related to LEC-CMRS interconnection compensation arrangements, combined with the possibility that LECs could use their market power to stymie the ability of CMRS providers to interconnect (and may have incentives to do so), could adversely affect the public interest. We tentatively conclude that it will better serve the public interest to give providers some degree of certainty, within a short time, that reasonable interconnection arrangements will be available. Some of the alternatives described below may approximate the results of cost studies, and thus provide most of the advantages of the theoretical model described above, but avoid the main disadvantages -- administrative costs and delays.

59. Accordingly, we tentatively conclude that an interim pricing approach should be adopted that could be implemented relatively quickly and with minimal administrative burdens on CMRS providers, LECs, and regulators. We plan to move forward expeditiously so as to have an interim pricing approach in place in the near term. Below, we discuss our

⁷⁴ 47 C.F.R. § 61.49(g)(2). See *Telephone Company-Cable Television Cross-Ownership Rules*. Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 244, 339-47, paras. 205-223 (1994) (*Video Dialtone Reconsideration Order*).

⁷⁵ In that order, we clarified, *inter alia*, that the LECs would be expected, in the video dialtone context, to include in direct costs a reasonable allocation of other costs that are associated with shared plant used to provide video dialtone and other services. *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 345-46, paras. 217-21.

tentative conclusion that a bill and keep approach (zero rate for termination of traffic) should apply with respect to local switching facilities and connections to end users, with the exception of dedicated transmission facilities linking the two networks. We also set out a number of alternative approaches. Our preferred approach or the alternative options could be adopted as interim solutions for some limited period of time. We seek comment on whether such an approach should apply for a prescribed time period, whether months or years, or until the occurrence of a specific triggering event. With respect to our preferred approach and each of the alternative options discussed below, we ask parties to address whether some combination of these options should be made available, and on the implementation costs for carriers, as well as the speed with which such options could be implemented. In particular, we seek comment on the extent to which modifications would be required in the network to implement such options (*e.g.*, to collect information necessary for billing and collection), the cost of such modifications, and who should bear such costs. We also solicit parties' analysis of the relevant administrative burdens on the Commission caused by the various options, and the ease with which these options can be enforced. Finally, we seek comment on any changes to our approaches that would be necessary or advisable if LECs and CMRS providers were to change current arrangements for recovering costs from end users.⁷⁶

(a) Tentative Conclusions

60. *Bill and Keep.* We tentatively conclude that a "bill and keep" arrangement represents the best interim solution with respect to terminating access from LEC end offices to LEC end-user subscribers, and with respect to terminating access from equivalent CMRS facilities to CMRS subscribers. Under bill and keep arrangements, neither of the inter-connecting networks charges the other network for terminating the traffic that originated on the other network, and hence the terminating compensation rate on a usage basis is zero. Instead, each network recovers from its own end-users the cost of both originating traffic delivered to the other network and terminating traffic received from the other network. Bill and keep arrangements yield results that are equivalent to the networks charging one another incremental cost-based rates for shared network facilities if the incremental cost of using such facilities is equal to (or approximates) zero for both networks. We note that several states, including California, Connecticut, Texas and Pennsylvania, have implemented bill and keep

⁷⁶ For instance, CMRS subscribers currently pay the cost of airtime for terminating calls. The prospect has been raised that CMRS providers might change this practice, so that LEC customers who originate calls to CMRS subscribers would pay those costs. If information is made available to the LEC customer regarding the price of the call before the call is placed, this arrangement, called "sender pays," should foster economic efficiency because the party who expects to pay for a telephone call makes the decision whether to complete the call based on his or her consideration of whether the value of the call exceeds the price. Adoption of such an arrangement might well affect LEC-CMRS interconnection rate issues. For instance, if the LEC, rather than the CMRS provider, collects revenues reflecting the costs of terminating airtime, that might well affect the appropriate interconnection rates.

arrangements, at least on an interim basis. We tentatively conclude that, as an interim solution, such bill and keep arrangements should cover both peak and off-peak time periods.

61. Bill and keep arrangements appear to have a number of advantages, especially as an interim solution. First, such arrangements are administratively simple and would require the development of no new billing or accounting systems.⁷⁷ Second, the bill and keep approach prevents incumbent LECs that possess market power from charging excessively high interconnection rates. Third, according to proponents, a bill and keep approach is economically efficient if either of two conditions are met: (1) traffic is balanced in each direction, or (2) actual interconnection costs are so low that there is little difference between a cost-based rate and a zero rate. Proponents of bill and keep submit that condition (2) is satisfied in the case of LEC-CMRS interconnection because they allege that the average incremental cost of local termination on LEC networks is approximately 0.2 cents per minute.⁷⁸

62. In view of these advantages, we tentatively conclude that, for terminating access between the end office (or equivalent CMRS facilities) and the end-user subscriber, a bill and keep arrangement applied to both peak and off-peak periods represents the best interim solution. We also tentatively conclude that a requirement that LECs and CMRS providers not charge one another for terminating traffic from the other network would not violate any party's legal rights. Specifically, we believe that a bill and keep requirement would not deprive either LECs or CMRS providers of a reasonable opportunity to recover costs they incurred to terminate traffic from the other's network, because these costs could be recovered from their own subscribers. We seek comment on these tentative conclusions. We also seek comment on the effect that a bill and keep approach is likely to have on traffic flows between LEC and CMRS networks: is this approach likely to lead to more balanced traffic flows, or will it create incentives to perpetuate or exacerbate existing traffic imbalances between LEC and CMRS networks?

63. *Transport Costs between the CMRS and LEC Networks.* Brock's analysis of bill and keep appears not to consider the costs associated with the physical transmission circuits connecting CMRS MTSOs with LEC end offices. Transmitting calls between CMRS and

⁷⁷ See, e.g., *Ex Parte* Letter from Randall S. Coleman, Vice President for Regulatory Policy and Law, CTIA to Regina Keeney, Chief, Common Carrier Bureau, Federal Communications Commission, Attachment at 1, December 8, 1995.

⁷⁸ *Id.* at 1. See also *ex parte* letter from Robert F. Roche, CTIA, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 94-54, December 8, 1995, Gerald W. Brock, *The Economics of Interconnection: Incremental Cost of Local Usage* (April 1995) (Brock Paper No. 3). Brock acknowledges that this is an average figure. He states that "[b]ecause the cost is determined by the use [of] peak capacity, the actual cost per minute is much higher at the peak and is zero at the off-peak." He estimates the cost of peak usage at 2.1 cents per minute during the busiest hour of each business day.

LEC networks can be accomplished through the use of dedicated facilities between CMRS MTSOs and LEC end offices, or through dedicated facilities between CMRS MTSOs and LEC tandem switches. When tandem switches are used, additional tandem-switched transport, consisting of tandem switching and transmission over common transport facilities, is used to transmit traffic between LEC tandem switches and LEC end offices. These facilities are generally provided by LECs. With respect to dedicated transport facilities, cost-causation principles suggest that the costs of such facilities be recovered from the cost-causer through flat rates. With respect to shared facilities used to provide tandem-switched transport, cost-causation principles suggest traffic-sensitive cost recovery, at least during peak periods.

64. LECs' existing interstate access tariffs include flat rates for dedicated transport (entrance facilities and direct-trunked transport) that we have concluded, in general, are reasonably cost-based.⁷⁹ Similar charges are included in many LEC intrastate access tariffs. These tariffed charges could be applied to CMRS providers relatively rapidly, with virtually no additional administrative proceedings. Moreover, we believe that the dedicated transport facilities used to connect LEC and IXC networks are similar or identical to the facilities connecting LEC and CMRS networks. Accordingly, we tentatively conclude that, when LECs provide the dedicated transmission facilities between CMRS MTSOs and LEC networks, they should be able to recover the costs of those facilities from CMRS providers through appropriate dedicated transport rates found in their existing access tariffs. We seek comment on this tentative conclusion.

65. We also seek comment on whether and how LECs should recover from CMRS providers the costs of tandem switching and common transport between tandem switches and end offices, in cases where such LEC-provided facilities are used. The LECs' interstate access tariffs include usage-sensitive charges for tandem-switched transport, as do many state tariffs. Should these tandem-switched transport charges be applied to CMRS providers? Should such charges apply to all minutes, or only to traffic during peak periods?

⁷⁹ See *Transport Rate Structure and Pricing*, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992), *first recon.*, 8 FCC Rcd 5370 (1993), *second recon.*, 8 FCC Rcd 6233 (1993), *third recon.*, 10 FCC Rcd 3030 (1994), *fourth recon.*, FCC 95-404 (released Sept. 22, 1995), *pets. for review pending*. See also *Local Exchange Carrier Switched Local Transport Restructure Tariffs*, 9 FCC Rcd 400 (Com. Car. Bur. 1993).

(b) Other Options

66. While we tentatively conclude that the proposals outlined above would lead to LEC-CMRS interconnection arrangements that best serve our public interest objectives during an interim period, we also seek comment on a number of alternative approaches. We seek comment on the relative costs and benefits of our proposals and these options. We also invite parties to suggest other alternatives or combinations of these options that would advance our public interest objectives and that could be implemented rapidly and with minimal administrative costs.

67. *Bill and Keep for Off-Peak Usage Only.* Brock acknowledges that "[i]f interconnection charges are imposed, they should be assessed at the long run incremental cost of adding capacity."⁸⁰ He also acknowledges that "the true cost for peak period usage is much greater than the cost for off peak usage . . . [which] may be near zero,"⁸¹ and that the cost for peak period usage is much higher than the average incremental cost of local usage, which he estimates to be 0.2 cents (\$0.002) per minute.⁸² In light of Brock's comments, we seek comment on whether a bill and keep approach should be limited to off-peak traffic, with charges assessed for peak-period traffic. We seek comment on what charges should apply for peak period traffic under this approach. For instance, we seek comment on whether some subset of existing access charges should apply, or whether an incremental capacity cost for peak-period traffic should be developed. We also seek comment on the peak periods for both LEC and CMRS networks, and the appropriate period for a peak capacity charge. In addition, we seek comment on whether charging different prices for peak and off-peak traffic has any disadvantages and whether it is likely to result in a shift in the peak period. In addition, we seek comment on the potential administrative costs and complexity involved in this approach.

68. *Subset of Access Charges.* To the extent that LEC-CMRS interconnection arrangements are similar to the interconnection arrangements between LECs and IXC's or other access customers, the rates for LEC-CMRS interconnection could be based on a subset

⁸⁰ *Ex parte* letter from Robert F. Roche, CTIA to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 94-54, December 8, 1995, Gerald W. Brock, *The Economics of Interconnection: Price Structure Issues in Interconnection Fees* (April 1995) (Brock Paper No. 1). Brock later asserts that "[i]n a competitive communications market, . . . we should expect to see interconnection charges based on the cost of capacity required to terminate traffic." *Id.* at 4.

⁸¹ *Ex parte* letter from Robert F. Roche, CTIA, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 94-54, December 8, 1995, Gerald W. Brock, *The Economics of Interconnection: Interconnection and Mutual Compensation With Partial Competition*, (April 1995), at 13 (Brock Paper No. 2).

⁸² Brock Paper No. 3 at 3.

of the LECs' existing interstate access charges (or comparable rates from their intrastate access tariffs).⁸³ As noted above, LECs could charge existing local transport rates for the transmission facilities that they provide to link LEC and CMRS networks. Similarly, LECs could charge CMRS providers existing local switching rates for minutes of use originating on CMRS networks and terminating on LEC networks. We do not envision that the LECs would charge CMRS providers the carrier common line (CCL) charge. The CCL charge, in essence, represents a subsidy from LECs' interstate access customers to reduce the subscriber line charges (SLC) paid by end-user subscribers for loop facilities that are dedicated to their use. We do not believe that such a subsidy should be imposed on CMRS providers. Under this alternative, we are also inclined not to permit LECs to charge CMRS providers the transport interconnection charge (TIC), given that the extent to which the TIC recovers transport-related costs is unclear. We seek comment on what subset of access charges should apply if we select this option as an interim compensation mechanism. We also seek comment on whether per-minute access charges should be converted into peak-sensitive capacity charges (either per-peak minute or flat-rate) in the context of LEC-CMRS interconnection, and, if so, on how to do so. In addition, we seek comment on whether the LECs' access charges would be an appropriate framework for LEC-CMRS interconnection once our Access Reform proceeding is completed.⁸⁴

69. *Existing Interconnection Arrangements Between Neighboring LECs.* In the alternative, LEC-CMRS interconnection arrangements could be based on existing arrangements between neighboring LECs. We seek comment on whether LECs should be required to disclose publicly the terms of their interconnection arrangements with neighboring LECs and to offer CMRS providers comparable arrangements. This option could help ensure that CMRS providers receive interconnection on terms and conditions that are at least as favorable as neighboring LECs. Neighboring LECs generally are larger and more established than CMRS providers and thus more likely to have been able to negotiate reasonable interconnection arrangements. We ask parties for comment on this option. In particular, we ask parties to describe existing arrangements between neighboring LECs and to comment on whether these arrangements would be workable in the context of other forms of LEC-CMRS interconnection.

70. *Existing Interconnection Arrangements Between LECs and Cellular Carriers.* Another possibility would be to apply the same rates, terms, and conditions in existing LEC-

⁸³ As of August 1995, the average level for price cap LECs of access rates was: local switching -- 0.95 cents per minute, tandem switched transport -- 0.19 cents per minute, and transport interconnection -- 0.68 cents per minute. USTA Compendium and Roll Up, 1995 Price Cap Tariff Review Plan, August 1995. See also FCC, Com. Car. Bur., Industry Analysis Div., *Monitoring Report*, CC Docket No. 87-339, Table 5.11 (May 1995) (average traffic sensitive charge per access minute since August 1995 was 1.9 cents per minute).

⁸⁴ As noted above, we intend to address major reforms to our access charge rules in the upcoming Access Charge Reform NPRM.

cellular interconnection arrangements to broadband PCS providers, or to other categories of CMRS providers. Like the previous option, this option could help ensure that CMRS providers would receive interconnection on terms and conditions that are at least as favorable as cellular carriers. We seek comment on whether cellular carriers, like neighboring LECs, are better established than broadband PCS providers and thus are more likely to have negotiated reasonable interconnection arrangements.⁸⁵ We ask the parties to describe existing interconnection arrangements between LECs and cellular carriers and to comment on whether these arrangements could be extended to other forms of LEC-CMRS interconnection.

71. *Intrastate Interconnection Arrangements Between LECs and New Entrants.* In a few states, LECs have filed tariffs providing for interconnection arrangements with competing wireline providers of local exchange service. For example, in Illinois, Ameritech offers reciprocal compensation rates of 0.5 cents per minute of use for end-office termination and 0.75 cents per minute of use for tandem termination.⁸⁶ In Michigan, Ameritech offers a reciprocal compensation rate of 1.5 cents per minute for a local switched termination.⁸⁷ In New York, NYNEX recently proposed rates for terminating traffic of 1.3 cents per minute, in addition to a flat rate interconnection charge.⁸⁸ Similarly, the Maryland Public Service Commission recently approved, on an interim basis, an MCI Metro tariff under which the carrier is charging 2.24 cents per minute for terminating local calls that originate on other carriers' networks.⁸⁹ In California, Pacific Bell and MFS Communications reached an interconnection agreement providing for a reciprocal call termination rate of 0.75 cents per minute for local calls.⁹⁰

72. We invite parties to comment on the various state approaches described above, in particular on whether CMRS providers should be eligible for these offerings or whether there is any technical or economic basis for distinguishing CMRS from wireline interconnection. We also ask parties to provide us with other relevant information about state regulations in

⁸⁵ Interconnection arrangements may be particularly beneficial in cases where the cellular carrier is affiliated with the LEC. On the other hand, some commenters have suggested that a LEC could negotiate a high interconnection rate with its cellular affiliate, since its shareholders would not care which entity was accruing the profit.

⁸⁶ *Ex parte* letter from J.G. Harrington, Counsel for Cox Enterprises, Inc., to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, October 19, 1995, attachment, "State by State Status of Compensation and Interconnection," at 3.

⁸⁷ *Id.*

⁸⁸ *Id.* at 4.

⁸⁹ *Id.* at 3.

⁹⁰ See Letter from Alan F. Ciamporcero, Vice President, Pacific Telesis, to Reed Hundt, Chairman, Federal Communications Commission, dated November 21, 1995.

this area, and to comment on the extent to which state actions in wireline-wireless interconnection may serve as a model for LEC-CMRS interconnection. We note that, as part of broader initiatives to remove the statutory or regulatory barriers to entry into the local telephone market, several states have initiated proceedings, and in some cases adopted interim or permanent rules, governing interconnection arrangements between LECs and competing local carriers. We ask parties to comment on these state regulations and on the relative costs and benefits of various approaches states have taken in this area.

73. *Measured Local Service Rates.* With respect to rates that recover the costs of shared facilities whose costs vary in proportion to capacity, we seek comment on whether interconnection rates should be set at some fixed percentage of the measured local service rates that LECs currently charge their local customers. For example, if a LEC currently charges its own measured local service customers 5 cents per minute, it could charge an interconnecting CMRS provider half that amount -- 2.5 cents per minute. This option essentially would assume that the existing measured service rates are cost-based, and that the LEC's cost in terminating a call placed by a CMRS customer is one-half (or some other percentage) of the cost of both originating and terminating a call placed by a LEC customer to another LEC customer. Under a variant of this option, if a LEC does not offer measured local service, or if few LEC customers select such service, an imputed per-minute rate could be derived by dividing the LEC's monthly local service rate by the average customer's number of local minutes originated per month. Both the basic option and the variant discussed here have the appeal of facilitating competition between CMRS providers and LECs, by ensuring that CMRS providers never pay more for interconnection than LECs charge for a complete call. A disadvantage of these options is that they would not necessarily result in cost-based interconnection rates.

74. *Uniform Rate.* We also seek comment on whether a presumptive uniform per-minute interconnection rate should be established for all LECs and CMRS providers. Such a rate could be developed from generic, forward-looking studies of LEC network costs.⁹¹ We invite parties to submit any such studies into the record of this proceeding. A second option would be to develop such a rate based on one or more (or an average) of the state policy decisions cited in the preceding paragraph. Interconnection rates that have been ordered or accepted by state commissions range between 0.5 cents to 2.4 cents per minute, with a median of around one cent per minute. A third possibility would be to set such a uniform rate based on the average level of LECs' interstate access charges.⁹² For example, the per-

⁹¹ See, e.g., Robert M. Pepper, *Through the Looking Glass: Integrated Broadband Networks. Regulatory Policy and Institutional Change* (FCC, OPP Working Paper Series No. 24, Nov. 1988) at 47 (assuming that marginal cost of local telephone service is one cent per minute); Comcast *Ex Parte* Presentation, CC Docket No. 94-54, March 27, 1995 ("Incremental Cost of Local Usage," by G. Brock) (estimating average incremental cost of local usage of LEC networks, using digital technology, to be 0.2 cents per minute).

⁹² See *supra* para. 77.

minute rate for terminating traffic interconnected at an end-office (exclusive of flat-rate charges for circuits connecting LEC and CMRS networks and per-minute charges for tandem switched transport) could be set based on the average level of LECs' interstate local switching charges, but not transport interconnection charges or carrier common line charges. We seek comment on the advantages and disadvantages of establishing a uniform interconnection rate level, whether establishing such a uniform rate would be lawful, the basis on which such a rate might be set, and the practical problems of implementing such a rate scheme. We also seek comment on whether such a rate, instead of being a presumptively lawful rate, should be a prescription, and on what showing a carrier would need to make to charge a different rate. In the alternative, we seek comment on whether carriers should apply different interconnection rate levels in different geographic areas that they serve.⁹³

75. *Bill and Keep Until a Satisfactory Rate Is Developed.* Finally, we seek comment on whether a bill and keep arrangement should be imposed on a LEC pending the negotiation of a satisfactory interconnection arrangement between the LEC and a CMRS provider or the approval of other cost based charges. If the negotiations were to break down, a reasonable basis for resolving the dispute might be the imposition of a rate equal to the lowest of: (1) existing interconnection arrangements between the LEC and neighboring LECs; (2) intrastate interconnection arrangements between the LEC and new entrants; or (3) a subset of LEC interstate access charges for terminating traffic. A LEC would be allowed, however, to demonstrate that the lowest of the charges described above does not provide the LEC with a reasonable opportunity to recover all the costs incurred in terminating CMRS traffic on the local landline network, and some overhead costs. This approach would preserve the primary role of negotiations between the parties in reaching interconnection arrangements, but would limit the LEC's ability to exercise its market power, while simultaneously creating an incentive for it to negotiate a satisfactory rate expeditiously. We also seek comment on whether CMRS providers would have an incentive to negotiate under this approach.

(2) Long Term Approach

76. We seek comment on what the long-term approach to interconnection pricing should be, whether one of the interim options outlined above should be the permanent methodology, or whether interconnection rates should be based on a specific demonstration of the cost of providing service, much as we require for establishing rates for new services under our price cap rules. We believe that, in the long term, pro-competitive LEC-CMRS interconnection arrangements should be developed that advance our public interest objectives. First, these arrangements should give efficient incentives regarding both consumption and investment in telecommunications services. To this end, prices should be reasonably cost-

⁹³ Compare the zone density pricing system, initially adopted in *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7451-57, ¶¶ 172-84 (1992) (*Special Access Expanded Interconnection Order*), recon., 8 FCC Rcd 127 (1992), recon., 8 FCC Rcd 7341, vacated in part and remanded sub nom. *Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (1994), reaffirmed on remand in pertinent part, 9 FCC Rcd 5154, 5192-5200 (1994).

based. Cost-based prices could be derived through cost studies, or could be based on potentially reasonable proxies in lieu of developing rates based on complete cost justifications, possibly including one or more of the interim approaches described above. Moreover, over time, we believe that price cap regulation and increasing competition will force interconnection rates toward cost. Ultimately, markets may become sufficiently competitive that cost-based interconnection prices should result without any regulatory intervention.

77. Second, functionally equivalent forms of network interconnection arguably should be available to all types of networks at the same prices, unless there are cost differences or other policy considerations that justify different rates. Thus, in the long run, if LECs provide essentially similar interconnection services to CMRS providers and to IXC's, then it may well be in the public interest for the rates in LEC-CMRS interconnection arrangements not to differ from the rates for LEC-IXC interconnection -- *i.e.*, access charges. We acknowledge, however, that there may be significant reasons, including our interest in facilitating the competitive development of CMRS and considerations relating to the Part 36 jurisdictional separations rules, that may necessitate differences in regulatory regimes. We also recognize that current interstate access charges are problematic, and in the near future we intend to initiate a comprehensive proceeding to reform the access charge regime. We also seek comment on the impact of each of the pricing options on universal service considerations. Finally, we note that substantially different prices for similar forms of interconnection raise the possibility that parties could seek to deflect traffic from a more costly form of interconnection to a less costly form. We invite comment on the implications of this possibility, including methods to prevent such traffic deflection.

(3) Symmetrical Compensation Arrangements

78. We tentatively conclude that LEC-CMRS interconnection rates should be symmetrical -- that is, LECs should pay CMRS providers the same rates as CMRS providers pay LECs. Most existing interconnection arrangements between LECs and competing wireline providers of local exchange service require that interconnection rates be symmetrical.

79. We recognize that symmetrical interconnection rates have certain disadvantages. Asymmetrical, cost-based rates have the benefit of providing each of the carriers (and, if passed through to them, their customers) incentives to use resources such as interconnection commensurate with the actual cost of those resources. LEC networks and CMRS networks use different technologies that may have different costs. (Moreover, even different LEC networks that use similar technologies, as well as different CMRS networks, may have different cost characteristics from one another.) If interconnection rates were fully cost-based, then a LEC might pay a CMRS provider different interconnection rates than the CMRS provider would pay the LEC.

80. On the other hand, symmetrical compensation rates would be administratively easier to derive and manage than asymmetrical rates based on the costs of each of the respective networks. Moreover, symmetrical rates could reduce LECs' ability to use their bargaining strength to negotiate an excessively high termination charge that CMRS providers would pay LECs and an excessively low termination rate that LECs pay CMRS providers. Setting asymmetric, cost-based rates might require evaluating the cost structure of non-dominant carriers, which would be complex and intrusive. Accordingly, we tentatively conclude that interconnection arrangements should include symmetrical compensation rates, at least during an interim period. We seek comments on the foregoing analysis. Commenters should discuss any other reasons why symmetrical or asymmetrical compensation rates would be in the public interest and the relative merits of these approaches. We also seek comment on whether we should revisit our existing policy of forbearing from regulating CMRS providers' rates in order to enforce our interim policies with respect to the rates CMRS providers charge to LECs.

81. In addition, we note that, according to a number of parties, many LECs do not now pay any compensation to CMRS providers for LEC-originated traffic that terminates on their networks, and that some LECs even impose charges on CMRS providers for such traffic. Such conduct would appear to violate our existing mutual compensation requirement. We seek comment on whether such violations are occurring and what methods could and should be used to enforce this requirement. In the *CMRS Second Report*, we stated that CMRS providers may file complaints, under Section 208 of the Act, if a LEC violates the requirement that they charge the same rates to CMRS providers for interstate interconnection as they charge other mobile service providers.⁹⁴ Is this avenue for obtaining remedies sufficient, or should we institute some other procedure or other mechanism to ensure that LECs comply with our existing rules? For example, should we require LECs to report to us on the amounts of compensation they are paying to CMRS providers for traffic that originates on LEC networks and terminates on CMRS networks? Are alternative dispute resolution procedures necessary?

⁹⁴ *CMRS Second Report*, 9 FCC Rcd at 1498, para. 233.

C. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

a. Positions of the Parties

82. LECs are currently required to engage in good faith contractual negotiations over CMRS interconnection arrangements.⁹⁵ In the *Equal Access and Interconnection NPRM and NOI*, we sought comment on whether LECs should be required to take any further action, such as: (1) filing tariffs specifying their CMRS interconnection offerings; (2) filing their contractual agreements regarding interconnection with CMRS providers for public inspection; or (3) including a "most favored nation" clause in all CMRS interconnection agreements to guarantee that no CMRS provider received more favorable terms than others.⁹⁶

83. Most LECs, AT&T, and established cellular carriers, as well as some SMR, paging, and PCS providers, support the existing requirement that LECs engage in good faith negotiations over interconnection with CMRS providers.⁹⁷ They argue that contractual negotiation is superior to tariffed interconnection, because it permits the greater flexibility needed to respond rapidly to changing interconnection needs. Although many acknowledge that the process of individually negotiating cellular interconnection agreements initially was difficult, they contend that the relevant parties now have more experience, and most LECs and cellular carriers say they are satisfied with the current process. These cellular carriers now maintain that the process has produced: (1) lower rates than tariffing, due to savings on the administrative costs of tariffing; (2) service arrangements better tailored to particular interconnection needs than would have been possible under a tariffed rate structure; and (3) adequate protection against LEC discriminatory conduct.⁹⁸

84. Prospective local entrants such as MCI and smaller, less established CMRS providers, as well as GSA and several state commissions, argue that LECs should be

⁹⁵ *Id.* at 1497-98, para. 230.

⁹⁶ 9 FCC Rcd at 5457, paras. 119-120.

⁹⁷ AT&T Comments at 12-13; Ameritech Comments at 3; Bell Atlantic Comments at 13-14; BellSouth Comments at 5-9; GTE Comments at 37-45; NYNEX Comments at 11-12; Pacific Bell Comments at 12; SW Bell Comments at 63; CBT Comments at 2; SNET Comments at 12; Rochester Comments at 8; AirTouch Comments at 12; Alltel Comments at 7-8; McCaw Comments at 23; Vanguard Comments at 21; New Par Comments at 21-22; Western Comments at 7; Dial Page Comments at 6; E.F. Johnson Comments at 6; Geotek Comments at 10; OneComm Comments at 20; RAM Mobile Data Comments at 7; AMTA Comments at 13-14; CTIA Comments at 21; OPASTCO Comments at 5; PCIA Comments at 11; Rural Cellular Comments at 9; PageNet Comments at 8; APC Comments at 4-5; Columbia PCS Comments at 5.

⁹⁸ *See, e.g.*, CTIA Comments at 15-22 and Reply at 9-10.

required to file CMRS interconnection tariffs.⁹⁹ They agree with the Commission's observation that tariffing is an established mechanism for ensuring that carriers with market power do not express it in rates, terms, and conditions that are unreasonable or unreasonably discriminatory. They contend that tariffing would counter the LECs' incentives to hinder the development of competition from new CMRS services, such as PCS, particularly in cases where the LECs are not structurally separate from their own wireless affiliates. The California PUC also argues that interconnection tariffs would reduce the opportunity for LECs to favor their affiliates in the wireless market. Nextel contends that opponents of tariffing want to deny new entrants that opportunity to secure the same favorable interconnection agreements that the incumbent cellular carriers have already negotiated.¹⁰⁰ Point argues that small cellular carriers have little bargaining power *vis a vis* LECs in "good faith" negotiations, and that a tariffing requirement would aid smaller carriers.¹⁰¹

85. MCI challenges claims that a tariffing requirement would be administratively burdensome and lead to increased litigation. First, MCI claims that the resources the LECs currently devote to tariffing -- including a host of interconnection tariff filings in the states -- are sufficient to handle the filing of CMRS contract tariffs for both existing and new arrangements. Second, MCI maintains that the publication of tariffs would provide greater assurances to CMRS carriers that they have been offered reasonable terms and conditions of interconnection, comparable to those offered other similarly situated parties, thereby diminishing their incentive to litigate.¹⁰² Third, MCI counters the argument that tariffs are overly rigid by suggesting that the Commission use the flexible contract tariffs mechanism described at Section 61.55 of the Commission's rules.¹⁰³ MCI asserts that contract tariffs provide parties with the flexibility to negotiate individual interconnection agreements, and yet ensure that the terms negotiated are generally available. MCI claims that contract tariffs would give the Commission greater ability to supervise interconnection arrangements, but would not require the tariffing of contract details. MCI declares that, by giving CMRS providers more information, it would enable them to negotiate more economically and technically efficient interconnection agreements. Finally, MCI submits that the Section 208 complaint and alternative dispute resolution processes are not satisfactory substitutes for LEC interconnection tariffs.¹⁰⁴

⁹⁹ See, e.g., GSA Comments at 4-6 and Reply at 7-9; California PUC Comments at 3; New York DPS Comments at 4; MCI Comments at 11-12, Reply at 6; GCI Reply at 3; PRTC Comments at 2-3; Point Comments at 5; Nextel Comments at 15; Time Warner Reply at 7.

¹⁰⁰ Nextel Reply at 11.

¹⁰¹ Point Comments at 5.

¹⁰² MCI Reply at 9.

¹⁰³ *Id.* at 7-8 (citing 47 C.F.R. § 61.55).

¹⁰⁴ MCI Reply at 9.

86. Several CMRS providers, as well as AT&T, Ameritech, and SW Bell, support requiring LECs to make the interconnection agreements that they negotiate with CMRS providers available for public inspection.¹⁰⁵ SW Bell asserts that the same benefits that tariffs provide by publicly disclosing available terms and conditions would be provided by a less burdensome filing requirement in combination with a "most favored nation" clause. SW Bell also suggests that contracts be filed locally, near the relevant market area, with the state regulatory agency. AT&T agrees that this requirement would facilitate the monitoring of LEC interconnection agreements with other carriers. PCIA states that it would inhibit discrimination while preserving flexibility and minimizing regulatory burdens. PCIA also asks that the requirement not include a filing fee and that state filing requirements be deemed sufficient to satisfy this federal requirement. Finally, PCIA asks that contracts not be required to include any information about the particular CMRS provider involved so as not to disclose any competitively sensitive information about that carrier.¹⁰⁶ Parties, primarily LECs, opposing this filing requirement, regard it as an unwarranted burden in terms of adding delay, administrative cost, and reducing the LECs' flexibility.¹⁰⁷

87. A number of LECs, as well as MCI and PCIA, oppose requiring interconnection contracts to include a "most favored nation" guarantee, because such a guarantee is already provided by statutory requirements against unreasonable discrimination,¹⁰⁸ and would spawn litigation because such guarantees are difficult to interpret and they require discovery to determine compliance.¹⁰⁹ BellSouth alleges that it would limit flexibility, because a LEC willing to compromise on one feature in return for a customer's compromise to forgo a different feature, could be forced by the customer to provide the second feature because other customers had received it.¹¹⁰ Supporters of a most favored nation clause, including SW Bell and several CMRS providers, argue that it would be less burdensome and inflexible than

¹⁰⁵ AMTA Comments at 13-14; AT&T Comments at 13; Ameritech Comments at 3; Columbia PCS Comments at 5-7; Comcast Comments at 5-8; Cox Comments at 4-8, 12; Dial Page Comments at 6; GCI Reply at 3; GO (formerly Columbia PCS) Reply at 4-5; Point Comments at 6; RAM Mobile Data Comments at 7-8; Rural Cellular Comments at 9; SW Bell Comments at 64-65 (it might be preferable to file contracts locally with state regulators); UTC Reply at 5-6.

¹⁰⁶ PCIA Comments at 12-13.

¹⁰⁷ APC Comments at 5-6; Bell Atlantic Comments at 15 n.12; BellSouth Comments at 11; CBT Comments at 2-3; GTE Comments at 45; McCaw Comments at 23-24; NYNEX Comments at 12 n.13; SNET Comments at 12-13; Waterway Comments at 8-9.

¹⁰⁸ APC Comments at 5; Ameritech Comments at 3; BellSouth Comments at 11; CBT Comments at 3; GTE Comments at 44-45; NYNEX Comments at 12 n.13; PCIA Comments at 12; Rochester Comments at 9; SNET Comments at 13; Waterway Comments at 9.

¹⁰⁹ GTE Comments at 44 and Reply at 36; MCI Reply at 7-8; PCIA Comments at 12.

¹¹⁰ BellSouth Comments at 11.

tariffing, but a useful safeguard against discrimination by providing an additional recourse against such conduct.¹¹¹ Although Cox supports the proposal to require LECs to file interconnection contracts with the Commission and to include a "most favored nation" clause in the contracts, it contends that these requirements are still not sufficient to prevent against unreasonable arrangements resulting from negotiations. Thus, Cox also proposes that the Commission establish a mechanism for prompt review of LEC interconnection rates upon request of a CMRS provider, which would ensure that the LEC unbundled its network sufficiently and did not include excessive overhead loadings in its rates. Cox states that its proposal preserves the flexibility of a contract-based system, while ensuring that LECs do not stifle competition.¹¹²

b. Discussion

88. As discussed above, we believe that some involvement in the formation and administration of interconnection arrangements between LECs and CMRS providers would help to counter possible abuses of market power and would help ensure that these arrangements are efficient and advance the public interest.¹¹³ We also have addressed the types of compensation arrangements that we believe would best serve the public interest.¹¹⁴ We seek more detailed comment on the type of involvement that would be optimal in light of our views on the compensation arrangements. In particular, we ask parties to comment on the interrelationship of the procedural issues addressed in this section to the substantive policy options regarding compensation arrangements discussed above. Some of the substantive options discussed above might make some procedural approaches infeasible, or could make certain protections unnecessary.

89. In considering how to implement our policies regarding interconnection arrangements, we seek to promote arrangements that foster competition and advance economic efficiency and our other goals. We also desire to enable LECs and CMRS carriers to respond rapidly and flexibly to changing interconnection needs. We seek comment on whether an open process in which a LEC and a CMRS provider freely discuss and negotiate a wide variety of interconnection options is preferable to a process whereby the LEC presents the CMRS provider with a limited choice of preset interconnection options. There may be a

¹¹¹ Cox Comments at 12; McCaw Comments at 23-24; New Par Comments at 21-22; Nextel Comments at 16-17; OneCom Comments at 20; RAM Mobile Data Comments at 7-8; Rural Cellular Comments at 9; SW Bell Comments at 64-65.

¹¹² Comcast Comments at 9; Cox Comments at 7-13. *Accord*, New Par Comments at 22 (LEC's must not charge CMRS providers for elements or services that (i) are not needed or wanted by the interconnecting CMRS carrier or (ii) are not charged to interconnecting landline LECs).

¹¹³ See paras. 8-14, *supra*.

¹¹⁴ See paras. 59-81, *supra*.

useful purpose in some level of intervention to prevent abuse of market power or unreasonable discrimination. This may be particularly critical in cases in which the parties are unable to negotiate a satisfactory agreement, but may also be valuable as a "backstop" measure even when parties can reach agreement, to prevent unreasonable discrimination against other parties or anticompetitive collusion that might disadvantage consumers.

90. If LECs and CMRS providers were to negotiate interconnection arrangements consistent with the compensation framework discussed above, the public interest would be served while avoiding the need for intervention. As discussed above, however, we believe that optimal compensation arrangements are unlikely to result from purely private negotiations. At least for the near future, there is likely to be an imbalance in negotiating power between the incumbent LECs, which currently possess monopoly power in local exchange markets, and new CMRS providers seeking to enter such markets. The LECs may seek to impose unduly high interconnection rates or other unreasonable conditions that could reduce CMRS entry. Moreover, there is a significant risk that LECs may not offer new CMRS carriers interconnection agreements that are as financially advantageous as those that large and incumbent CMRS providers have already secured. Finally, in cases where LECs and CMRS providers compete directly against one another, there is a significant risk that LECs and CMRS providers could engage in collusive behavior and voluntarily agree to arrangements that would not advance the public interest. Thus, participation in the process by regulators may be warranted for some period of time.

91. An alternative would be a requirement that voluntarily-negotiated interconnection contracts be filed publicly. Such public filing -- either at the Commission (pursuant to Section 211)¹¹⁵ or at state commissions -- could reduce the LECs' ability to engage in unreasonable discrimination among CMRS providers, although we recognize that such a procedure would not necessarily ensure that arrangements will comply with the substantive standards discussed above. We also seek further comment on possible ways to minimize the burden of such disclosure and protect the confidentiality of LECs' and CMRS providers' proprietary data, while still obtaining disclosure of enough information to advise new entrants about rates, terms, and conditions. Finally, we seek comment on whether filing at a regulatory agency is necessary if the carriers themselves were required to make publicly available relevant, specified information about the agreement upon request.

92. As noted above, even public disclosure of negotiated agreements may not be sufficient to prevent anticompetitive behavior by LECs possessing market power and to ensure that interconnection compensation arrangements are structured in an optimal manner. A more forceful approach would be to require that interconnection arrangements be filed as tariffs. The tariff process is a well-established mechanism for regulatory commissions to protect the public interest by rejecting unreasonable provisions in carriers' offerings. On the other hand, tariffing requirements could entail administrative costs.

¹¹⁵ 47 U.S.C. § 211.

93. We tentatively disagree with the position taken by some of the commenting parties that any tariffing requirement would automatically preclude flexible interconnection arrangements. We note that, even in a contractual environment, one party might inflexibly present a limited number of options and refuse to negotiate alternatives; by contrast, even under a tariffing requirement, parties can cooperatively negotiate provisions in a flexible manner. Such provisions can later be incorporated as tariffed options. Thus, tariffed interconnection arrangements need not be "one size fits all." For example, in the *Interexchange Order*,¹¹⁶ we adopted rules permitting IXCs to offer services pursuant to individually negotiated contracts, but allowed AT&T, then considered a dominant interexchange carrier, to offer contract rates only for services found subject to substantial competition and accorded streamlined regulation.¹¹⁷ Such tariffs, consisting of certain specific information required by our rules, must be made generally available to similarly situated customers and do not require cost support. In the *Second Further Notice of Proposed Rulemaking* in the LEC price cap performance review proceeding, we invited comment on whether the rules should be changed to allow price cap LECs to offer contract-based tariffs when a service is subject to substantial competition and accorded streamlined regulation.¹¹⁸

94. The major difference we see between non-tariffed arrangements and arrangements subject to a contract tariff process is that, in the latter case, the regulator has additional mechanisms to protect against terms that may be unreasonable or unreasonably discriminatory, such as issuing an order for investigation pursuant to Section 205 of the Act. We seek comment on the costs and benefits of amending our rules to permit the use of contract tariffs to implement LEC-CMRS interconnection arrangements. We also seek comment on whether a different form of contract tariffing for LEC-CMRS interconnection would better serve the public interest. For instance, should a special notice period apply to LEC-CMRS interconnection contracts? Should some level of cost showing be required for LEC-CMRS interconnection contracts, unlike contract tariffs generally?

95. In sum, we tentatively conclude that information about interconnection compensation arrangements should be made publicly available in order to foster competition and to advance the public interest. As to what form this information should take -- tariff, public disclosure or other approach -- we seek comment from parties as to the costs and

¹¹⁶ *Competition in the Interexchange Marketplace*, 6 FCC Rcd 5880, 5897 (1991); see 47 C.F.R. § 61.5(m).

¹¹⁷ Of course, we have recently determined that AT&T should be classified as a non-dominant carrier with respect to the interstate, domestic, interexchange market. *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, FCC 95-427 (released Oct. 23, 1995).

¹¹⁸ *Price Cap Performance Review for Local Exchange Carriers*, Second Further Notice of Proposed Rulemaking, CC Docket No. 94-1, FCC 95-393 (released Sept. 20, 1995).

benefits of each option, keeping in mind the goals of promoting economic efficiency through competition and negotiating flexibility.

2. Jurisdictional Issues

a. Statutory Background

96. In the 1993 Budget Act,¹¹⁹ Congress fundamentally changed the regulatory framework for CMRS. The statutory plan that Congress adopted clearly indicates its intention to promote an economically vibrant and competitive nationwide market for commercial mobile radio services. In addition to providing more spectrum and authority to assign the spectrum rapidly through auctions, Congress also expressed its preference for rapid deployment of wireless technologies.¹²⁰ As the House Report states: "The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."¹²¹ Pursuant to this Congressional directive, we found, in the *CMRS Second Report*, that nationwide commercial mobile radio service would likely stimulate nationwide economic growth and job creation, as well as the health of the U.S. economy. We also concluded that nationwide development of CMRS would upgrade the nation's telecommunications infrastructure and help ensure access by all Americans to the nation's information superhighway.¹²²

97. A number of provisions in the Communications Act of 1934, as amended, *inter alia*, by the 1993 Budget Act, are relevant to the extent of our jurisdiction over LEC-CMRS interconnection. Section 1 declares that the purpose of the Act is "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . . ."¹²³ Section 2(a) grants the Commission jurisdiction over all interstate communication by wire or radio, while Section 2(b) generally reserves to the states jurisdiction over

¹¹⁹ See *supra* ¶ 20 & n.13.

¹²⁰ Budget Act, § 6002(a), amending Section 309 of the Communications Act; see *Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates*, Report and Order, 10 FCC Rcd 7486, 7496-97 (1995).

¹²¹ House Report on H.R. 2264 at 261 (1993).

¹²² *CMRS Second Report*, 9 FCC Rcd at 1419-22.

¹²³ 47 U.S.C. § 151.

intrastate communication service by wire or radio of any carrier.¹²⁴ In the 1993 Budget Act, Congress added an exception to Section 2(b), so that the section now provides:

Except as provided in sections 223 through 227, inclusive, *and section 332*, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or give the Commission jurisdiction with respect to (1) charges, classifications, practices, service, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier. . . . (Emphasis added.)

Section 332(c)(3), also added in 1993, provides in relevant parts:

Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service. . . . Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary

Section 332(c)(1)(B) provides:

Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

b. Positions of the Parties

98. Many wireless carriers argue that the Commission can and should establish uniform policies governing all LEC-CMRS interconnection. McCaw argues that, to ensure the continued development of a seamless national wireless infrastructure, there needs to be a

¹²⁴ These provisions generally have been interpreted "to define a national goal of the creation of a rapid and efficient phone service, and to enact a *dual* regulatory system to achieve that goal." *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 370 (1986)(emphasis added).

single set of rules for physical interconnection and interconnection compensation. New Par states that, to avoid hindering the rapid deployment of CMRS technologies, the Commission must now clarify that, with respect to the basic principles of CMRS interconnection, federal policy preempts all inconsistent state regulation. Columbia PCS asserts that it will be increasingly difficult to ascertain the jurisdictional nature of traffic given the automatic roaming capabilities that are being developed. These parties contend that, at a minimum, the Commission should declare that the principles of reciprocal compensation and "good faith" negotiations apply to intrastate as well as interstate traffic.¹²⁵

99. Century Cellnet maintains that the Commission's fundamental holding that CMRS providers are co-carriers, and as such are entitled to reasonable interconnection following good faith negotiations, applies without regard to the jurisdictional nature of the traffic. While Century states that the levels of compensation for intrastate traffic may generally be left to the states, it insists that, even there, the Commission would have authority to take action if the compensation levels set served to impede interstate interconnection.¹²⁶ PCIA states that both the *CMRS Second Report* and the Commission's implementing regulations affirmatively specify that mutual compensation is required, without differentiating between interstate and intrastate traffic.¹²⁷ PCIA contrasts this to other sections of the rules and order which explicitly apply only to interstate aspects of interconnection. It concludes that mutual compensation is an inherent part of reasonable interconnection and good faith negotiations, which are solely within the Commission's jurisdiction.¹²⁸

100. Both Cox and Comcast strongly argue that the Commission has exclusive jurisdiction over the rates and terms of both interstate and intrastate interconnection between CMRS providers and LECs pursuant to the 1993 Budget Act amendments to Section 332(c) and 2(b) of the Act.¹²⁹ Cox and Comcast state that before these amendments, the

¹²⁵ See, e.g., APC Comments at 4; Columbia PSC Comments at 5-7; McCaw Comments at 25-26; New Par Comments at 21-22; Nextel Reply Comments at 13; PCIA Comments at 14; Century Cellnet Reply Comments at 17.

¹²⁶ Century Cellnet Reply Comments at 17.

¹²⁷ PCIA Comments at 14-15 (citing *CMRS Second Report*, 9 FCC Rcd at 1498 ¶ 232 and App. A at 1520 (codified at 47 C.F.R. § 20.11(b))).

¹²⁸ PCIA Comments at 14-15.

¹²⁹ See *Ex Parte* Letter from Werner K. Hartenberger, Leonard J. Kennedy and Laura H. Phillips, Counsel for Cox Communications, to Mr. William F. Caton, Secretary, Federal Communications Commission, filed October 16, 1995 ("Cox Memorandum"); *Ex Parte* Letter from Leonard J. Kennedy, Laura H. Phillips and Peter A. Batacan, attorneys for Comcast Cellular Communications, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission, filed October 19, 1995 ("Comcast Memorandum").

Commission was denied jurisdiction over intrastate telecommunications that were severable from the interstate portion or did not conflict with a federal policy, as required under *Louisiana PSC*.¹³⁰ They contend, however, that the Budget Act amended Sections 332(c) and 2(b) and superseded *Louisiana PSC* with respect to state jurisdiction over intrastate CMRS rates. Moreover, Cox and Comcast argue that Section 2(b), as amended, dictates that the substantive provisions of Section 332 determine the Commission's jurisdiction over CMRS, and that this section grants the Commission sole authority to regulate all interstate and intrastate rate and entry aspects of CMRS.¹³¹ According to Cox and Comcast, Congress inserted a reference to Section 332 (giving the Commission authority over CMRS) into Section 2(b)'s initial clause, which provides exceptions to Section 2(b)'s general exclusion of the Commission's jurisdiction over intrastate telecommunications. Cox and Comcast argue that the statutory design of Section 332(c)(3)(A), which preempts state authority over rate and entry regulation of CMRS "[n]otwithstanding sections 152(b) and 221(b) . . .", shows that states are preempted from regulating intrastate CMRS rates and entry without regard to any residual jurisdiction a state may claim under Section 2(b) of the Act.¹³² In addition, Cox notes that, although Section 332 does allow states to regulate "other terms and conditions" of CMRS, the legislative history indicates that this phrase refers to customer billing information and practices and billing disputes and other consumer protection matters, not mutual compensation or other matters relating to reasonable and nondiscriminatory interconnection, over which the Commission retains jurisdiction.¹³³ Comcast also cites the language in the legislative history of Section 332 which states that the preemption provisions of Section 332 are intended to "foster the growth and development of mobile services that by their nature, operate without regard to state lines" as support for the proposition that CMRS is a jurisdictionally interstate service.¹³⁴

101. Cox and Comcast argue that Section 332, by preempting state rate and entry authority over CMRS, reserves to the Commission jurisdiction to "occupy the field" of substantive CMRS regulation.¹³⁵ In addition, they submit that Section 332(c)(1)(A), which authorizes the Commission to forbear from enforcing any provision of Title II (with certain exceptions) that the Commission determines are not necessary to ensure that the charges and classifications for CMRS are nondiscriminatory, Section 332(c)(1)(C), which directs the

¹³⁰ See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 372-376 (1986) ("*Louisiana PSC*").

¹³¹ Cox Memorandum at 4-5, Comcast Memorandum at 7-8.

¹³² See 47 U.S.C. § 332(c)(3)(A). Cox Memorandum at 6, Comcast Memorandum at 9.

¹³³ Cox Memorandum at 6 (citing H.R. Rep. No. 103-111, 103rd Cong., 1st Sess., at 260).

¹³⁴ Comcast Memorandum at 11-12 (citing H.R. Rep. No. 103-111, 103rd Cong., 1st Sess., at 260).

¹³⁵ Cox Memorandum at 7; Comcast Memorandum at 9.

Commission to conduct "annual reports" reviewing competitive market conditions regarding CMRS, and Section 332(d), which delegates to the Commission the authority to define key terms relating to CMRS, confirm that the overall design of the statute is to vest the Commission with jurisdiction over CMRS.¹³⁶ These parties add that the Commission's jurisdiction is also supported by Section 332(c)(3)(A), which they contend grants the Commission sole authority over CMRS unless and until a state files a petition for rate regulation authority and the Commission approves such a petition.¹³⁷

102. Comcast contends that a review of the Budget Act and legislative history also confirms the Commission's sole authority over interconnection between CMRS providers and LECs, because these provisions emphasize the interstate and nationwide nature of the wireless communications network, and because the rates and conditions of interconnection to landline LEC networks are essential to the rapid and competitive buildout of the wireless network.¹³⁸ Furthermore, Comcast states that, because the Budget Act expressly grants the Commission sole authority to define the statutory terms "interconnected service" and "public switched telephone network" ("PSTN"), Section 332(d) shows that Congress intended to grant the Commission the authority to regulate interconnection between CMRS providers and LECs -- historically known as the gatekeepers to the PSTN.¹³⁹

103. Moreover, Cox and Comcast claim that, even if the purpose of the Budget Act amendments were not clear, the Commission and the courts have consistently held that jurisdiction over telecommunications services is to be determined by the nature of the communications, rather than the physical location of the facilities.¹⁴⁰ Because CMRS is part of an interstate "network of networks," Cox argues that CMRS calls are inherently interstate and thus subject to exclusive Commission jurisdiction, regardless of any local or intrastate

¹³⁶ Cox Memorandum at 7-8, Comcast Memorandum at 9-10.

¹³⁷ Cox Memorandum at 8, Comcast Memorandum at 9.

¹³⁸ Comcast Memorandum at 12-13.

¹³⁹ Comcast Memorandum at 13 (citing 47 U.S.C. § 332(d)).

¹⁴⁰ Cox Memorandum at 9-11; Comcast Memorandum at 15-17 (citing Bell System Tariff Offerings of Local Distribution Facilities for Use by Other Common Carriers, 46 F.C.C. 2d 413, 417 (1974)(Commission has exclusive jurisdiction over rates, terms and conditions associated with interconnection to intrastate facilities when local facilities are an essential link in interstate and foreign communications services); *Lincoln Tel. & Tel. Co. v. FCC*, 659 F.2d 1092 (D.C. Cir. 1981)(facilities or services that substantially affect provision of interstate communication are not deemed to be intrastate in nature even though they are located or provided within the confines of one state)); Comcast Memorandum at 14 (citing *Public Utility Com'n of Texas v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989)(where federal and state regulation conflicts, to avoid duplication of networks and equipment for interstate and intrastate use, federal interconnection policies must prevail)).

aspects of LEC-CMRS interconnection rates.¹⁴¹ Thus, Cox and Comcast conclude that the Commission's conclusion in the *CMRS Second Report* that Section 332 does not extend the Commission's jurisdiction to the regulation of local CMRS rates is inaccurate and that this statement must be clarified to conform with the Commission's actual exclusive jurisdiction to adopt uniform federal policy governing the rates, terms and conditions associated with CMRS interconnection.¹⁴²

104. Willkie Farr and Gallagher ("Willkie Farr") also submitted a memorandum supporting the argument that the policy goals and preemption provisions of Section 332 provide the Commission with the authority, if not the obligation, to preempt state regulation of LEC-CMRS interconnection compensation rates.¹⁴³ Specifically, Willkie Farr argues that, in revising Section 332, Congress intended to promote a uniformly-regulated, efficient and competitive CMRS market, and thus it charged the Commission with implementing regulatory policies to achieve these goals.¹⁴⁴ Willkie Farr submits that the language of Section 332(c)(3)(A), which clearly prohibits state regulation of the rates charged by CMRS providers and CMRS entry, "by its very nature" comprehends intrastate interconnection compensation charges negotiated between LECs and CMRS providers, because the rates charged by CMRS providers for completing LEC traffic are rates charged by a CMRS provider.¹⁴⁵ Willkie Farr adds that states may not directly or indirectly impede entry, either entirely or partially, such as through added cost or delay, by their regulation of LEC-CMRS interconnection compensation rates.¹⁴⁶ Willkie Farr contends that Congress' action to preempt entry regulation for mobile services represents a fundamental shift in policy from Section 2(b) of the Act, and that, under a strict reading of Section 2(b), states no longer "retain jurisdiction over purely intrastate calls notwithstanding the economic effect such state jurisdiction might have on the interstate market."¹⁴⁷ As an alternative basis for preemption, Willkie Farr argues that, under the exception to Section 2(b) of the Act, the Commission may preempt state regulation that would negate the legitimate exercise of the Commission's

¹⁴¹ Cox Memorandum at 9-11.

¹⁴² Cox Memorandum at 12; Comcast Memorandum at 17-19.

¹⁴³ *Ex parte* Letter from Philip L. Verveer and Jennifer A. Donaldson to Ms. Karen Brinkmann, Special Counsel for Local Competition, Common Carrier Bureau, Federal Communications Commission, dated October 27, 1995 ("Willkie Farr Memorandum").

¹⁴⁴ *Id.* at 4-6.

¹⁴⁵ *Id.* at 7.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 7 (citing *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 746 F.2d 1492, 1500 (D.C. Cir. 1984)).

interstate authority.¹⁴⁸ In this case, according to Willkie Farr, the federal objective to be furthered is the assurance of an efficient, competitive buildout of nationwide wireless communications infrastructure, which is supported by the Commission's adoption of PCS service areas based on MTAs and BTAs -- geographic areas which follow patterns of trade and do not respect state lines.¹⁴⁹ Willkie Farr claims that this federal goal would be impossible to achieve if systems' architecture and interconnection nodes have to be designed to accommodate varying state requirements with respect to interconnection compensation.¹⁵⁰

105. In contrast, the New York Commission staff argues that there is no reason that state and federal policies regarding LEC-CMRS interconnection cannot co-exist. It notes that the Commission has in the past recognized that cellular service is primarily used to provide "local, intrastate exchange telephone service," and therefore urges the Commission not to alter its current model, whereby interconnection arrangements "are properly the subject of negotiations between the carriers as well as State regulatory jurisdictions."¹⁵¹ Pacific also argues that the Commission previously found that LEC rates for interconnection are severable into interstate and intrastate rates because the costs are severable, and thus the Communications Act denies the Commission jurisdiction over intrastate interconnection rates. It maintains that "the extent to which a state regulatory commission desires to regulate mutual compensation for intrastate interconnection has been and must remain in its sole discretion."¹⁵² NARUC contends that the Budget Act clearly indicates that "other terms and conditions" concerning CMRS regulation should be left to the states. In addition, NARUC argues that if the Commission chooses not to impose rules concerning CMRS providers' rights to provide physical aspects of interconnection, it may not preempt related state regulatory initiatives, nor should it, since states are in the best position to monitor interconnection arrangements, and to impose additional obligations when local conditions warrant.¹⁵³

¹⁴⁸ Willkie Farr Memorandum at 10, citing *e.g.*, *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375 n.4 (1986); *California v. FCC*, 798 F.2d 1515 (D.C. Cir. 1986); *Nat'l Assn of Regulatory Util. Commissioners v. FCC*, 880 F.2d 422 (D.C. Cir. 1989)). These cases all allowed federal preemption based on the physical impossibility of separating interstate and intrastate components, although Willkie Farr argues that some of these cases did actually involve economic indivisibility as well. See, *e.g.*, *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104 (D.C. Cir. 1989).

¹⁴⁹ Willkie Farr Memorandum at 12-13.

¹⁵⁰ *Id.*

¹⁵¹ NY DPS Comments at 4-5, citing *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd at 5453 para. 108.

¹⁵² Pacific Reply Comments at 8-9.

¹⁵³ NARUC Comments at 3.

106. BellSouth argues that there is no justification for Commission intervention in the interconnection arrangements between LECs and CMRS providers at this time. BellSouth states that the current interconnection arrangements between BellSouth and CMRS providers are based on negotiations between the carriers with state commission oversight and have resulted in reductions in CMRS interconnection rates of 30% since 1992.¹⁵⁴ With respect to the Commission's authority to regulate the rates charged by LECs to CMRS providers to terminate mobile originated traffic, BellSouth states that this would require that the statutory language be rewritten to read, "no State . . . shall have the authority to regulate . . . the rates charged *to* (instead of *by*) any commercial mobile service . . .," which only Congress could do. BellSouth also argues that the Commission interpreted Section 332(c)(3) correctly in a recent decision: "[W]e note that Louisiana's regulation of the interconnection rates [charged] by landline companies to CMRS providers appears to involve rate regulation only of the landline companies, not the CMRS providers, and thus does not appear to be circumscribed in any way by Section 332(c)(3)."¹⁵⁵ Even assuming, *arguendo*, that the Commission has jurisdiction to adopt a national interconnection policy that would encompass wireless interconnection, BellSouth argues that it should do so in its comprehensive access reform and interconnection proceeding envisioned for 1996.

c. Discussion

107. We seek comment on three alternative approaches to implementing the interconnection policies discussed above. We recognize that states share our goals of stimulating economic growth by promoting the development of CMRS, which would upgrade the nation's telecommunications infrastructure and would help make available broader access to communications networks. We also recognize that, as detailed above, some state public utility commissions have begun to develop their own policies governing interconnection arrangements. We intend to continue to work cooperatively with state regulators to formulate interconnection policies that advance our common public interest goals.

108. One approach to implementing these goals would be to adopt a federal interconnection policy framework that would directly govern LEC-CMRS two-carrier interconnection with respect to interstate services and that would serve as a model for state commissions considering these issues with respect to intrastate services. Essentially, we would recommend that states voluntarily follow our guidelines, rather than making them mandatory requirements. Under this informal model, we would give guidance to the states while not directing state regulators in interconnection matters. For example, if we were to affirm our tentative conclusions discussed above regarding bill and keep compensation, we

¹⁵⁴ *Ex Parte* Letter from Ben G. Almond, Executive Director-Federal Regulatory, Bell South, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, December 7, 1995.

¹⁵⁵ *Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana*, 10 FCC Rcd 7898, 7908 (1995).

could require LECs and CMRS providers to use that approach with respect to terminating interstate traffic originating on the other's network, and encourage states to adopt the same approach with respect to intrastate traffic. On the other hand, there would be no guarantee that states would adopt our proposed model. We seek comment on this option and whether there might be some way to supplement it to better achieve the goals discussed above. For example, would it be beneficial to have an industry group develop specific standards to govern the terms and conditions for interconnection arrangements, based on our informal model? If so, should we set a date certain by which such an industry group should develop these standards?

109. A second approach would be to adopt a mandatory federal policy framework or set of general parameters to govern interconnection arrangements between LECs and CMRS providers with respect to interstate and intrastate services, but allow state commissions a wide range of choices with respect to implementing specific elements of these arrangements. Thus, although compliance with these policy parameters would be mandatory, state commissions would have substantial latitude in developing specific arrangements that would comply with these parameters. One example of a general policy parameter is our existing mutual compensation requirement -- which generally requires that there be mutual compensation between LECs and CMRS providers for the reasonable costs of terminating each other's traffic -- without precluding the states from setting the actual interconnection rates that LECs and CMRS providers charge. We could also adopt more specific policy parameters, while still preserving a degree of discretion for state commissions. For example, we could require the use of bill and keep compensation, as discussed above, for all off-peak traffic, but allow states to decide whether to use bill and keep or some alternative option with respect to compensation for intrastate traffic during peak periods. The possible benefit of this approach is that it would provide some greater national uniformity, while still preserving the state commissions' flexibility to develop specific arrangements that meet their needs. We seek comment on this option and on whether it would most effectively achieve our goals. If parties do support the use of mandatory federal policy parameters, we ask that they comment on what level of detail we should adopt in such parameters -- that is, whether we should adopt broad, general parameters on what the appropriate interconnection rates should be or whether we should adopt a more detailed set of parameters.

110. As a third alternative, we seek comment on our promulgating specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements. This approach would place more specific parameters on state action regarding interconnection rates. For example, if we were to affirm our tentative conclusions discussed above regarding bill and keep compensation, we could require LECs and CMRS providers to adopt such an approach with respect to all traffic.

111. We tentatively conclude that the Commission has sufficient authority to implement these options, including our proposal that interconnection compensation on a bill and keep basis be adopted on an interim basis. As a preliminary matter, Section 332 explicitly preempts state regulation in this area to the extent that such regulation precludes

(or effectively precludes) entry of CMRS providers.¹⁵⁶ In addition, to the extent state regulation in this area precludes reasonable interconnection, it would be inconsistent with the federal right to interconnection established by Section 332 and our prior decision to preempt state regulation that prevents the physical interconnection of LEC and CMRS networks.¹⁵⁷ We also believe, contrary to our conclusion in earlier orders,¹⁵⁸ that preemption under *Louisiana PSC* may well be warranted here on the basis of inseverability, particularly in light of the strong federal policy underlying Section 332 favoring a nationwide wireless network.¹⁵⁹ Indeed, in this regard, we note that several entities have argued that Section 332 itself gives the Commission exclusive jurisdiction in this area.¹⁶⁰

112. We seek comment on this analysis and also ask parties to submit relevant factual information on this issue. We seek comment, first, on the inseverability of interconnection rate regulation. We note that much of the LEC-CMRS traffic that may appear to be intrastate may actually be interstate, because CMRS service areas often cross state lines, and CMRS customers are mobile. For example, if a cellular customer from Richmond travels to Baltimore and then places a call to Alexandria, the call might appear to be an intrastate call, placed from a Virginia telephone number to another Virginia number, but would in fact be interstate because the call originates in Maryland and terminates in Virginia. Service areas defined as "local" in wireless providers' rate structure do not coincide with LEC "exchanges" defined by Section 221(b) as subject to state authority, and often cross state lines.¹⁶¹ This is true of many existing cellular providers, and is even more likely to be true with respect to PCS licensees in major trading areas (MTAs). We request that commenting parties submit empirical data and analysis on the extent to which existing LEC-CMRS interconnection arrangements involve both interstate and intrastate traffic, the extent to which significant levels of interstate wireless traffic are being carried under such arrangements, and, most importantly, the extent to which interstate and intrastate traffic can

¹⁵⁶ 47 U.S.C. § 332(c)(3).

¹⁵⁷ See *CMRS Second Report*, 9 FCC Rcd at 1498.

¹⁵⁸ See, e.g., *Id.*, para. 231.

¹⁵⁹ *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375 n.4 (1986) (*Louisiana PSC*) (preemption may be warranted when interstate and intrastate services are inseparable and state regulations make it impracticable for the Commission to exercise its statutory powers).

¹⁶⁰ See, e.g., Cox Memorandum at 4-5; Comcast Memorandum at 7-8; Willkie Farr Memorandum at 4-7.

¹⁶¹ For example, in the Washington-Baltimore metropolitan area, both cellular carriers and the pioneers' preference broadband PCS licensee have established local calling areas encompassing areas stretching from north of Baltimore in Maryland to significantly south of Washington, D.C., in Virginia. CMRS-originated calls from anywhere in this area to anywhere in this area are considered local calls.

be severed for regulatory pricing purposes. We seek comment on whether either the CMRS or the LEC networks have the technical capability to distinguish whether a wireless call interconnecting with its network is an interstate or intrastate call. We also seek comment on whether we should reconsider our recent conclusion, cited by BellSouth, that Section 332 does not circumscribe state regulation of the interconnection rates that LECs charge CMRS providers.¹⁶²

113. We also ask parties to identify what types of state rate regulation, if any, preclude (or effectively preclude) entry of CMRS providers. We seek specific information on the types of regulations that are either in effect or have been proposed by state regulators in the area of LEC-CMRS interconnection, and seek comment on what impact such state action has had on interconnection arrangements and on the ability of CMRS providers to compete in the market. We also request comment on the meaning and relevance of Section 332(c)(1)(B) to our jurisdictional analysis.¹⁶³

114. In determining what the Commission's role should be with respect to implementation of LEC-CMRS interconnection policies, we again emphasize our recognition of the states' legitimate interest in interconnection issues and our intention to work in coordination with state regulators in this regard. In addition, although we have identified three possible options to implement our interconnection compensation proposals, and we seek comment on these options, we also encourage parties to suggest other options, or variations of our options, regarding implementation. Our goal is to achieve implementation of our interconnection proposals in the most efficient and effective manner to the collective benefit of all the parties involved.

IV. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC

115. We held in 1984 that radio common carriers and cellular carriers are not IXCs and therefore are not required to pay LECs interstate access charges.¹⁶⁴ We have never addressed, however, whether LECs or IXCs should remit any interstate access charges to CMRS providers when the LEC and the CMRS provider jointly provide access service.¹⁶⁵

¹⁶² *Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana*, 10 FCC Rcd 7898, 7908, para. 47 (1995).

¹⁶³ 47 U.S.C. § 332(c)(1)(B).

¹⁶⁴ *MTS and WATS Market Structure*, Third Report and Order, 97 FCC 2d 834, 881-83 (1984); *FCC Policy Statement on Interconnection of Cellular Systems*, 59 RR 2d at 1284-85, notes 1 & 3.

¹⁶⁵ *But see CMRS Second Report*, 9 FCC Rcd at 1478-81 (1994)(forbearing from requiring or permitting CMRS providers to file tariffs for interstate access service).

For example, when a cellular customer places a long-distance call, the cellular carrier typically transmits the call to the LEC, which connects the call to the IXC. Similarly, when long-distance calls are placed to cellular customers, the IXC handling the call typically transmits the call to a LEC, which, in turn, hands it to the cellular carrier for termination to the called party.¹⁶⁶ We have not previously established specific rules or guidelines applicable to the joint provision of interstate access service by a LEC and a CMRS provider. Until CMRS providers generate sufficient traffic to warrant direct connections to IXC points of presence, we believe that most CMRS providers are likely to depend on LECs for interconnection of interexchange traffic to IXCs. Thus, we tentatively conclude that it will be necessary to apply certain protections to such interconnection arrangements, at least in the foreseeable future. We seek comment on this analysis and on our tentative conclusion. We also invite CMRS providers and LECs to describe existing arrangements under which CMRS providers are compensated for originating and terminating interstate interexchange traffic that transits a LEC's network.

116. In the context of the existing access charge regime, we tentatively conclude that CMRS providers should be entitled to recover access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks. We propose to require that CMRS providers be treated no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from IXCs and LECs for interstate interexchange traffic. We tentatively conclude that any less favorable treatment of CMRS providers would be unreasonably discriminatory, and would interfere with our statutory objective and ongoing commitment to foster the development of new wireless services such as CMRS.¹⁶⁷ We seek comment on how to implement this non-discrimination requirement. For example, should we require that contracts between neighboring LECs establishing joint arrangements for providing interstate access, as well as comparable contracts between LECs and CMRS providers, be publicly filed pursuant to § 211 of the Act in order to protect against such discrimination? Should such arrangements be included in LEC interstate access tariffs?

117. We also seek comment on the basis for CMRS providers' access charges, which under our proposal would be collected directly or indirectly from IXCs. Should CMRS providers impose interstate access charges that mirror those of the LECs with which they connect? Or should they impose their own access charges, as do many independent LECs? If the latter, should we retain our existing policy of forbearing from regulating CMRS

¹⁶⁶ These circumstances commonly prevail whether or not the cellular provider offers its customers equal access. "Equal access" refers to allowing end user customers to presubscribe to the IXC of their choice for all interLATA calling. This Notice does not solicit comment on whether CMRS providers should be required to offer their customers equal access; this issue is already under consideration based on an earlier Notice. See *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd 5408.

¹⁶⁷ See *CMRS Second Report*, 9 FCC Rcd at 1419-22.

providers' interstate access charges?¹⁶⁸ In the alternative, should we find that, even though CMRS providers may lack market power with respect to end users, they may have some market power over IXCs that need to terminate calls to a particular CMRS provider's customer, or to originate calls (in an equal access context) from such a customer? If we were to adopt such a conclusion, should we adopt guidelines or some other form of pricing regulation to govern CMRS providers' interstate access charges? Should we address the billing arrangements that would apply in this context? Parties are invited to comment on the issues and proposals discussed herein, and to address the costs and benefits of these and possible alternative approaches.

V. APPLICATION OF THESE PROPOSALS

118. We invite comment on whether the proposals and options considered in this Notice of Proposed Rulemaking should apply to interconnection arrangements between LECs and: (1) broadband PCS providers only; (2) broadband PCS, cellular telephone, SMR, satellite telephony, and other CMRS providers that offer two-way, point-to-point voice communications, which could compete with LEC landline telecommunications services; or (3) all CMRS providers. We solicit comments and analysis on the relative costs and benefits of broader and narrower approaches, and on any technical or economic similarities or differences among CMRS services that would warrant similar or different treatment. (We note that, as a matter of convenience, we refer elsewhere in this notice generically to "CMRS providers;" this usage is not intended to exclude the possibility of applying our policies more narrowly.)¹⁶⁹

119. There may be benefits to focusing primarily on broadband PCS or some other limited group of CMRS services. First, it might be desirable to limit our focus to broadband PCS because it is a new service. We have assigned the initial broadband PCS licenses relatively recently and will soon assign more. Fewer issues arise in applying policy changes to a new service, such as broadband PCS, than to existing services: for example, it is less likely that we would need to consider problems of displacement, interference with existing contracts, or transitions from existing interconnection arrangements to new arrangements.

120. Second, we could consider addressing interconnection between LECs and all types of commercial mobile radio services that support voice telecommunications and could compete with the local telephone services provided by the LECs. The interconnection arrangements between this group of CMRS providers and LECs could have a critical effect on whether these carriers can develop into effective competitors for providing the local links required for interstate communications. Focusing narrowly either on broadband PCS alone

¹⁶⁸ *Id.*, 9 FCC Rcd at 1478-81.

¹⁶⁹ We note that the comments received in this proceeding focused on CMRS providers in general, because that was the focus of the questions asked in the original Notice. See *Equal Access and Interconnection NPRM and NOI*, 9 FCC Rcd 5408 (1994).

or on this subset of CMRS would allow us to tailor our policies more carefully to the particular subset of carriers or services involved.

121. Third, there are arguments for applying our proposals more broadly to interconnection between LECs and all CMRS providers because this would enable us to make improvements in as large a part of the local telephone and CMRS markets as possible. Moreover, pursuant to Congressional intent, we have taken a number of actions to apply similar regulatory treatment to different types of CMRS providers.¹⁷⁰ Differential treatment among CMRS providers in the critical area of interconnection could be interpreted as inconsistent with our overall policies with respect to CMRS. On the other hand, some of the proposals in this Notice might not be in the public interest if applied to CMRS providers that do not compete with LEC services.

VI. PROCEDURAL ISSUES

A. *Ex Parte* Presentations

122. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

B. Initial Regulatory Flexibility Analysis

123. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's Initial Regulatory Flexibility Analysis with respect to the *Notice of Proposed Rulemaking* is as follows:

124. *Reason for Action:* The Commission is issuing this *Notice of Proposed Rulemaking* seeking comment on possible changes in the regulatory treatment of interconnection compensation arrangements between LECs and CMRS providers and related issues.

125. *Objectives:* The objective of the *Notice of Proposed Rulemaking* is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

126. *Legal basis:* The *Notice of Proposed Rulemaking* is adopted pursuant to Sections 1, 2, 4, 201-205, 215, 218, 220, 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201-205, 215, 218, 220, 303(r) and 332;

¹⁷⁰ *See, e.g., CMRS Second Report*, 9 FCC Rcd 1411 (1994).

127. *Description, potential impact, and number of small entities affected:* Any rule changes that might occur as a result of this proceeding could impact entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rulemaking* to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601, *et seq.* (1981).

128. *Reporting, recordkeeping and other compliance requirements:* None.

129. *Federal rules which overlap, duplicate or conflict with the Commission's proposal:* None.

130. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives:* The *Notice of Proposed Rulemaking* solicits comments on a variety of alternatives.

131. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this *Notice of Proposed Rulemaking* but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*

C. Comment Filing Procedures

132. Comments and reply comments should be captioned in CC Docket No. 95-185 only. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before February 26, 1996, and reply comments on or before March 12, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

133. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we request that such comments be organized in a uniform format. Specifically, we ask the parties to organize their comments and reply comments in the outline provided in the footnote.¹⁷¹ Each new section should begin on a new page, and should be labeled with the name of the filing party, identification of whether the document is an initial comment or a reply comment, the docket number, filing date, and number and name of the outline section addressed (although formal legal headers are unnecessary for section headings). No pages need be submitted for issues that a party chooses not to address. Arguments that conceptualize issues in a manner that does not fit into the segments listed above may be included in the "Other" section.

D. Ordering Clauses

134. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4, 201-205, 215, 218, 220, 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218, 220, 303(r) and 332, a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

135. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification,

¹⁷¹ Our preferred outline for comments and reply comments is as follows:

- I. General Comments
- II. Compensation for Interconnected Traffic between LECs and CMRS Providers' Networks
 - A. Compensation Arrangements
 - 1. Existing Compensation Arrangements
 - 2. General Pricing Principles
 - 3. Pricing Proposals (Interim, Long Term, Symmetrical)
 - B. Implementation of Compensation Arrangements
 - 1. Negotiations and Tariffing
 - 2. Jurisdictional Issues
- III. Interconnection for the Origination and Termination of Interstate Interexchange Traffic
- IV. Application of These Proposals
- V. Responses to Initial Regulatory Flexibility Analysis
- VI. Other

to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A:

Comments filed on the First Notice of Proposed Rulemaking in CC Docket No. 94-54

COMMENTS

1. AirTouch Communications (AirTouch)
2. Allnet Communication Services, Inc. (Allnet)
3. ALLTEL Mobile Communications, Inc. (ALLTEL)
4. American Mobile Telecommunications Association, Inc. (AMTA)
5. American Personal Communications (APC)
6. Americell PA-3 Limited Partnership (Americell)
7. Ameritech
8. AMSC Subsidiary Corp. (AMSC)
9. AT & T Corporation (AT & T)
10. Michael B. Azeez d/b/a Deadwood Cellular Telephone Company, Durango Cellular Telephone Company, Ohio State Cellular Phone Company, Inc., and Trillium Cellular Corporation (Azeez)
11. Bell Atlantic Companies (Bell Atlantic)
12. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp. (BellSouth)
13. People of the State of California and the Public Utilities of the State of California (California PUC)
14. Cellular Service, Inc. and ComTech, Inc. (CSI/ComTech)
15. Cellular Telecommunications Industry Association (CTIA)
16. Century Cellunet, Inc. (Century Cellunet)
17. Cincinnati Bell Telephone (Cincinnati Bell)
18. Claircom Communications Group, L.P. (Claircom)
19. Columbia PCS, Inc. (Columbia PCS)
20. Comcast Corporation (Comcast)
21. Cox Enterprises, Inc. (Cox)
22. DCR Communications, Inc. (DCR)
23. Dakota Cellular, Inc. (Dakota)
24. Dial Page, Inc. (Dial Page)
25. E.F. Johnson Company (E.F. Johnson)
26. First Cellular of Maryland, Inc. (First Cellular)
27. Florida Cellular RSA Limited Partnership (Florida Cellular)
28. General Services Administration (GSA)
29. Geotek Communications, Inc. (Geotek)
30. Grand Broadcasting Corporation (Grand)
31. GTE Service Corporation (GTE)
32. Highland Cellular, Inc. (Highland)
33. Horizon Cellular Telephone Company (Horizon)
34. Lake Huron Cellular Corporation (Lake Huron)

35. LDDS Communications, Inc. d/b/a LDDS Metromedia (LDDS)
36. Maritel
37. McCaw Cellular Communications (McCaw)
38. MCI Telecommunications Corporation (MCI)
39. Miscellco Communications, Inc. (Miscellco)
40. National Association of Business and Educational Radio, Inc. (NABER)
41. National Association of Regulatory Utility Commissioners (NARUC)
42. National Cellular Resellers Association (NCRA)
43. National Telephone Cooperative Association (NTCA)
44. New Par
45. New York State Department of Public Service (New York DPS)
46. New York Telephone Company, New England Telephone & Telegraph Company, and NYNEX Mobile Communications Company (NYNEX)
47. Nextel Communications, Inc. (Nextel)
48. OneComm Corporation (OneComm)
49. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
50. Pacific Bell and Pacific Bell Mobile Services (Pacific Bell)
51. Pacific Telecom Cellular, Inc. (PacTel)
52. Paging Network, Inc. (PageNet)
53. Palmer Communications Incorporated (Palmer)
54. Personal Communications Industry Association (PCIA)
55. Point Communications Company (Point)
56. Puerto Rico Telephone Company (PRTC)
57. RAM Mobile Data USA Limited Partnership (RAM Mobile)
58. Rand McNally & Company (Rand McNally)
59. Rochester Telephone Corporation (Rochester)
60. Rural Cellular Association (Rural Cellular)
61. Saco River Cellular Telephone Company (Saco River)
62. Sagir, Inc. (Sagir)
63. Small Market Cellular Operators (SMCO)
64. SNET Mobility, Inc. (SNET)
65. The Southern Company (Southern Company)
66. Southwestern Bell Corporation (SW Bell)
67. Telephone and Data Systems, Inc. and United States Cellular Corporation (TDS)
68. Triad Cellular
69. TRW, Inc. (TRW)
70. Union Telephone Company (Union)
71. Vanguard Cellular Systems, Inc. (Vanguard)
72. Waterway Communications System, Inc. (Waterway)
73. Western Wireless Corporation (Western Wireless)
74. WilTel, Inc. (WilTel)

REPLY COMMENTS

1. AirTouch Communications (AirTouch), Erratum
2. Allnet Communication Services, Inc. (Allnet)
3. Amarillo CellTelCo (Amarillo)
4. American Mobile Telecommunications Association, Inc. (AMTA)
5. American Personal Communications (APC)
6. Ameritech
7. AT&T Corporation (AT&T)
8. Bell Atlantic Companies (Bell Atlantic)
9. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp. (BellSouth)
10. Cellular Communications of Puerto Rico, Inc. (CCPR)
11. Cellular Service, Inc. and ComTech, Inc. (CSI/ComTech)
12. Cellular Telecommunications Industry Association (CTIA)
13. Century Cellunet, Inc. (Century)
14. Comcast Corporation
15. Competitive Telecommunications Association (CompTel)
16. General Communications, Inc. (Gencomm)
17. General Services Administration (GSA)
18. Geotek Communications, Inc. (Geotek)
19. GO Communications Corporation (GO)
20. GTE Service Corporation (GTE)
21. Horizon Cellular Telephone Company (Horizon)
22. Larsen Cellular Communications, Inc. (Larsen)
23. LDDS Communications, Inc. d/b/a LDDS Metromedia (LDDS). Erratum
24. MCI Telecommunications Corporation (MCI)
25. National Association of Business and Educational Radio. Inc. (NABER)
26. National Cellular Resellers Association (NCRA)
27. New Par
28. New York Telephone Company, New England Telephone & Telegraph Company, and NYNEX Mobile Communications Company (NYNEX)
29. Nextel Communications, Inc. (Nextel)
30. OCOM Corporation (OCOM)
31. OneComm Corporation (OneComm)
32. Pacific Bell, Nevada Bell and Pacific Bell Mobile Services (Pacific Bell)
33. Palmer Communications Incorporated (Palmer)
34. Personal Communications Industry Association (PCIA)
35. Puerto Rico Telephone Company (PRTC)
36. Rochester Telephone Corporation (Rochester)
37. Rural Cellular Association (RCA)
38. RVC Services, Inc. d/b/a Coastel Communications Company (RVC/Coastel)
39. Southwestern Bell Corporation and Southwestern Bell Mobile Systems, Inc. (SW Bell)

40. Telephone and Data Systems, Inc. and United States Cellular Corporation (TDS)
41. Time Warner Telecommunications, a division of Time Warner Entertainment, L.P. (Time Warner)
42. United States Telephone Association (USTA)
43. UTC, The Telecommunications Association (UTC)
44. Vanguard Cellular Systems, Inc. (Vanguard)

SEPARATE STATEMENT
of
COMMISSIONER ANDREW C. BARRETT

RE: *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185) and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers (CC Docket No. 94-54)*

Today, the Commission adopts a notice of proposed rulemaking that continues its consideration of whether existing policies regarding local exchange carrier (LEC) and commercial mobile radio service (CMRS) interconnection serve the public interest.¹ Presently, the Commission requires LECs to offer interconnection to CMRS providers on reasonable terms and conditions, and to do so under the principle of mutual compensation. Concerns have emerged, however, that existing general interconnection policies may not do enough to foster the development of CMRS and to encourage efficient interconnection rates. Therefore, we issue this notice to consider our interconnection policies and, specifically, the compensation arrangements for LEC-CMRS interconnection. In the notice, we ask for comment on a tentative conclusion that, at least for an interim period, interconnection rates for terminating access between the end office (or equivalent CMRS facilities) and the end user-subscriber should be priced on a "bill and keep" basis (*i.e.*, both the LEC and the CMRS provider "charge" a rate of zero for the termination of traffic), and that rates for dedicated transmission facilities connecting LEC and CMRS networks should be set based on existing access charges for similar transmission facilities. In addition to this proposal, we seek comment on, and solicit other proposals for, alternative pricing options for LEC-CMRS interconnection arrangements. With respect to these issues and the tentative conclusions described in the notice, the Commission also tentatively concludes that it has the authority to adopt or modify policy in this area.

I fully support the Commission's action today, and I assert that, after careful consideration of a complete record, there are several critical reasons for the Commission to take clear, bold, and decisive action in this area.³ As the notice discusses, today, telecommunications is increasingly provided by a system of independent, interconnected

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- 1 See *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408 (1994) (considering adoption of equal access requirements for CMRS providers and whether LEC and CMRS interconnection should be tariffed).
 - 2 *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*); see 47 U.S.C. § 201(a).
 - 3 See *Second Report and Order, Separate Statement of Commissioner Andrew C. Barrett*, 9 FCC Rcd at 1534 (explaining need to develop a record regarding interconnection issues).

networks. These networks may consist of wireline and wireless elements that, when functioning properly, should be transparent to the users. The ability of communication, be it voice, video, or data, to move seamlessly from one network to another is becoming increasingly vital. Simply put, uneconomic and unnecessary barriers to the flow of communications between the increasing number of diverse networks would seriously undermine the benefits of telecommunications and would impede the development of competition between network providers.

Without efficient interconnection, telecommunications competition will not develop and flourish. Interconnection enables new service providers to compete with incumbent LECs on the basis of the services they offer the public and the prices, quality, and features of those services. Interconnection also facilitates access – it allows subscribers of one network to obtain access to subscribers of all other interconnected networks. If we are serious about the notions of wireless services becoming a supplement, rather than a complement, to the wireline network and wireless service becoming a viable competitor to wireline service, we must pursue solutions that facilitate this competition, not hamstring it. Moreover, we should consider the options in a careful and reasoned, but also expedited manner.⁴

I agree with the Commission's decision to propose, for an interim period, a "bill and keep" interconnection compensation arrangement for terminating access from LEC end offices to LEC end-user subscribers and for terminating access from equivalent CMRS facilities to CMRS subscribers. Without going into the details of such an arrangement, it appears to be a reasonable interim solution that we will be able to scrutinize after receiving parties' comments. I look forward to closely examining parties' submissions on this tentative conclusion.

I also anticipate that interested parties will, in their comments, devote time to the complex jurisdictional issues raised in the notice. While the Commission makes several tentative conclusions in this NPRM concerning its legal authority in this area, I emphasize that these findings are tentative, and that in this proceeding we will consider all relevant arguments and theories. In this vein, I believe that it is important to acknowledge the significant role our State colleagues have taken in connection with local competition and interconnection issues. To date, 33 States have removed legal barriers to competition for local services. Washington, Texas, Pennsylvania, Connecticut, and California, to name a few, have been at the forefront on these issues and have implemented "bill and keep" as an interim arrangement. I recognize that the States have legitimate interests in this area, and I will do my part as a member of this Commission to ensure that our continuing efforts will be fully coordinated with the State regulators.

⁴ I note that recently in the Washington, D.C. metropolitan area, one of the first personal communications services or PCS providers commenced service. The Commission's consideration of these issues, I contend, could not be more timely.

December 15, 1995

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

Re: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers

This Notice forcefully expresses our intention to promote maximum opportunities for Personal Communications Services ("PCS") to flourish -- as quickly, simply, and fairly as possible.

PCS has the potential to provide much-needed competition to both cellular and wireline local exchange services. Our PCS bandplan and our PCS auctions were important milestones, but they alone cannot bring us to the goal of strong PCS competition. Without effective interconnection arrangements, PCS may never reach its full potential.

PCS and other providers of Commercial Mobile Radio Services ("CMRS") unquestionably should enjoy fair and reasonably priced interconnection to the public switched telephone network. Today, there is a very real danger that wireline local exchange carriers ("LECs") will delay the resolution of interconnection issues or charge too much for interconnection services. Indeed, there are disturbing reports that LECs are not currently complying with our existing requirement for mutual compensation between wireline LECs and cellular carriers.

Fearful of the harm that could result if interconnection needs are not accommodated, CMRS providers have urged us to consider adopting an interim, rough-justice approach that would be available in a matter of months, even as longer-term approaches are further debated and studied. Our Notice tentatively endorses this proposal. This reflects our collective commitment to PCS and other CMRS services, and it should sharpen the focus of the comments we receive.

We tentatively propose adoption of a bill-and-keep regime. Some parties maintain that it is reflective of the underlying economics, excepting perhaps during peak traffic periods. They also assert that bill-and-keep is already a commonplace arrangement for LEC-LEC interconnection. It undoubtedly has the considerable virtue of administrative simplicity.

Even though arguments in favor of bill-and-keep have thus far been largely un rebutted, I remain willing to consider other approaches. After all, a strict regulatory prescription for an

interconnection rate of zero represents a stronger exercise of regulatory power than is customary, even for pricing of LEC services. The special circumstances of CMRS-LEC interconnection may well justify such an approach, but I trust that those who believe otherwise will recognize the necessity of tendering concrete alternatives that meet our public interest objectives.

Finally, although we wish to move swiftly, we must not throw caution to the winds. We must proceed in a manner that is consistent with the law and that will be perceived as fair. We must not abridge the LECs' legal or equitable rights, distort marketplace incentives for CMRS providers, or cause prices for other LEC customers to increase. And we must seek to maintain the federal-state cooperation that we have worked so hard to develop in a number of proceedings over the past year. As a practical matter, it may be impossible to distinguish intrastate and interstate traffic in the CMRS-LEC interconnection context, but I still intend to explore ways in which state and federal authorities can work together on these issues.

Overall, I believe this Notice is very much on the right track, and I am pleased to support it.

December 15, 1995

SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG

Re: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185), and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Service Providers (CC Docket No. 94-54) -- Notice of Proposed Rulemaking

Interconnection is critical to the development of new communications services and the evolution of competitive markets. As existing wireless and wired networks continue to expand and new ones are built, there are important public policy reasons to ensure that they are able to interconnect with each other at reasonable rates and on reasonable terms and conditions. Without question, it is in the public interest for communications traffic to pass between networks freely and transparently. This will help our nation achieve the full benefits of a seamless "network of networks" and bring promising new services to consumers.

In my view, timely and reasonably-priced interconnection is the lifeblood of competition among alternative service providers. The development of new wireless services offers the prospect of vigorous competition among commercial mobile radio service (CMRS) providers, and between CMRS providers and existing providers of local exchange service. To the extent these new wireless competitors are able to terminate traffic on other networks at reasonable rates, they will be better able to compete with incumbents on retail prices to end user customers. Conversely, prohibitive rates for this essential wholesale input will inflate the new entrants' costs and impede their ability to compete at the retail level. Thus, interconnection offered at rates substantially above the costs of providing the service may be tantamount to no interconnection at all.

In addition, delay caused by contentious and time-consuming administrative proceedings, or technical requirements that are disadvantageous to a connecting network, may further impair the development of competition. Interconnection delayed may be interconnection denied.

For these reasons, I believe it is essential that the Commission move quickly to establish a sensible, efficient, and fair interconnection policy between wireless and wireline networks. Because of the importance of this issue, I support the tentative conclusion in this notice to adopt an interim approach to interconnection. The status quo is problematic; our current policy may not be providing wireless competitors reasonably-priced, timely interconnection to wireline networks. Therefore, it does not appear that we can afford to leave the current policy intact while we try to find the optimal long range approach to interconnection. A workable interim solution should suffice while we consider various options for the longer term.

In developing interconnection rules, both for an interim period and for the longer term, we should strive to build in flexibility and minimize administrative cost and delay. If possible, I would like to avoid a structure that requires carriers to file tariffs with voluminous cost support data. This can be costly and burdensome to the parties and embroil the Commission in time-consuming proceedings to resolve complex issues raised by cost studies. I am concerned that an approach requiring detailed cost justification may not strike an appropriate balance of fairness, efficiency, and expedition. It may be that a less regulatory option, such as employing a reasonable proxy for cost-based pricing, would better serve the public interest.

As for flexibility, we may want to consider a transitional approach to interconnection. In the early stages of competition, a proxy-type approach may be necessary to ensure timely and efficient interconnection. As competition increases, reduced government involvement may be appropriate. Informational filings of individually negotiated agreements may be adequate to achieve our policy goals at that point. And when full blown competition arrives, we should employ a light regulatory touch.

In the meantime, we must move quickly to adjust our interconnection policy to better serve the public interest. I urge interested parties, both wireless and wireline, to participate in this rulemaking proceeding and provide the Commission with the information necessary to develop sensible, efficient, and fair interconnection rules.