Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

**Taking of Private Property**

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From July 18 until August 16, 2002 add temporary § 165.T01–096 to read as follows:

**§ 165.T01–096 Safety Zone: Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, Massachusetts.**

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River 100-yards upstream and downstream of the McArdle Bridge, East Boston, MA.

(b) *Effective Date.* This section is effective from July 18 until August 16, 2002, and will be enforced from sunset until sunrise each day during this period.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of the Port (COTP) or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 18, 2002.

**C.M. DeLeo,**

*Commander, U. S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.*

[FR Doc. 02–19241 Filed 7–25–02; 3:11 pm]

**BILLING CODE 4910–15–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[WT Docket No. 01–316; FCC 02–203]**

### Petitions of Sprint PCS and AT&T for Declaratory Ruling Regarding CMRS Access Charges

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; interpretation.

**SUMMARY:** In this document, the Commission responds to a primary jurisdiction referral from the U.S. District Court for the Western District of Missouri in an action styled *Sprint Spectrum L.P.* v. *AT&T Corp.* In its referral order, the court asked the Commission to decide two questions: whether Sprint may charge AT&T access fees for use of the Sprint PCS network, and if so, what rate may reasonably charged for such services. Based on the rules in effect during the period in dispute—from 1998 to the present—the Commission finds that Sprint PCS was not prohibited from charging AT&T access charges, but that AT&T was not required to pay such charges absent a contractual obligation to do so.

**FOR FURTHER INFORMATION CONTACT:** Steven Morris, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or via the Internet at *sfmorris@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Declaratory Ruling in WT Docket No.

01–316 released on July 3, 2002. The full text of this document is available on the Commission's website in the Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

**Background**

In 1998, Sprint PCS, a CMRS provider, began sending invoices to AT&T, an IXC, asking that AT&T compensate Sprint PCS for the costs of terminating interexchange traffic bound for Sprint PCS's CMRS customers. Sprint PCS charged AT&T 2.8 cents per minute, the rate in the NECA tariff. AT&T refused to pay. As of September 1, 2001, the amount in dispute exceeded $60 million. In August 2000, Sprint PCS filed suit in state court in Missouri seeking recovery of the amount allegedly owed by AT&T. AT&T removed the case to the federal district court for the Western District of Missouri, and then requested that the court refer the issues to this Commission under the doctrine of primary jurisdiction. The court granted AT&T's request.

Both parties filed petitions for declaratory ruling on October 22, 2001, and the Commission sought comment on the petitions. In its petition, Sprint PCS asked the Commission to find that there is no federal law or Commission policy that bars Sprint PCS from recovering its call termination costs from AT&T. Sprint PCS also asked the Commission to find that AT&T's refusal to pay access charges to Sprint PCS is unreasonably discriminatory under section 202(a) of the Communications Act of 1934, as amended (the Act), and unjust and unreasonable under section 201(b) of the Act. In its petition, AT&T asked the Commission to find that CMRS carriers should continue to recover their costs from their end users, not by imposing access charges on IXCs. If CMRS carriers are permitted to impose access charges, AT&T asked that those charges be capped at the reciprocal compensation rate for local traffic and assessed only prospectively.

**Discussion**

Sprint PCS is correct that neither the Communications Act nor any Commission rule prohibits a CMRS carrier from attempting to collect access charges from an interexchange carrier. In 1994, in the *CMRS Second Report and Order,* the Commission addressed the question of which Title II requirements it should impose on CMRS carriers. The Commission decided that the market for retail CMRS services was sufficiently competitive that it was not necessary to regulate the retail rates of CMRS carriers, or to require (or permit) CMRS carriers to file tariffs for retail services. The Commission also decided temporarily to forbear from requiring or permitting the filing of tariffs for interstate access services offered by CMRS carriers. In a detariffed, deregulated environment such as this one, carriers are free to arrange whatever compensation arrangement they like for the exchange of traffic. Thus, for example, Sprint PCS and AT&T could agree that AT&T would pay Sprint PCS for the traffic exchange, that Sprint PCS would pay AT&T for the exchange, or that neither party would pay anything.

That Sprint PCS may seek to collect access charges from AT&T does not, however, resolve the question whether Sprint PCS may *unilaterally impose* such charges on AT&T. There are three ways in which a carrier seeking to impose charges on another carrier can establish a duty to pay such charges: pursuant to (1) Commission rule; (2) tariff; or (3) contract. As noted above, CMRS access services are subject to mandatory detariffing, and it is therefore undisputed that Sprint PCS could not have imposed access charges on AT&T pursuant to any tariff. Consequently, we need only consider whether Sprint PCS can impose access charges on AT&T pursuant to Commission rules or a contract between the parties.

We find that there is no Commission rule that enables Sprint PCS unilaterally to impose access charges on AT&T. In the *LEC–CMRS Interconnection NPRM,* the Commission specifically addressed the question whether CMRS carriers should be able to impose access charges on IXCs for calls that are exchanged through LEC facilities. The Commission tentatively concluded that CMRS carriers should be able to recover access charges from IXCs for the completion of interexchange calls in the same manner as LECs and competitive access providers (*i.e.,* by setting a rate to be paid by the IXC). The Commission noted, however, that some form of price regulation might be necessary if it adopted this tentative conclusion because CMRS carriers ''may have some market power over IXCs that need to terminate calls to a particular CMRS provider's customer.'' The Commission has never adopted a final decision adopting or implementing this tentative conclusion, nor has it resolved the question of the appropriate form of price regulation for CMRS access charges. Accordingly, our rules do not enable Sprint PCS unilaterally to impose access charges on AT&T.

We disagree with Sprint PCS that the forbearance policy adopted in the *CMRS Second Report and Order* enables Sprint PCS to impose unilaterally whatever rate it wishes, subject only to AT&T's right to file a complaint under section 208 of the Act. Our policy of forbearing from regulating CMRS access rates means that we will not regulate rates pursuant to the tariffing process set forth in sections 203, 204, and 205 of the Act. Our forbearance policy does not, however, mean that a detariffed carrier unilaterally can impose a charge merely by billing an IXC, as Sprint PCS has attempted to do here. This interpretation of the *CMRS Second Report and Order* is consistent with our general policies on detariffing, which are premised on the expectation that carriers will establish a contractual relationship with customers to whom they sell service. Even in a competitive situation, where the customer has a choice of carriers, a contract is beneficial to both the carrier and the customer because it makes clear the rights and obligations of both parties. A contract is particularly important in the case of terminating access services because, as Sprint PCS acknowledges, CMRS carriers possess market power with respect to termination of calls to their subscribers.

We also do not agree with Sprint PCS's argument that the 1987 *Cellular Interconnection Order* entitles it to collect access charges in the absence of an agreement with AT&T. The *Cellular Interconnection Order* established a principle of ''mutual switching compensation'' between CMRS carriers and LECs. The Commission stated that ''the principle of mutual switching compensation should apply to Type 2 but not Type 1 service. Cellular carriers and telephone companies are equally entitled to just and reasonable compensation for their provision of access, whether through tariff or by a division of revenues agreement.'' This statement regarding compensation for the ''provision of access'' clarified how the mutual switching compensation principle would apply to Type 1 and Type 2 interconnection, and the mechanism for compensation when it does apply (tariff or agreement). Following the *CMRS Second Report and Order,* tariffs no longer were available to CMRS carriers; therefore compensation is available only through an agreement.

There being no authority under the Commission's rules or a tariff for Sprint PCS unilaterally to impose access charges on AT&T, Sprint PCS is entitled to collect access charges in this case only to the extent that a contract imposes a payment obligation on AT&T.

While it is preferable for carriers to memorialize such contracts in a written agreement, the parties here agree that there is no written agreement or any express contract between AT&T and Sprint PCS. Nevertheless, the law recognizes—as has the Commission—that an agreement may exist even absent an express contract. Turning to the question whether there was such an agreement here, we believe that it is an issue that should be resolved by the Court. We interpret the Court's primary jurisdiction referral as seeking our input on the federal communications law questions related to this dispute. Because the existence of a contract is a matter to be decided under state law, we defer to the court to answer this question.

We offer the court two important observations regarding the regulatory regimes applicable to both IXCs and CMRS carriers during the period in dispute. First, CMRS carriers have never operated under the same calling party's network pays (CPNP) compensation regime as wireline LECs. Under a CPNP regime, LECs are compensated for terminating calls by the carrier of the customer that originates the call, not by the customer receiving the call. In contrast, since the advent of commercial wireless service, and continuing today, CMRS carriers have charged their end users both to make and to receive calls. Until 1998, when Sprint PCS first approached AT&T and other IXCs about payment for terminating access service, all CMRS carriers recovered the cost of terminating long distance calls from their end users, and not from interexchange carriers.

Second, there is a benefit to customers of both IXCs and CMRS carriers when CMRS carriers terminate IXC traffic. Because both carriers charge their customers for the service they provide, it does not necessarily follow that IXCs receive a windfall in situations where no compensation is paid for access service provided by a CMRS carrier. Nor do we believe that terminating access charges to CMRS carriers are necessarily imputed in IXCs' retail rates. The fact that the industry practice for 15 years has been for CMRS carriers to recover costs from their end users, together with the highly competitive nature of the interexchange market, makes it unlikely that an IXC that does not pay access charges to CMRS carriers somehow ''overcharges'' its customers.

We need not address Sprint PCS's claims under sections 201(b) or 202(a) at this time. Until the court determines the respective obligations of the parties, in particular whether AT&T has any obligation to pay Sprint PCS under a contract, the Commission has no basis on which to assess whether AT&T is subject to sections 201(b) or 202(a) in these circumstances and, if so, whether its actions violate those statutory provisions.

In addition to questions presented by the district court regarding our present policy on CMRS access charges, the pleadings filed in response to the declaratory ruling petitions raise a number of issues that relate either to the prospective treatment of CMRS–IXC interconnection or to issues beyond the scope of those presented for Commission resolution in the primary jurisdiction referral. Our order today clarifies requirements under our *existing* rules. Suggestions for changes to those rules will be addressed in our pending *Intercarrier Compensation* proceeding. Our goal in the *Intercarrier Compensation* proceeding is to move toward a unified compensation regime that eliminates the opportunity for arbitrage due to different regulatory treatment of different types of traffic. At that time we will address CMRS carriers' requests to be placed on equal footing with wireline carriers, whether through bill-and-keep or some other compensation mechanism.

In the interim, IXCs and CMRS carriers remain free to negotiate the rates, terms and conditions under which they will exchange traffic. Given the mutual benefit that CMRS and IXC customers realize when CMRS carriers terminate calls from IXCs, we anticipate that these negotiations will be conducted in good faith and prove fruitful for both sets of carriers. To the extent that carriers encounter problems with this regime, we encourage them to raise any concerns in the pending *Intercarrier Compensation* proceeding so that we may consider those concerns in any future compensation regime we may adopt.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 201, and 332 of the Communications Act, as amended, 47 U.S.C. 154(i), 201, and 332, and section 1.2 of the Commission's rules, 47 CFR 1.2, the Petitions for Declaratory Ruling filed by AT&T and Sprint PCS are *denied* to the extent set forth herein.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–19180 Filed 7–29–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 27

**[WT Docket No. 99–168; FCC 02–204]**

### Service Rules for the 746–764 and 776–794 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, petitions for reconsideration.

**SUMMARY:** This document responds to public safety concerns, in resolving two petitions for reconsideration filed in this proceeding. The document establishes mandatory coordination zones near public safety base stations, within which commercial base station operators will be required to coordinate their operations with public safety licensees. In adopting this document, the Commission intends to establish an anticipatory, rather than reactive, process for controlling interference to public safety operators in the upper 700 MHz band.

**DATES:** Effective July 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Stanley Wiggins, Attorney Advisor, 202–418–1310.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Memorandum Opinion and Order (MO&O) in WT Docket No. 99–168; FCC 02–204, adopted July 2, 2002, and released July 12, 2002. The complete text of this M O&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov.*

#### Synopsis of the Third Memorandum Opinion and Order

1. The Commission, in this Third Memorandum Opinion and Order (MO&O) continues its efforts to ensure the capabilities and responsiveness of both public safety and commercial wireless services in emergency situations. The MO&O responds to two petitions for reconsideration of the Second Memorandum Opinion and