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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, in WT Docket No. 98-100, FCC 03-203, adopted August 7, 2003, and released August 20, 2003. The full text of the Second Report and Order is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 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.

Summary of Second Report and Order*I. Background.***A. PCIA Forbearance Order and Notice**

1. In the *PCIA Forbearance Order and Notice*, 13 FCC Rcd 16857 (1998), *recon. denied*, 64 FR 61022 (Nov. 9, 1999), the Commission addressed a forbearance request by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (PCIA) and decided, *inter alia*, to forbear from two provisions of TOCSIA for all CMRS OSPs. One of the TOCSIA-related provisions from which the Commission decided to forbear was the "unblocked access" provision, which allows consumers access to the OSP of their choice. The Commission also forbore from requiring CMRS OSPs to file informational tariffs. However, the Commission concluded that the record was insufficient to support forbearance from the other requirements of TOCSIA. Moreover, with respect to TOCSIA's disclosure requirements, the Commission declined to forbear because of the "vital information that disclosure provides to consumers" and "because there is no record evidence that these requirements impose an undue burden * * *". Also in the *PCIA Forbearance Order and Notice*, the Commission affirmed on reconsideration the GTE Declaratory Ruling. Concurrently with the release of the *PCIA Forbearance Order*, the Commission issued the *Notice*, in which the Commission, *inter alia*, sought specific information relevant to determining whether, and in what respects, the Commission should forbear from applying or modifying additional TOCSIA requirements in the CMRS context. Although the *PCIA*

Forbearance Order and the *Notice* are in the same document, we may refer to the *PCIA Forbearance Order* and the *Notice* as if they were separate documents.

II. Discussion

2. The Commission declines, with two limited exceptions, to forbear from applying TOCSIA provisions to CMRS aggregators and OSPs. The Commission generally concludes that TOCSIA and its implementing regulations continue to be in the public interest in that its provisions ensure that transient users of mobile telephones designed for public use enjoy the same benefits they would have if they were using their own private mobile telephones.

3. The Commission forbears, however, from applying two TOCSIA provisions to CMRS aggregators and OSPs where the risks of conflicting mandates compels forbearance and to ensure clarity for public safety. Specifically, the Commission forbears from requiring CMRS OSPs to regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in the operator's services and in the choices available to consumers. Also, the Commission forbears from applying emergency call routing provisions of TOCSIA to CMRS aggregators and OSPs.

A. Aggregator Disclosure

4. *Background.* Under Commission rules, CMRS aggregators are required to post the following information on or near the telephone instrument, in plain view of consumers: (a) The name, address, and toll-free telephone number of the OSP presubscribed to the telephone; (b) in the case of a pay telephone, the local coin rate for the pay telephone location; and (c) the name and address of the Commission.

5. *Discussion.* The Commission declines to adopt its tentative conclusion to forbear from requiring aggregators to "post" disclosure information "on or near the telephone instrument," in the CMRS context. The Commission recognizes that, due to the diminutive size of many mobile phones today, the requisite legible disclosure language may not practically fit "on" the mobile phone. The Commission finds that forbearance in this case is unnecessary, however, because it is entirely practicable to post disclosure information "near" the mobile phone. In the mobile phone context, aggregators will be in compliance with TOCSIA if they post the necessary information "near" the mobile phone so that it is received by and can be kept by end-user customers.

B. OSP Oversight of Aggregators

6. *Background.* Responsibility for enforcement of the aggregator disclosure requirements is, in addition to being placed on the aggregator as described above, placed upon the OSP used by the aggregator. Under TOCSIA and our implementing regulations, an OSP is obligated to ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the aggregator disclosure requirements.

7. *Discussion.* Consistent with its tentative conclusion, the Commission finds that the OSP oversight requirement is a necessary business tool to ensure that aggregators comply with their TOCSIA obligations. In situations where, for example, the CMRS carrier agrees to a contractual arrangement with an aggregator whereby it directly imposes charges upon members of the public, the Commission finds no basis for justifying forbearance from TOCSIA. Although the potential for abuse has been claimed to come from the aggregator because it is the aggregator that may most effectively take advantage of the consumer, in this particular context involving the existence of a contractual arrangement, the CMRS OSP may wield an important business influence over the aggregator. Similar to the wireline context, the Commission cannot forbear under the first prong of section 10 of the Communications Act of 1934 when this rule requiring such a business influence may serve to prevent potential abuses before they occur. In addition, the Commission does not believe this business function to be insignificant to protecting the consumer under the second prong of the section 10 forbearance standard.

8. In the absence of a contract or tariff with an aggregator to provide OSP services or knowledge of the aggregator's activities, the OSP is not responsible for ensuring aggregator compliance. Section 226(b)(1)(D) of the Communications Act of 1934 requires that each provider of operator services shall "ensure, by contract or tariff, that each aggregator for which such provider is a presubscribed provider of operator services is in compliance" with the aggregator service provisions of TOCSIA. This provision presupposes the existence of a sufficient nexus between aggregator and OSP such that a contract or tariff would be the appropriate mechanism on which to base the oversight requirement. To the extent that a CMRS OSP has a contractual relationship with an aggregator of its service, the CMRS OSP