

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

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In the matter of
Policies and Rules Pertaining to
the Equal Access Obligations of
Cellular Licensees

) FEDERAL COMMUNICATIONS COMMISSION
) OFFICE OF THE SECRETARY
) RM-8012
)

ORIGINAL
FILE

OPPOSITION TO PETITION FOR RULEMAKING

ALLY, INC.
CELLULAR, INC.
CELLULAR 7 PARTNERSHIP
CENTURY CELLUNET, INC.
HIAWATHALAND CELLULAR
LIMITED PARTNERSHIP
MARSHALL CELLULAR
PARTNERSHIP
MINNESOTA RSA 9 LIMITED
PARTNERSHIP
MINNESOTA RSA 10 LIMITED
PARTNERSHIP
PANHANDLE
TELECOMMUNICATIONS
SYSTEMS, INC.
RURAL CELLULAR
CORPORATION
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September 2, 1992

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Summary

A group of cellular carriers opposes MCI's June 2, 1992, petition for a rulemaking looking toward Commission imposition of equal access requirements upon cellular licensees.

The MCI petition should be rejected outright, because it contains no evidence that cellular customers want the capability to presubscribe to an interexchange carrier for their cellular long distance traffic. Moreover, the experience of both non-BOC and BOC cellular carriers indicates that there is no public demand for cellular equal access.

The Commission should also reject MCI's petition on a cost-benefit basis. Rather than producing any concrete public interest benefits, cellular equal access will require cellular customers to pay more for their cellular long distance calls and to suffer the inconvenience of multiple monthly cellular bills. In addition, cellular equal access would force cellular carriers to incur substantial new equipment, software, balloting, and administration costs at a time when available funds would be better invested in expanding coverage, increasing channel capacity, and developing new cellular services.

Finally, regardless of what steps are taken by the courts concerning the cellular equal access obligations imposed upon the BOCs in the Modification of Final Judgment proceeding, the Commission should not create an unwanted and expensive new cellular equal access regulatory structure. This is

particularly true with respect to the many smaller cellular markets where neither existing cellular licensee is a BOC-controlled entity subject to court-imposed cellular equal access requirements, and where the BOCs' "competitive equity" argument is clearly inapplicable.

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OPPOSITION TO PETITION FOR RULEMAKING

Ally, Inc. ("Ally"); Cellular, Inc. ("CI"); Cellular 7 Partnership ("Cellular 7"); Century Cellunet, Inc. ("Century"); Hiawathaland Cellular Limited Partnership ("Hiawathaland"); Marshall Cellular Partnership ("Marshall"); Minnesota RSA 9 Limited Partnership ("Minnesota 9"); Minnesota RSA 10 Limited Partnership ("Minnesota 10"); Panhandle Telecommunications Systems, Inc. ("Panhandle"); Rural Cellular Corporation ("Rural"); and XIT Cellular ("XIT"), collectively, the "Opposing Group," by their attorneys, hereby oppose MCI Telecommunications Corporation's ("MCI's") June 2, 1992, petition for a rulemaking to impose uniform equal access obligations upon cellular licensees. The present opposition is timely filed in accordance with the procedural schedule set forth in the Commission's Order, DA 92-1016, released July 28, 1992, in the captioned proceeding.

Introduction

The Opposing Group vigorously opposes MCI's petition, which contains no evidence whatsoever that cellular equal access is needed by the public or that it will produce tangible public interest benefits. During the course of their

marketing contacts with the public, Opposing Group members have found no significant demand by cellular customers for cellular equal access. Moreover, cellular equal access promises no public interest benefits, but rather is likely to result in higher cellular long distance charges, and the inconvenience of separate cellular service and cellular long distance bills. Cellular equal access would require expensive equipment replacements and modifications, as well as significant balloting and administrative costs, at a time when available resources could be used far more productively to expand coverage areas, channel capacities, and cellular services. Finally, Commission imposition of cellular equal access obligations upon non-BOC cellular carriers is not necessary to restore competitive equity, particularly in the numerous small cellular markets where neither cellular licensee is presently subject to equal access requirements.

The Opposing Group

Ally is the licensee of the nonwireline cellular system for South Carolina RSA 2. This system commenced commercial operations in March, 1991.

CI holds ownership interests in wireline cellular systems in 11 MSAs and 75 RSAs in 17 states (primarily in the Great Plains and Mountain states), and manages wireline and nonwireline cellular systems in 5 MSAs and 44 RSAs. CI's MSA systems have been operational since February, 1989, and its

RSA systems have been operational since September, 1991.

Cellular 7 is the licensee of the wireline cellular system for Minnesota RSA 7. This system commenced commercial operations in January, 1991.

Century holds a controlling stock interest in and/or operates cellular systems (primarily, wireline cellular systems) serving 12 MSAs in Michigan, Louisiana, Wisconsin, and Arkansas/Texas, and 17 RSAs in Michigan, Louisiana, Arkansas, Texas, Arizona, New Mexico, and Minnesota¹. The majority of Century's MSA systems commenced operations between Fall, 1987 and Spring, 1988, while virtually all of its RSA systems commenced operations during the second half of 1991.

Hiawathaland is the licensee of the wireline cellular system for Minnesota RSA 11. This system commenced commercial operations in November, 1990.

Marshall is the licensee of the wireline cellular system for Minnesota RSA 8. This system commenced commercial operations in January, 1991.

Minnesota 9 is the licensee of the wireline cellular system for Minnesota RSA 9. This system commenced commercial operations in November, 1990.

Minnesota 10 is the licensee of the wireline cellular system for Minnesota RSA 10. This system commenced commercial operations in November, 1990.

¹ Century also holds minority ownership interests in cellular systems in Michigan, Arkansas, Louisiana, Wisconsin, Minnesota, Arizona, New Mexico, and Colorado.

Panhandle is the licensee of the wireline cellular system for Oklahoma RSA 1. This system commenced commercial operations in October, 1991.

Rural is the licensee of the wireline cellular systems for Minnesota RSAs 1, 2, 3, 5 and 6. These systems commenced commercial operations between November, 1990, and February, 1991.

XIT is the licensee of the wireline cellular system for Texas RSA 1. This system commenced commercial operations in June, 1990.

**There Is No Public Demand
For Cellular Equal Access**

MCI's petition is devoid of evidence that there is any demand for cellular equal access by existing or potential cellular customers. MCI attempts to skirt this critical void by claiming that customers of non-BOC cellular systems are "not given freedom of choice," and that all cellular customers should "have an equal opportunity to purchase cellular service and long-distance service separately, on an unbundled basis" (MCI petition, p. 5). However, it offers no anecdotal, survey or other evidence that any perceptible segment of cellular customers wants the ability to presubscribe to a specific interexchange carrier ("IXC") for their cellular traffic.

In the experience of the Opposing Group, there is no public demand for cellular equal access. Their marketing contacts with potential, existing and former cellular

customers have indicated that these customers are concerned primarily with the following cellular service features: (1) an extensive coverage area; (2) sufficient channel capacity to minimize blocked calls; (3) a clear and high quality signal; (4) the ability to roam on other systems; and (5) a reasonable total monthly bill. Whenever one or more of these critical elements has not been satisfactory to a customer, the cellular carriers have normally learned about it very quickly and directly -- in the form of a lost sale, customer complaint or disconnect order. In contrast, only a handful of the customers of several members of the Opposing Group -- well less than one-half of one percent (0.5%) of the total subscribers of those members² -- have made cursory inquiries as to whether they could presubscribe to an IXC. Virtually all of these inquiries were made at the time that the local wireline telephone company was converting to equal access. To the best of the knowledge of the members of the Opposing Group, they have never had a customer order or request (as opposed to merely inquire about) cellular equal access service, and have never lost a sale or a customer because they did not offer cellular equal access. In fact, it is the information and belief of the Opposing Group that the vast majority of their cellular customers like their present

² For example, XIT (over 1,200 cellular subscribers) received 5 or 6 inquiries at the time that its affiliated wireline telephone company was converting to equal access.

cellular long distance arrangements and rates, and that a substantial proportion of these customers would find it inconvenient and objectionable to receive separate cellular service and cellular long distance bills each month³.

The experience of the Opposing Group in smaller MSAs and RSAs appears to be very similar to the experience of the BOCs in larger cellular markets. If there were a significant demand on the part of cellular customers for the option to presubscribe to an IXC, the BOCs would have found the cellular equal access mandated in connection with the Modification of Final Judgment to be a potent competitive weapon in their favor. Customers would have selected BOC systems offering the equal access presubscription option over competing GTE, McCaw and other systems that did not provide it. By now, GTE, McCaw and other competitors would have voluntarily converted their systems to equal access in order to regain competitive parity. However, as indicated in the Ameritech/BellSouth/NYNEX/Pacific/US WEST comments filed in this proceeding on August 3, 1992, and in the Southwestern Bell comments filed the same date, the BOCs have not found cellular equal access to afford them any competitive advantages. Rather, they have requested the Department of Justice to seek a waiver of the MFJ's

³ This information and belief is based upon conversations by the marketing personnel of various Small Cellular Market Group members with thousands of new and potential customers at the time that various service features, including long distance calling arrangements, were explained to them.

cellular equal access requirement on the ground that it places the BOCs at a competitive disadvantage vis-a-vis non-BOC cellular carriers, none of whom appear to have found it necessary or advantageous to offer cellular equal access.

The lack of any customer demand for cellular equal access, by itself, requires Commission denial of MCI's petition. It is simply not in the public interest for the Commission to order cellular carriers to provide the public with a service option that it does not want.

**Cellular Equal Access Will Not
Produce Positive Public Interest Benefits**

Moreover, cellular equal access should also be rejected by the Commission under a cost-benefit analysis, for the costs of implementing and administering it far outweigh any potential benefits. In fact, the Opposing Group believes that cellular equal access would have a detrimental, rather than a beneficial, impact upon the price and quality of cellular service provided to the public.

MCI offers no evidence of any concrete public interest benefits resulting from a Commission-mandated cellular equal access. Rather, it erroneously assumes that "in most cases, [customers of non-BOC cellular systems] are charged premium 'full market rates' for the resold long distance service," and posits that cellular equal access would permit customers to "choose the combination of carriers which offer the best price/performance combination." (MCI petition, p. 5).

In actuality, many Opposing Group members bill their cellular customers for long distance calls at rates between the "full market rates" that the customer would pay if they subscribed individually to the IXC services and the bulk rates paid by the cellular carriers to IXCs. This approach permits existing cellular customers to pay lower toll charges for their cellular long distance calls -- a direct and tangible cost savings which several Opposing Group members employ as a marketing tool.

In addition, the present system affords cellular customers the convenience of receiving a single monthly bill listing all applicable charges for their cellular usage. Particularly for the many customers who make extensive use of their cellular phones for business purposes, this single bill approach eases the burdens of recording and matching cellular and related long distance charges for accounting, reimbursement, and tax purposes.

If cellular equal access requirements were to be superimposed on the Local Access and Transport Area ("LATA") framework developed by the courts in the Modification of Final Judgment proceeding, the calling patterns and toll costs of cellular customers and their correspondents are likely to be adversely impacted. As this Commission is well aware, the LATA boundaries were drawn with no consideration for radio propagation characteristics, and are not conducive to the regulation of cellular operations. For example, Minnesota RSA

6 covers portions of four separate LATAs. If non-BOC cellular carriers are required in an equal access environment to hand off all interLATA calls to a presubscribed IXC, many of these cellular carriers would have to significantly revise their calling area plans. The immediate impact of this would be an increase in the long distance toll charges incurred by cellular customers and their correspondents.

Put simply, to the average non-BOC cellular customer, cellular equal access is most likely to bring the "freedom" to pay higher cellular long distance charges, and the "opportunity" to spend more time trying to match the charges on separate monthly cellular service and cellular long distance bills. MCI has not indicated the existence of any concrete cellular equal access benefits that counterbalance these detriments.

**Cellular Equal Access Would Impose
Unduly Burdensome Implementation And Administrative Costs
At A Critical Stage Of The Cellular Industry's Development**

Even if cellular equal access offered some potential service benefits to customers, the costs of implementing and administering it would still require Commission denial of the MCI petition.

First, non-BOC cellular carriers would have to purchase the hardware and software necessary to upgrade -- or, in many cases, to replace -- their existing cellular switching equipment. It is the information and belief of the Opposing

Group that Northern Telecom and Astronet cellular switches can be upgraded to provide equal access to a carrier's own customers within its Cellular Geographic Service Area ("CGSA"), but that the Motorola EMX-100 and Novatel cellular switches used by many smaller cellular carriers are not capable of being upgraded or otherwise converted to cellular equal access. It appears that it would cost a minimum of \$30,000 to upgrade an Astronet switch to equal access, while the equipment to provide the Motorola EMX-100 and Novatel cellular switches with equal access capability is not available at any price. Rather, the Motorola and Novatel switches would have to be replaced before cellular equal access could be implemented.

In addition, the costs of the equal access balloting and allocation process have ranged from \$4.00 to \$9.00 per customer for small independent telephone companies, and can be expected to be roughly the same for cellular carriers. However, unlike independent telephone companies, cellular carriers will not be able to recover these costs from the National Exchange Carrier Association ("NECA") pools. Rather, the individual cellular carrier, and ultimately its customers, will bear the costs of any cellular equal access balloting and allocation process.

Third, if cellular carriers are to be classified as equal access providers, they will presumably need to file and maintain interstate access charge tariffs with the

Commission⁴. This will entail significant administrative costs, both for the cellular carrier to prepare and update its access tariff filings and for the Commission to review them⁵. Moreover, cellular carriers will incur additional administrative expenses to process customer-requested and IXC-requested presubscribed carrier ("PIC") changes, and to resolve slamming allegations and other equal access disputes among their customers and IXCs.

The foregoing costs assume that cellular equal access is made available to a carrier's home system customers only, and not to roamers. Whereas MCI notes, in passing, that cellular equal access should be made available to roamers as well as to home system subscribers (MCI petition, note 2), it gives no indication that it has considered the feasibility or cost of roamer equal access.

The Opposing Group has checked with several cellular switch vendors and found that none presently offers equipment capable of furnishing cellular equal access for roamers, although Northern Telecom has indicated that it may be able to provide upgrades for equal access to "networked" roamers (i.e., roamers from adjacent cellular systems) within 18-to-

⁴ At present, IXCs do not compensate cellular carriers for calls originating or terminating on cellular systems. In a cellular equal access environment, cellular carriers should be classified as "access providers," and should be permitted to develop a system of access charges applicable to IXCs.

⁵ In addition, the Commission would need to establish an initial structure for cellular access charges.

24 months at a cost that is yet to be determined. Northern Telecom does not appear to have any present plans to develop upgrades to furnish equal access to non-networked roamers, while Motorola and Novatel do not appear to have any plans to develop cellular equal access upgrades for any subscribers, whether home or roaming. Hence, at present, it does not appear that roamer equal access is technically feasible.

Even if were to become technically possible, the administrative burdens and costs of roamer equal access would be substantial. Would cellular carriers be forced to create and maintain national or regional databases containing the presubscribed or preferred IXC's of potential roamers, and, if so, at what cost? Or would a roamer be required to contact the cellular carrier in order to specify a preferred IXC before receiving roamer service? In the event of the latter, how would this impact the availability of automated roamer service and intersystem handoff?

In addition to considering the costs of implementing and administering cellular equal access, it is important for the Commission to recognize that these costs would be imposed upon numerous non-BOC cellular carriers that remain in the start-up phase of their development, and that have yet to generate the profits necessary to recover their initial construction/acquisition costs and operating losses (i.e., to reach their break-even points).

Whereas MCI emphasizes the overall growth of the cellular

industry (MCI petition, pp. 1-3), it ignores the facts that most cellular systems in the smaller MSAs (i.e., Markets 151-305) have been operational for less than four years, while most cellular systems in the RSAa have been operational for less than two years. In the experience of the Opposing Group, virtually no smaller market cellular system has yet been able to generate an annual operating profit, much less to recover the initial investment therein. Whereas the operating revenues of some systems have begun to approach their operating expenses, the interest expenses for initial construction or acquisition loans continues to generate losses and negative cash flow.

Were the Commission to require smaller market cellular carriers to implement and administer cellular equal access at this time, the resulting costs would increase their annual losses, and further postpone the attainment of their break-even points. More important, the dollars spent on this endeavor would reduce the funds available to the carriers to expand their coverage areas, increase their channel capacities, and provide new cellular services demanded by their customers. Put another way, an opportunity cost of implementing cellular equal access (for which there is no discernible customer demand) is likely to be a critical reduction of investment in the coverage, channel capacity and new cellular services that the public wants.

**Commission-Mandated Cellular Equal Access
Is Not Necessary To Promote Competitive Equity
In The Smaller Cellular Markets**

The Ameritech/BellSouth/NYNEX/Pacific/US WEST comments and the Southwestern Bell comments filed in this proceeding on August 3, 1992, make a strong case that cellular equal access requirements are unnecessary, costly and anticompetitive, and that they should not be imposed on either BOC or non-BOC cellular carriers. However, Southwestern Bell argues that, if the courts do not relieve the BOCs of their cellular equal access obligations under the Modification of Final Judgment, the Commission should promote competitive equity by imposing cellular equal access requirements on non-BOC cellular carriers as well (Southwestern Bell comments, pp. 14-15).

It is the Opposing Group's understanding that the court-imposed equal access obligations of the Modification of Final Judgment were intended to minimize the biases remaining from the pre-divestiture BOC/AT&T relationship, United States of America v. Western Electric Company, 552 F. Supp. 131, 195-200 (D.D.C. 1982), aff'd sub nom Maryland v. United States, 460 U.S. 1001 (1983), and that extension of these equal access obligations to the BOC's cellular operations was intended to foreclose potential evasion of the Modification of Final Judgment's interexchange service restriction. United States of America v. Western Electric Company, 673 F. Supp. 525, 550-521 (D.D.C. 1985). These circumstances do not apply to non-

BOC cellular carriers, and do not require the Commission to mandate significant new equal access obligations.

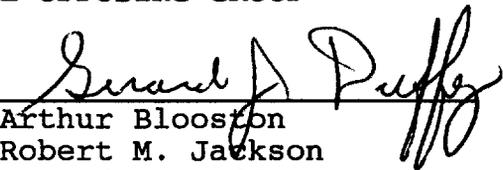
In any event, Southwestern Bell's competitive equity argument does not apply to numerous smaller cellular markets, where neither the wireline nor the nonwireline licensee is subject to equal access requirements as a BOC-controlled entity. For example, all of the Opposing Group members, except Ally, operate wireline systems in small MSAs and RSAs. Since neither they nor their nonwireline competitors are subject to cellular equal access requirements, there is no need for the Commission to mandate equal access to achieve any sort of "competitive equity."

Conclusion

Cellular equal access is a bad idea -- an unwanted regulatory structure that will cost the public dearly in terms of higher cellular charges and foregone cellular service improvements. Regardless of how the courts ultimately deal with the present BOC requests for lifting of the Modification of Final Judgment's cellular equal access requirement, the Commission should not impose cellular equal access on any portion of the cellular industry.

Respectfully submitted,
THE OPPOSING GROUP

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Dated: September 2, 1992

CERTIFICATE OF SERVICE

I, Kimberly Douglas, hereby certify that I am an employee in the Law Offices of Blooston, Mordkofsky, Jackson & Dickens and that on this 2nd day of September, 1992, I mailed by first class United States mail, postage prepaid, a copy of the foregoing "OPPOSITION TO PETITION FOR RULEMAKING" to the following:

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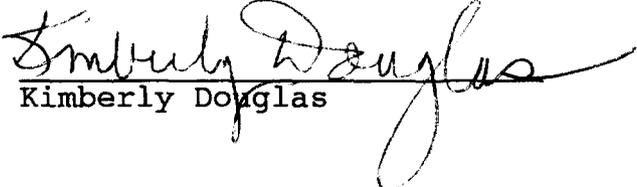
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