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September 2, 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

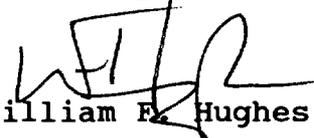
Re: File No. RM-8012

Dear Ms. Searcy:

I enclose for filing the original and six copies of the Comments of Dobson Cellular Systems, Inc., in the above-referenced proceeding. Microfiche copies of these Comments will be filed within 15 days.

Should there be any questions concerning this matter, please contact me at (202) 962-3046.

Sincerely,

  
William F. Hughes

Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION** FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554 OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Policies and Rules Pertaining ) RM-8012  
to the Equal Access Obligations )  
of Cellular Licenses )

**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.**

Dobson Cellular Systems, Inc. ("Dobson"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules, hereby comments on the Petition for Rulemaking filed June 2, 1992, by MCI Telecommunications Corporation ("MCI"). MCI seeks the adoption of a Commission requirement that all cellular licensees interconnect with interexchange carriers (IXCs) under uniform, nationwide cellular equal access policies and procedures. MCI has failed to provide sufficient justification for the imposition of equal access requirements on all cellular licensees. Cellular equal access requirements would impose a significant burden on cellular carriers who operate in a competitive mobile wireless environment that does not present any of the local exchange bottleneck characteristics that would warrant imposition of such conditions. For the following reasons, MCI's Petition should be denied.

**Background**

Dobson is the managing partner and/or parent company of five FCC licensees of cellular systems in western Oklahoma and eastern Texas. Dobson controls the Block B cellular licenses in

the Oklahoma 5 West - Roger Mills Rural Service Area ("RSA"), the Oklahoma 7 - Beckham RSA and the Texas 2 - Hansford RSA and the Block A licenses in the Oklahoma 2 - Harper RSA and the Enid, Oklahoma Metropolitan Statistical Area ("MSA"). Dobson's affiliate, Dobson Telephone Company operates several landline exchanges,<sup>1/</sup> and through a corporate subsidiary holds ownership interests in a fiber network that is utilized in providing interexchange telecommunications services.

In support of its petition, MCI explains that while residential or business customers ordering conventional wireline telephone service are currently accorded the opportunity to presubscribe to a preferred interexchange carrier ("IXC"), only the Bell Operating Companies ("BOCs") afford, through their cellular subsidiaries and related licensees, the same opportunity to cellular telephone service customers, and then only by reason of equal access requirements imposed under the AT&T Modified Final Judgment ("MFJ").<sup>2/</sup> MCI claims that it knows of no other cellular licensee that provides equal access to its customers. In MCI's view, cellular subscribers should have options as to the interexchange carrier that is used to provide their long distance services, and that, more importantly, IXCs should have the opportunity to market their interexchange services to cellular

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<sup>1/</sup> As an LEC affiliate, Dobson is familiar with the costs associated with constructing and operating the necessary facilities to provide equal access.

<sup>2/</sup> See United States v. AT&T, 552 F.Supp 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 103 S.Ct. 1246 (1983).

subscribers. To achieve such results in an orderly fashion, MCI asserts that the current state of the cellular market and varying degrees of state regulations across the country require the Commission, in the public interest, to develop uniform, nationwide equal access policies and procedures to apply to all cellular licensees. MCI Petition at 5.

**Discussion**

**A. The Cellular Industry Is Not Characterized By The Bottleneck Aspects Of Monopoly Local Exchange Service That Warranted The Imposition Of Equal Access Requirements On Local Exchange Carriers.**

The equal access requirement was first imposed on the local exchange telephone operations of the Bell Operating Companies by Section II of the MFJ. Prior to the break-up of the Bell System, AT&T enjoyed virtual monopoly control over access to the subscribers of the local exchange that could be used to stifle its competition in the burgeoning long distance markets. Indeed, as of the break-up, AT&T had superior interconnection arrangements within the Bell System, which made the use of its service far more appealing to consumers. It was critical to assure that these conditions did not linger even after the local exchange services and facilities were broken away from AT&T's interexchange services. The MFJ, therefore, imposed equal access requirements on the resulting BOCs to assure, over time, that the local exchange regulated monopoly was quarantined from, and thus did not adversely affect the competitive markets dependent upon access through that bottleneck. Since mobile services were to be treated as "local exchange" services for all other purposes of

the MFJ, the BOCs' mobile operations were also subjected to equal access requirements and line of business restrictions identical to those imposed on the landline local exchange facilities.<sup>3/</sup> In a similar context, the FCC has adopted very complex ONA programs to assure that local monopoly facilities of the BOCs are not used to deny information services providers equivalent access to the local exchange customers the BOCs employ for their competitive enhanced services offerings. Absent the existence of such bottleneck monopoly local exchange facilities, there is no justification for imposing regulatory requirements that assure any competitor access in any particular fashion to any customer.

MCI fails to substantiate its claim that cellular facilities in any way constitute a bottleneck on access to critical customer bases that could be used to negatively impact the competitiveness of the interexchange marketplace. And, indeed, there is no evidence that cellular carriers present such a bottleneck. On the contrary, IXCs are not disadvantaged by any historical or other circumstance that denies them the ability to provide service on a competitive basis to customers of any cellular network. The cellular networks simply are not the type of bottleneck monopoly facilities that are critical to the competitiveness of the interexchange market in a way that would

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<sup>3/</sup> The BOCs are currently challenging the equal access mobile services requirements imposed by Section II of the MFJ. The main focus of their arguments is that vigorous competition exists in the mobile wireless marketplace. Dobson does not intend to discuss the specific merits of the BOCs' position in this proceeding.

warrant federal intervention in the form of an equal access requirement.

Cellular service is an adjunct to local exchange service, and not a substitute for it. And while cellular carriers are appropriately deemed co-carriers for purposes of certain landline interconnection rights, IXCs have not regularly included cellular carriers in the negotiation or payment of interstate or intrastate access fees.<sup>4/</sup> Rather, in most instances, the IXC treats the cellular carrier -- and not its subscribers -- as the customer, and cellular carriers are, if anything, resellers of the IXC services that they offer to their subscribers as part of the overall package of cellular services.<sup>5/</sup>

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<sup>4/</sup> This is not to suggest that some IXCs have not made such arrangements. However, MCI's proposal opens up a Pandora's box of issues relating to implementation which alone argue against a nationwide policy or requirement. For example, if each cellular system is required to provide equal access, will each cellular licensee be entitled to access fees for the origination and/or termination of traffic to the IXCs. Will cellular carriers be required to file access tariffs at the state and federal levels. What cost structure will be used to determine those rates. Who will handle the billing and collection of access fees for the cellular carriers, particularly the smaller carriers in which the number of transactions will be relatively few. How will roamer traffic be handled; will the roamer be required to designate its carrier of choice, or will the foreign market in which it is roaming be responsible for defaulting roamer traffic to one particular carrier. These are but a few of the issues that would need to be worked out before equal access requirements could be imposed on cellular carriers.

<sup>5/</sup> In this regard, it should be noted that there is no legal or policy reason why cellular carriers should be required to provide interexchange or any other toll services to their subscribers; indeed, some cellular carriers offer services which expressly limit toll calling capabilities, for example,

Cellular systems function in a highly competitive environment. In fact, the FCC has carefully monitored conditions in mobile markets to ensure that no bottleneck capabilities will develop. Cellular licensees must vigorously compete with the other cellular licensee and cellular resellers in their markets. More and more, they must also compete with a wide range of other mobile wireless services. In addition to traditional paging and two-way mobile radio services, a number of new mobile communications services in the last decade have been, or are under consideration to be, authorized by the Commission.<sup>6/</sup> In all of these areas, the FCC is issuing competitive licenses and vigorously promoting both new services and new entry to existing services. And in each instance, it is necessary and essential that the licensee have the ability and flexibility to tailor its service offerings -- including the interexchange portion of any services available -- to meet its competitive interests.

MCI's brief petition offers no persuasive arguments to justify imposition of uniform nationwide equal access

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to enhance the value of the services to larger businesses who want to limit their salespersons' uses of the cellular network to local calls only, or on the basis of credit-risk analysis as to certain customers.

<sup>6/</sup> For example, SMRs and more advanced ESMRs have competed, and are likely in the future even more forcefully to compete, with cellular licensees for mobile subscribers. Last month the FCC took a significant step toward initiating personal communications services ("PCS"), noting that "many PCS applications will create new markets and provide a greater level of competition in many segments of the telecommunications industry." See New Personal Communications Services Proposed, Report No. DC-2175, released July 16, 1992.

requirements on all cellular carriers under such competitive, non-bottleneck circumstances. The technological improvements in cellular services cited by MCI (MCI Petition at 4) have merely enabled cellular licensees to keep pace with the significant number of competing mobile services authorized by the Commission over the last decade. They do not provide justification for hamstringing the cellular carriers' ability to package wireless and long distance services in the most competitive posture possible.

**B. The Competitive Position Of Small Market Cellular Carriers Would Be Severely Damaged By The Imposition Of Equal Access Requirements.**

It is noteworthy that MCI's Petition targets major cellular providers like McCaw and GTE but ignores the position of a significant number of small market cellular carriers like Dobson. In this regard, the suggestion that providing for equal access will not impose undue economic burdens on the cellular carrier is grossly misplaced.

It is possible, but hardly intuitive, that carriers like McCaw or GTE could reasonably bear the significant costs of implementing equal access. At least in their urban, or larger regional markets, they will have the luxury of spreading the significant installation and management costs among a relatively large subscriber base (although it is not entirely clear how many of those subscribers would in fact benefit from the availability of such equal access facilities). In contrast, small market carriers like Dobson are faced with small subscriber bases,

typically in the hundreds or few thousands, to which they may allocate the costs of equal access implementation.<sup>1/</sup> Given the competition that such carriers face from wireless alternatives like paging, two-way mobile radio and SMRS carriers who are not burdened by equal access requirements, placing such a regulatory millstone around the neck of cellular licensees in today's competitive mobile marketplace could severely increase the costs of service to subscribers of smaller licensees and damage the competitive standing of all licensees in smaller cellular markets.

Moreover, in light of the relatively small size of the subscriber base available and the offsetting costs to the IXC of interexchange access facilities that might be necessary to reach the cellular carrier's facilities in such markets, it is altogether unclear how many IXCs would even participate in the equal access balloting that might result in such markets. In such instance, great expenses might be incurred at the cellular carrier's expense with virtually no impact on, and little benefit to, the competitive IXC market. Such results should hardly be suffered lightly.

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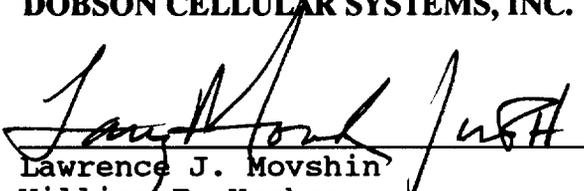
<sup>1/</sup> The costs of implementation are not limited to the changes to physical facilities that would be necessitated by such a requirement, but also include the substantial initial and ongoing administrative costs that would be associated with such a change. See, e.g., n. 6, supra.

**CONCLUSION**

MCI's Petition to impose uniform nationwide equal access requirements on all non-wireline cellular licensees is not in the public interest. MCI has failed to establish that cellular systems display the kind of bottleneck monopoly characteristics that would warrant requiring cellular licensees of any size to provide equal access to their customers. Small market cellular carriers would be particularly and significantly affected by MCI's proposed regulations because of the extensive competition that exists among mobile wireless radio services at the local level. Accordingly, MCI's petition should be rejected.

Respectfully submitted,

**DOBSON CELLULAR SYSTEMS, INC.**

By: 

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Its Attorneys

September 2, 1992

CERTIFICATE OF SERVICE

I, William F. Hughes, hereby certify that on the 2nd day of September, 1992, I caused a true and correct copy of the foregoing Comments of Dobson Cellular Systems, Inc., to be served on the following:

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William F. Hughes