

utilize the Expanded Interconnection proceeding as the framework for implementation of CMS interconnect obligations.

V.

NCRA RESPONSE TO RELATED QUESTIONS RAISED
BY THE NPRM

1. Definitional Status of Cellular Resellers Under Section 332.

27. To the extent that the contention may be made that resellers may not, under § 332(c)(1)(B), be allowed to obtain interconnection with a common carrier, because they are not definitionally providing "a commercial mobile service," the Commission should make absolutely clear that such resellers do occupy the status of commercial mobile service providers and have, at the same time, full interconnection rights. The Commission has previously ruled and the courts have affirmed the conclusion that persons engaged in resale are common carriers within the provisions of Sections 201 and 202 of Title II of the Communications Act. In re Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C. 2d 261 (1976), reconsideration, 62 FCC 2d 588 (1977), aff'd sub nom., AT&T v. FCC 572 F.2d 17 (2d Cir.); cert. denied, 439 U.S. 875 (1978) (Resale Report and Order). Reseller rights to interconnection are therefore derived, in any event, from Sections 201 and 202 of the Act.

28. The only feature which resellers may lack is a license to engage in commercial mobile service as a facilities-based

they play as providing precisely the same functionally equivalent service for the public as a licensed commercial mobile service provider. Under the statutory tests of both Title II and Title III, therefore, resellers have the right to interconnect and to provide the range of services on a competitive basis that the resale policy of the Commission was intended to ensure and which Congress has somewhat redundantly reaffirmed in the grant of interconnection rights in Section 332(c)(1)(B).

2. Regulatory Treatment of Dominant Common Carriers
Affiliated With Commercial Mobile Service Affiliates.

29. In paragraph 64 of the NPRM, the Commission has noted that it has imposed certain safeguards on dominant common carriers in instances where their affiliates are providing certain services. The Commission now seeks comment on whether it should impose any similar requirements on dominant common carriers with commercial mobile service affiliates. The Commission may have in mind the proposed acquisition by AT&T of McCaw Cellular Commissions, Inc. as well as the possibility that LECs may acquire PCS licenses within their local exchange areas. As indicated elsewhere here, NCRA is in favor of marketplace solutions to conditions that might create anti-competitive or noncompetitive markets. In the case of the ownership of CMS providers by dominant carriers, imposition of safeguards would represent a regulatory answer if the marketplace itself does not have a solution to the possible abusive use by dominant common carriers of their affiliation with CMS providers. NCRA would only point out that the creation of a healthy, independent resale industry which has access to cost-based rates,

as urged upon the Commission here, would be a structural response to the problems noted in paragraph 64 of the NPRM. Abusive practices by dominant carriers owning CMS affiliates would be limited to the extent that reselling entities will be able to compete in the marketplace.

3. State Preemption Issues.

30. In paragraph 69 through 75 of the NPRM, comment is requested on a number of issues raised by the FCC's authority to preempt state regulation of the right to interconnection. In approaching these questions, NCRA again believes that achievement of a seamless commercial mobile services environment in which there are a maximum number of offerings made available to end users, can best be achieved in the marketplace under the aegis of Federal oversight. However, unless all commercial mobile services providers, like resellers, have a Federally mandated right of equal access to LECs, IXCs and open entry, on a cost-based basis, to the services of facilities-based commercial mobile service providers, State regulation must be kept open as a viable alternative unless all of the Federally protected rights are established.

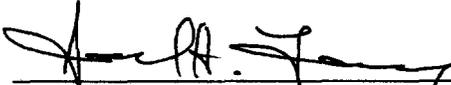
31. NCRA strongly supports a requirement that all commercial mobile service providers be required to provide interconnection to other commercial mobile service providers. Exclusion of one CMS provider from the marketplace by another be it a reseller or facilities-based CMS licensee is simply insupportable if a seamless and universal mobile marketplace is to be achieved. Similarly, NCRA also supports the right of PCS providers, be they private or

NCRA also supports the right of PCS providers, be they private or commercial, to have a federally protected right to interconnect with LEC facilities and that inconsistent state regulation should be preempted.

32. Finally, the Commission, in paragraph 79, has requested comment on state petitions to extend rate regulation authority, which is provided for under § 332(c)(3)(A) and (B). NCRA believes that the establishment of a uniform system of regulation -- the very goal of the regulatory parity legislation -- requires the adoption of federal rules and appropriate limitations on inconsistent state activity. Congress has specifically recognized that special circumstances involving the need to protect universal land line telephone exchange service, and the possible failure that federal regulation of rates to achieve a competitive marketplace may indicate the need for state regulatory action on rates. Where the states have made reasoned determinations about rate regulation and how it may be utilized to promote competition pursuant to state statutory duties in accordance with the Federal statutory standards, those decisions should be respected. In this regard, the Commission should adopt a standard of review of state petitions requesting to extend or initiate rate regulation that is

sufficiently generous to assure that local and state interests may continue to exercise their state statutory duties.

Respectfully submitted
NATIONAL CELLULAR RESELLERS
ASSOCIATION

By: 
Joel H. Levy

Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 293-3860

Its Attorneys

Dated: November 8, 1993

NCRA
EXHIBIT 1

WALL STREET JOURNAL

Bears Say Nextel Communications May Be Hot But They Are Betting Its Stock Price Will Fall

HEARD ON THE STREET

By SUSAN PULLIAM

Staff Reporter of THE WALL STREET JOURNAL

Whew! Investors are still catching their breath after the spate of deals in the wireless communications market over the past two weeks.

At first blush, the flurry of activity suggests that cellular telephone companies may soon face stiff competition from the likes of Nextel Communications, one of the largest companies that is developing an alternative nationwide wireless network.

But investors should pause before flipping open their cellular phones and dialing a broker. Nextel's stock has tripled since the beginning of the year, to 54 at Monday's close. Yesterday it fell 1 1/4 to 52 1/4.

The precipitous rise has brought out the bears who are now betting that Nextel's stock price will soon tumble. In the past month, the amount of stock sold short, or borrowed and sold in a bet that the price will decline, nearly doubled to 3.4 million shares. That made Nextel one of the companies with the largest increases in short positions in recent weeks. Nextel's average daily volume is about 1.2 million shares.

Bears say Nextel's stock has gotten ahead of itself. For a company without earnings and the promise of a nationwide network that it can't deliver on for years, a stock market value of more than \$7 billion — assuming all options are exercised and outstanding transactions closed — is excessive, the shorts argue.

Nextel says that skeptics are always pointing to a new hurdle and points out that it keeps right on bounding over them. But it is easy to see that Nextel has its work cut out.

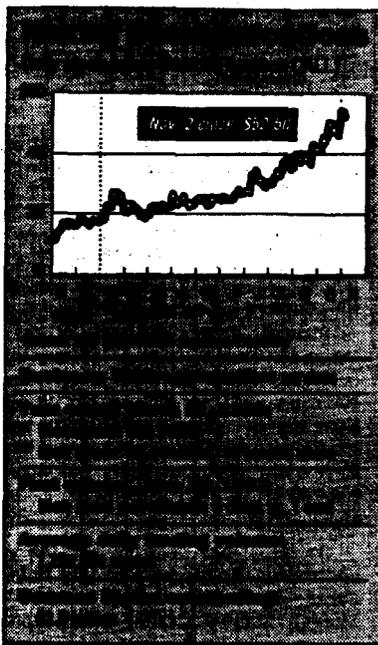
Formerly called Fleet Call, Nextel has long been in the business of providing radio dispatch services for taxicabs, trucks and deliverymen. Now, however, it is trying to convert its digital network for specialized mobile radio services into a service that will compete with cellular networks. Its strategy pits it against cellular giants such as McCaw Cellular and LIN Broadcasting, not to mention the so-called wireline (phone company) cellular providers.

Nextel's handsets are heavy, clumsy and expensive, says Roger McNamee, general partner with Integral Capital Partners, which invests in technology companies. "Why would anyone want one of these," says Mr. McNamee, who says his firm sold its Nextel holdings a long time ago.

Nextel's chairman, Morgan O'Brien, insists that the company's handsets will be priced "competitively" for cellular customers as well as dispatch users.

Ronald Bennett, a cellular consultant in Cupertino, Calif., says he was allowed to test Nextel's system several weeks ago in Los Angeles, where the company is rushing to offer commercial service by the end of the year. "You get cut off and fade out," he says, even within the company's service area.

Of course, cellular customers can face the same problem in Los Angeles because of capacity constraints. But one of Nextel's selling points to investors has been that users wouldn't face the same problems as cellular customers.



Mr. O'Brien says Nextel doesn't face significant technical problems right now. Mr. Bennett might have tried the system when certain areas of service were turned off, he says. Further, "The system is in a test mode. We've been very happy with the results."

One other hurdle for Nextel: Pacific Telesis and Los Angeles Cellular Telephone, the two cellular companies in Los Angeles, have signed contracts with cellular dealers that discourage them from selling Nextel's gear and services. That means Nextel must use its own salesmen for now, and hope that demand will eventually cause some of the cellular dealers to bolt. In the meantime, some investors say Nextel's marketing costs may be higher than those of cellular companies.

Even Nextel's most ardent supporters concede it will be years before the company delivers a dime in earnings to its shareholders. Linda Runyon, a telecommunications analyst at Merrill Lynch, estimates the company won't turn a profit until 1998. And, she adds, Nextel's recent acquisition of the radio dispatch units of two companies "could push that time frame back even further."

Meanwhile, Chairman O'Brien says a seamless nationwide network won't be available to Nextel's customers until November 1996, though the recent consolidation could move that schedule up, he adds. "I'm a lot more aggressive than a few months ago," he says.

Nextel is racing the clock to build its network before the cellular companies add capacity to their networks by moving to digital technology. If Nextel wins that race, it still is rushing to complete its network before another competing network, called PCS, is completed around 1997. The PCS network, which stands for Personal Communications Services, is the expected result of an approaching government auction of part of the radio spectrum.

"What we're racing against is the opportunity to be the preferred wireless device," says Mr. O'Brien. "We think we can get there first," he says. From the shorts' point of view, however, five years is a long time for the stock to stay at its current lofty level.

For later information and related news call 1-900-JOURNAL, news category 1-7000.

AT&T's OPPOSITION TO RBOC'S MOTION TO 'EXEMPT'
WIRELESS SERVICES FROM SECTION II OF THE DECREE

Pages 1, 36-39

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)

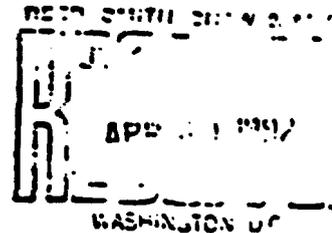
Plaintiff,)

v.)

WESTERN ELECTRIC COMPANY,)
INC. and AMERICAN TELEPHONE)
AND TELEGRAPH COMPANY,)

Defendants.)

Civil Action No. 82-0192 H



TO: THE DEPARTMENT OF JUSTICE

**AT&T'S OPPOSITION TO RBOCs' MOTION
TO "EXEMPT" WIRELESS SERVICES
FROM SECTION II OF THE DECREE**

American Telephone and Telegraph Company ("AT&T") hereby responds to -- and opposes -- the motion of the seven Regional Companies ("RBOCs") to "remove" mobile and other wireless services from Section II of the Decree.

INTRODUCTION AND SUMMARY

In their voluminous filing,¹ the RBOCs are asking the Department to support a sweeping -- and indeterminate -- modification of the provisions that constitute the very core of the Decree. First, the RBOCs propose a modification of Section II(D)(1)'s interexchange services injunction. It would allow the RBOCs to provide, without geographic limitations, any

¹ The RBOCs' motion is accompanied by a 55-page memorandum ("RBOC Memorandum" or "RBOC Mem.") and by a 187-page, single-spaced document entitled "Report of the Bell Companies on Competition in Wireless Telecommunications Services, 1991" ("RB Wireless Report"). These filings will be referred to collectively as the "RBOCs' Motion."

"wireless" services are competitive and are offered in separate markets from "landline" services. However, these allegations would not justify a waiver even if they were true -- as they are not.

1. The RBOCs' Claims That All Mobile Exchange Services Are Competitive Are Erroneous.

Preliminarily, the claims that all mobile and wireless services are competitive are not only unsupported, but also are refuted by the RBOCs' Motion and their independent public sources alike. If competitive conditions in these exchange markets were relevant -- as they are not -- there is no basis on which the Department could reach a conclusion that the relevant wireless exchange markets are competitive.

To be sure, there are some wireless services that appear to be quite competitive -- e.g., one-way paging -- but there are no one-way paging issues before the Department. See pp. 25-26, supra. Conversely, there were at divestiture, and there are today, a number of "radio-based" access services that are so closely integrated with the RBOCs' local exchanges that these "wireless" services, too, are natural monopolies.

Indeed, the RBOCs have contemporaneously described for the FCC a host of emerging "personal communications" and "wireless" access services that require such close integration with the RBOCs' exchanges that they will have the same natural monopoly characteristics as do the RBOCs' landline exchanges. For example, they describe "fiber to the curb" and other systems in which "radio transmitters" will provide the last few feet of

each local loop transmission.⁴² When these systems are implemented, all telecommunications will be "originate or terminate in . . . wireless devices," but the RBOCs will be the monopoly providers of the "wireless" access as well as the bottleneck landline link that begins at the "curb."

Similarly, the RBOCs' claim that today's cellular services are fiercely competitive are unsupported and at odds with their own sources. Here, too, some aspects of the cellular radio market undoubtedly are competitive: e.g., the provision of cellular CPE and the provision of interexchange services to the RBOCs' cellular customers. But the suggestions that the provision of the cellular exchange services themselves -- i.e., air time -- is "competitive" is contrary to other statements in the RBOCs' Motion and in the "independent, public sources" on which the RBOCs rely.

The independent public sources state that cellular radio is "a market that is simultaneously free of competition and regulation" and that functions as a "monopoly with two operators."⁴³ They attribute this phenomenon to the "duopoly"

⁴² See, e.g., Comments of the Bell Atlantic Companies, FCC PCS Docket, p. 9 n.19 (Oct. 1, 1990); Comments of NYNEX Corp., FCC PCS Docket, p. 12 (Oct. 1, 1990).

⁴³ First Boston, The Future of the Cellular Telephone Industry, Part I, p. 4 (Dec. 27, 1991) ("1991 First Boston Cellular Industry Analysis") (emphasis omitted); accord Morgan Stanley, FCC Cur: The Changing Dynamics of the Cellular Telephone Industry, pp. 3-10 (April 23, 1991) ("1991 Morgan Stanley Cellular Industry Analysis"); Donaldson, Lufkin & Jenrette, The Cellular Communications Industry, pp. 5-6 (Spring 1991) ("1991 CLC Cellular Industry Analysis"). Similarly, the FCC has noted (but not resolved) claims that these markets are characterized by
(continued...)

structure of the market, to the fact that RBOCs are the sole providers of the service in many markets (representing over 30% of the nation), and to the financial weakness of the nonwireline carriers, which, analysts suggest, enables the cellular exchange markets to operate as one of the few real world examples of "shared monopoly" pricing.⁴⁴

Further, the RBOCs effectively admit the lack of price competition. While noting the radical price reductions in cellular CPE over the past eight years (from an average of \$2,700 to \$300 per unit), all the RBOCs can state about cellular exchange service itself (i.e., "air time") is that the rates have remained steady. RBOC Mem., p. 11. Indeed, the RBOCs state that cellular "air time" is priced at levels that are so high that cellular firms will "discount" or "give away" CPE and "ancillary" services in order to sell more "air time." RBOC Mem., pp. 32-33; RBOC Wireless Report, pp. 157-61. But contrary to the RBOCs' statements (RBOC Mem., pp. 32-33), this phenomenon cannot reflect the "value" of cellular service, for there could not be "value of service" pricing in a competitive market. By contrast, this phenomenon seemingly could only exist if there were actual or tacit collusion in this "duopoly" that allowed air

⁴³ (...continued)
noncompetitive or even "shared monopoly" pricing. See, e.g., Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rule Making and Order, 6 FCC Rcd. 1719, 1722 (1991).

⁴⁴ See, e.g., 1991 First Boston Cellular Industry Analysis, pp. 4, 20; Proposed Changes to Cellular Resale Policies, 6 FCC Rcd. 1719, 1722 (1991).

time to be priced at levels that afford supracompetitive margins.

To be sure, the Decree, actual or threatened utility regulation, the difficulties of coordinated pricing among two independent firms, and other factors are precluding the RBOCs from earning a full monopoly profit on the provision of local cellular "air time." But the present record simply will not support a claim that cellular exchange services are a "competitive" market today -- and not even the FCC has so found. See pp. 38-39 n.43, supra. Moreover, as explained below (pp. 52-56, infra), the RBOCs' Motion shows that what they want is the ability to exploit their bottleneck monopolies to foreclose competition in the provision of interexchange services to mobile customers and thereby to earn those supracompetitive or monopoly profits that are currently denied the RBOCs. This would harm all mobile customers.

2. In All Events, The RBOCs Have Bottleneck Control Over The Provision Of Interexchange Services To Mobile Customers.

In any case, the claims that mobile services are separate and competitive markets are irrelevant. There are a vast array of authorized RBOC services that are actually or potentially competitive and that comprise separate exchange markets. But because the RBOCs control the bottleneck facilities that connect these customers to interexchange carrier networks, that fact could not authorize the RBOCs to provide "bundled" or other interexchange services to customers of their competitive offerings.

Indeed, the Department and the Court have repeatedly

CERTIFICATE OF SERVICE

I, Brenda T. Chapman, hereby certify that on this 8th day of November, 1993, a copy of the Comments of National Cellular Resellers Association was mailed First Class, U.S. Mail, postage prepaid or delivered by hand where indicated to the following:

Michael F. Altschul
Vice President and General Counsel
Cellular Telecommunications Industry
Association
Two Lafayette Centre
1133 - 21st Street, N.W.
Suite 300
Washington, D.C. 20036

Mark D. Schneider, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

R. Michael Senkowski, Esq.
Wiley, Rein & Fielding
1776 K Street
Washington, D.C. 20006

*James H. Quello
Acting Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

*Robert Corn-Revere
Senior Legal Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

*Robert E. Branson
Senior Legal Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

*John C. Hollar
Senior Legal Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

*Renee Licht, Esq.
Acting General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554

*Cheryl A. Tritt, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

*Gregory J. Vogt, Chief
Tariff Division
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

*John Cimko, Jr., Chief
Mobile Services Division
Federal Communications Commission
1919 M Street, N.W.
Room 644
Washington, D.C. 20554

*Judith Argentieri
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

*Peter Batacan
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 659
Washington, D.C. 20554

*Nancy Boocker
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

ITS
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037


Brenda T. Chapman

* By Hand Delivery