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January 6, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: Ex Parte Communication Concerning GN Docket No. 93-252,
Regulatory Treatment of Mobile Services

Dear Mr. Caton

On Thursday, January 6, 1994, the attached letter and enclosure, which concern the issue of interconnection rights for cellular resellers in the context of the above-referenced rulemaking, were delivered to the following Commission staff on behalf of the National Cellular Resellers Association:

David Furth
Geraldine Matise
Richard Shiben
David Solomon

Sincerely,

Allan R. Adler
Allan R. Adler

Attachments

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 6, 1994

BY HAND

^F1^

Dear ^F2^:

On behalf of the National Cellular Resellers Association ("NCRA"), I am writing to bring to your attention some additional information regarding the NCRA's concerns about the interconnection rights of cellular resellers in the pending rulemaking (GN Docket No. 93-252) on the regulation of mobile services.

As we stated in our submitted Comments on the rulemaking, the NCRA believes that the Commission can promote a more competitive marketplace for consumers of cellular telephone service by treating cellular resellers as "commercial mobile service" ("CMS") providers who have the right to establish interconnection with any common carrier pursuant to Section 332(c) of the Communications Act, as amended. Such treatment is both required by the plain language of Section 332 and consistent with the Commission's extant policies regarding interconnection rights.

Section 332 states that, "upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connection with such service." Clearly, cellular phone service is a "commercial mobile service," and the right to interconnection is statutorily extended to "any person" providing such a service, not only to licensees or facilities-based providers. Relying on the plain meaning of this statutory language, the Commission should establish that cellular resellers, as providers of cellular service, are CMS providers who have a right to interconnection with the networks of facilities-based cellular service providers.

In effect, the Commission would treat cellular resellers as "competitive access providers" ("CAPs") who enhance competition in the duopoly cellular marketplace. Because cellular switched-based access is now technically feasible, the Commission should ensure that these CAPs can offer switch-based service pursuant to the same kind of interconnection policies the Commission has established for CAPs confronting monopoly control of bottleneck wireline local exchange service. This would allow resellers to competitively offer consumers a broad range of customized cellular services, such as

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number portability; limited calling areas; incoming call screening; cellular extension; voice mail enhancements; dual-system access; multi-line hunting; and, billing format design.

For your information, the attached paper briefly explains how switched-based cellular reselling works and what it can do to bring much-needed competition to the highly-concentrated cellular market.

Thank you for your consideration.

Respectfully,

David Gusky
Executive Director

Enclosure

cc: William F. Caton
Acting Secretary

**SWITCH-BASED RESELLING
IN THE CELLULAR INDUSTRY:**

Bringing Additional Competition
To a Highly-Concentrated Market

National Cellular Resellers Association

January 3, 1994

BACKGROUND

In each of cellular's 734 markets, the Federal Communications Commission licenses only two companies to transmit cellular calls over Federally-controlled radio spectrum. However, there are no laws barring other companies, using their own facilities, from transmitting cellular calls between the radio-based cellular carriers' network and the public switched telephone network (PSTN).

Cellular resellers, in fact, have asked radio-based cellular carriers for permission to connect switching equipment to the carriers' mobile telephone switching office (MTSO) and to assume the task of transmitting their subscribers' calls to and from the PSTN. In each instance, however, the carriers, using a variety of erroneous and antiquated arguments, have denied the requests.

The National Cellular Resellers Association, in the rulemaking proceeding addressing the regulatory treatment of mobile services,¹ has asked the FCC to require radio-based cellular carriers to offer interconnection to firms wishing to provide competing access services. NCRA believes this interconnection requirement is called for by the 1993 Omnibus Budget Reconciliation Act.² Equally important, NCRA believes the requirement would be wholly consistent with those policies meant to foster greater competition, rather than more regulation, in the telecommunications arena.

GENERAL DESCRIPTION

Resellers wishing to transmit calls between a radio-based cellular carrier's network and the PSTN would install a switch between the cellular network's MTSO and the facilities of the local exchange carrier (LEC) and interexchange carriers (IXCs). The reseller switch and its associated data bank would administer the resellers' own NXX codes, record and verify all pertinent information related to the reseller subscribers' calls, perform all functions necessary to route calls

¹ FCC Docket NO. 93-252, Notice of Proposed Rulemaking, October 8, 1993

² Section 6002 (b)(2)(B), Public Law 103-66

through the local and interexchange networks and, in the case of incoming calls, the MTSO, and provide the data required to generate subscriber bills.

Switch-based resellers would provide competition in those areas of cellular service where such competition is technically feasible. Until now, open competition in the cellular market has been limited to "retail" activities, that is, the solicitation of end-user customers, the initiation of their service, and the administration of their accounts. The "wholesale" activities, that is, the physical transmission of cellular calls, including interconnection with the PSTN, have been performed solely by the two firms in each market holding FCC licenses to use the radio spectrum allotted to cellular service.

In fact, only a small portion of these wholesale activities must be performed by the two FCC licensees in each market: the actual transmission of calls from cell site to cell site. There is no legal requirement which holds that only the two FCC licensees may transmit cellular calls from the point where they are converted to landline signals to the point where they interconnect with the PSTN (or the reverse in the case of incoming calls). This portion of the cellular system between the MTSO and the local and interexchange networks can and should be opened to competition from switch-based resellers.

Furthermore, there are no technological barriers to switch-based resellers. Every cellular phone is identified by a unique North American Numbering Plan destination address code -- a ten-digit telephone number. Cellular phones served by cellular reseller switches would be no different. When a reseller customer originates a call through the host radio-based cellular system, the MTSO would pass the connection directly through to the reseller switch. The reseller switch, rather than the MTSO, would then proceed to identify the caller and verify that the call is originating from a valid subscriber, route the call to its appropriate destination, and record all details required for billing. The reseller switch would also handle any special and enhanced features such as voice mail.

REGULATORY REQUIREMENTS

For switch-based cellular resellers to compete effectively with radio-based cellular carriers, the Commission must ensure that they can provide service to customers on an equal footing with radio-based carriers. To do this, resellers need only purchase from radio-based carriers those bottleneck network elements needed to provide service to end-users.

In this regard, there are relatively few requirements to ensure an equal competitive footing between switch-based resellers and radio-based carriers:

* **Radio-based cellular carriers' services must be unbundled into separate elements and offered to switch-based resellers at cost-based rates.** This would permit switch-based resellers to purchase, at a fair price, only those services that the radio-based carriers perform on their behalf.

* **Local exchange carriers must grant switch-based resellers interconnection on the same basis as the radio-based cellular carriers.** This would ensure that switch-based resellers incur the same charges to route calls through the local and interstate networks as their competitors.

* **NXX codes must be available to switch-based resellers on the same basis as they are available to radio-based cellular carriers.** Again, this would assure that switch-based resellers incur the same costs to administer their cellular phone numbers as their radio-based competitors.

CONSUMER BENEFITS

Should the Commission impose the requirements identified above, switch-based resellers can quickly bring much-needed competition to the cellular marketplace. Consumers naturally would benefit in several ways -- better service rates, improved quality of service, and more rapid service innovations.

Price

Competition is the most effective method yet devised to reduce costs to a minimum consistent with the provision of adequate service. The competitor that is capable of providing the best service at the lowest cost will be the most profitable. Other competitors must either emulate the efficiency of the lowest-cost competitor or risk being driven from the market. Over time, legitimate price competition from switch-based resellers would put downward pressure on provider costs and, in turn, retail prices throughout the cellular industry.

Improved Service Quality

Competition ensures a quality of service that is consistent with the requirements of the consumer. With the advent of switch-based resellers, multiple providers of cellular service would compete in most markets. Consumers could compare their performance and select the cellular provider whose service best meets their individual needs consistent with their willingness and ability to pay for the service.

Innovative Services

Competition encourages innovation. With switch-based resellers and radio-based carriers active in the same markets, there will be substantial pressure on each provider to try to distinguish its service or product by offering features or subservices not offered by competitors. For example, the technology exists to offer extension phone service to cellular subscribers. Competition, however, has been strong enough to prompt radio-based carriers to offer this service in only but a few markets. This would not be the case once switch-based resellers came into existence.

Unlike radio-based carriers, which must design their rate plans to capture large numbers of subscribers, smaller, switch-based resellers would be able to customize their services to target "niche" markets. For instance, certain occupations such as real estate and insurance sales require individuals to be on the road during the early evening hours or on weekends. An enterprising switch-based reseller might tailor its rate plans to best meet the needs of these individuals.

Competition drives innovation. Without competition, innovation is likely to languish even when the technology is readily available.

CONCEPT FURTHERS CURRENT COMMUNICATIONS POLICY

In 1963, a small company named Microwave Communications, Inc., proposed to build a long-distance telephone network between St. Louis and Chicago to compete with AT&T. Opponents of the plan argued that it would be an unnecessary duplication of facilities, that MCI did not have the legal, technical, and financial qualifications to build and operate the system, and that the system would be harmful to the existing network. But above all else, it would be an utter waste of time and money because MCI would be denied local interconnection and thus would be unable to complete its calls.

After a legal battle that went on for nearly a decade, the Commission reached the conclusion that competition could be introduced in the interexchange market and that MCI and other potential interexchange carriers, in order to construct viable systems, must be allowed to interconnect to the local exchange networks. With that decision, the Commission ushered in a new era of competition and innovation in the telecommunications arena which, thirty years later, is still in its early stages.

Clearly, a hallmark of this new era are policies which eliminate unnecessary and obsolete entry barriers. Giving cellular resellers the right to interconnect to radio-based cellular networks would be a further step in this ongoing effort to open highly concentrated markets to competition from new suppliers. While each of these attempts to create additional competition has been criticized by adversaries as being technically impossible, economically inefficient, or harmful to existing facilities, results in markets already opened to competition have proved otherwise, bringing better pricing, improved service, and innovative products to consumers.

Switch-based resellers would be no less beneficial for consumers in the cellular industry.