the time it takes to true up rates that a "cost-based" price cap regulatory regime may be obsolete.

Finally, should the Commission consider imposing a Cost-based Price Cap for some regional areas and not others? In analyzing this issue the Commission will consider the degree of competition that exists in a service territory. The exploration of this issue will require analyzing predictions of the expected level of competition in different areas. Specifically, do significant differences exist in the planned deployment of technologies; do the new service providers plan to focus on metropolitan service areas and forego rural areas?

3. **Relaxed Regulation of the Cellular Market**

One option for California to consider is whether this state should relax its existing regulation of cellular carriers or simply allow preemption of by the FCC to occur. According to a January 1992, Cellular Telecommunications Industry Association (CTIA) Report, 24 states currently regulate the cellular industry in some fashion while 26 states impose little or no regulation on cellular companies. Of the six most populous states, Florida, Texas, Pennsylvania, Illinois, New York, and California, three of the states regulate cellular companies and three do not. Cellular companies have now been offering service since approximately 1983, and most states have accumulated some experience with either regulation or deregulation of these markets. We seek comparative data of the experiences in both regulated and deregulated states and hope that parties with access to such information will present it to the Commission.

The Commission may also consider what form of consumer protections should remain in place under a scheme of lessened regulation. The Commission could retain active oversight, among other things, of consumer fraud issues and any issues of siting and placement of cellular facilities. Retention of authority to adjudicate customer complaints and local environmental and land use issues could constitute a minimum regulatory program, paring away

other forms of regulation aimed at reducing prices or expanding the availability of the service.

If the Commission minimized its regulation of any prices or service configurations, this strategy would be predicated upon the conviction that over the long-term market forces would be in place to assure price competition and steadily increasing service quality without regulatory intervention. Thus, an analysis of the level of competition and market forces at work as well as an evaluation as to the effectiveness of the various forms of regulation is critical in determining whether regulatory controls are in the public interest. This Commission should only regulate when the benefits of regulation outweigh the costs.

According to the July 1992 GAO report, specialized mobile radio providers are now licensed in 6 markets, and at least one provider is expected to be operational in California within the next year. Specialized mobile radio services cater to a market similar to cellular, by providing cellular-like service to large private business customers using the 800-900 Mh-band of radio frequency. Until SMR providers are actually operational, the extent of direct competition to existing entrenched cellular providers who enjoy the use of substantial bandwidth in comparison to SMRs, is unknown. However, this OII should consider the impact of their presence or potential entry on traditional wholesale cellular service prices and consider whether the arrival of effective competition will be expedited with regulatory safeguards geared at encouraging the development of a competitive market.

Below, we discuss potential competition to existing cellular services and the degree to which cellular is a discretionary service.

Additionally, the FCC has recently allocated 120 MHz of additional bandwidth to new entrants in the field of mobile communications services to compete with existing cellular markets and also provide personal communications services, a new form of mobile radio two-way communication. Personal communications systems are predicated on an innovative technology which may enable

person-to-person use of telephones in concentrated locations. This technology has been field tested in a variety of markets, and the allocation of new bandwidth by the FCC to new participants in the communications market should broaden competition with cellular companies. The FCC is currently considering rules under which bandwidth will be auctioned, as well as on procedures for selecting bandwidth recipients. There remain, however, uncertainties on the ultimate outcome of the FCC process.

If the auctioning of new bandwidth remains concentrated among cellular providers, then broader competition is unlikely. On the other hand, if the FCC selects new players, competition could increase significantly.

Another uncertainty is the market for PCS. If the technology or economic profitability constrains the deployment of PCS services to small area locales, then competition with cellular will occur only in limited geographic areas. As with SMR, the full impact of the competition will best be evaluated once service is deployed and the markets are established. Alternatively, the threat of potential entry may inhibit exercise of market power by existing firms. We seek comment on the influence threat of entry has on the exercise of market power by cellular carriers. This OII solicits information on progress in these areas, and their impact on the competitiveness of the cellular market in the long term. More importantly, during this transition period, the benefits to Californians or lack thereof from the Commission imposing regulatory safeguards to ensure a swift transition to a competitive market should be discussed.

Finally, it would benefit the CPUC to ascertain if the purchase of cellular service is still considered a luxury non-essential service, or if cellular service has reached a point in certain business, rural, or emergency uses where cellular companies fill a vital public utility role.

The CPUC has committed, in its infrastructure report to Governor Wilson, to periodic evaluation of the components of basic service. It may be appropriate to consider in this investigation whether any aspect of wireless services should also be considered part of basic service. In this investigation, the CPUC could design conditions which should apply if wireless service is to be classified as part of basic telephone service. For example, in rural areas, if wireless is the only telephone service available, is wireless service under those circumstances the equivalent of basic telephone service? Under what circumstances, if any, should wireless service providers be held to standards of universal service, or be required to offer lifeline assistance rates?

The Commission also may decide that these sets of issues are not appropriate for consideration in this investigation. If so, then the Commission should decide when and in what forum the agency will integrate periodic evaluation of landline basic service with inclusion of wireless service availability and reliance.

F. Additional Proposed Measures Governing Dominant Providers

1. Automatic Relaxation of Regulation: Reclassification to Non-Dominant Status

Where effective competition exists in particular markets, there is no need for intervention. Accordingly, if continued regulation for cellular licensees is adopted, it should be linked with provisions to progressively reduce and eventually eliminate such regulation when and if effective competition materializes in the wholesale mobile market.

New regulations should specifically provide standards which, if met, would allow cellular licensees to be reclassified to non-dominant status, and other standards under which carriers could request a reclassification upon Commission review of market alternatives. A carrier wishing to change its status should make a formal application to the Commission to do so and would bear the burden of showing it met the applicable standard.

2. **Unbundling of Radio Links**

The radio portion of duopoly carriers' services should be made available on an unbundled basis from all other aspects of services they may offer. Doing so would minimize the scope of the market bottleneck created by the duopoly structure for cellular licensing.

Many cellular-related network functions could be competitively provided outside the duopoly bottleneck. Most of the "cellular network" as operated by duopoly carriers is actually a *landline* network which mimics the local telephone network of conventional local exchange carriers.[20]

Historically, cellular networks were designed with centralized system administration and dedicated facilities for collecting (or "backhauling") mobile traffic from individual cells and processing it through duopolist-controlled switches (mobile telephone switching offices, or "MTSOs"). Some industry analysts have suggested that network designers in the 1960s and 1970s adopted a highly centralized architecture, in part, because it was not feasible at that time to distribute the processing power required further down toward individual cells.[21]

However, over the past decade, the development of inexpensive microprocessors has opened up the possibility of distributing system administration functions. It is no longer necessary to consolidate mobile traffic from several cells into a common MTSO before interconnecting such traffic into conventional local telephone company networks. Instead, administrative

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20 Long distance service provided by cellular partnerships with Bell Operating Company involvement are subject to equal access requirements. Otherwise, cellular service may also include long distance calling between metropolitan regions across the state.

21 See, for example, George Calhoun, Digital Cellular Radio, Artech House, 1988, pp. 385-391.

functions can be distributed to individual cells. The choice to employ distributed processing and hand off mobile-originated or receive mobile-destined traffic closer to individual cell sites should be made on a cost-efficiency basis and not be restrained in order to preclude competitive inroads into the non-radio aspects of providing mobile service.

The duopoly condition should be limited to the radio function where it is currently unavoidable. Ultimately, any firm should be allowed to offer competitive alternatives to all of the non-radio functions currently supplied exclusively by cellular duopolists. In this way, the market power of existing cellular duopolies may be reduced, and competitive firms will be afforded an expanded opportunity to provide added value to cellular consumers through more efficient or innovative landline network design and operation.

By narrowing any bottleneck that duopoly licensees control, the scope of functions that the Commission must intensively oversee is reduced. The entire set of functions designated as "wholesale" cellular service should not be regulated more tightly, only those functions which represent the non-competitive core (or "bottleneck") functions on which all retailers and resellers depend to provide service.

Therefore, substantial unbundling of most, and eventually perhaps all, landline transmission and switching functions now bundled into wholesale tariffs should occur.

We seek comment as to how such unbundling should occur with special emphasis on costing and pricing issues. Specifically, we are concerned that such unbundling requires cost-based regulation and that it may be incompatible with other regulatory frameworks from which the Commission might choose. In addition, we seek comment on the advisability of engaging in a process of unbundling if we expect the market to be competitive in the future and whether unbundling requirements are needed in a competitive market.

3. Involvement of Radio Bottleneck Licensees in Competitive Activities

a. Affiliate Relationships

An additional area of inquiry is the extent to which the Commission should act to discourage the participation of duopoly carriers in competitive aspects of the cellular and cellular-related markets.

When a duopoly carrier competes with firms that are dependent on it for the core functions it supplies, such carriers have an incentive to discriminate against their competitors or otherwise disadvantage them by manipulating the sale of those core functions. This type of anticompetitive conduct may have the effect of chilling competitive fervor in a variety of cellular-related markets.

When this conflict of interests exists, the Commission must consider crafting additional safeguards including monitoring and enforcement tasks to ferret out anticompetitive behavior. Integration by duopolists of core radio functions with competitively-available products and services, therefore, may carry with it substantial additional costs of regulation, or alternatively, detrimental effects on consumers. On the other hand, integration by duopoly carriers of core radio functions with other competitively-available functions may yield efficiencies of joint provision, e.g., "scope economies", in certain cases.[22]

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22 If duopolists are able to resist competitive pressures through their market power and anticompetitive conduct, however, such efficiencies may not be realized for consumers.

Scope economies, in any event, are not identical with the ability to package core radio functions with an array of equipment, landline services, and enhanced services to provide consumers with a convenient source of one-stop shopping. If duopolists do not integrate across those markets, there is nothing preventing other competitive firms from doing so -- as long as they are offered access to the core "building blocks" they need.

Stricter regulation of the bottleneck radio function would reduce the potential for much of the conduct considered injurious to consumers, e.g., anticompetitive price squeezes. Strict regulation of affiliate relationships should be balanced against the strictness of the regulation we adopt for the duopoly radio function itself. The election of a price cap and unbundling of the duopoly radio function could make it less necessary to discourage vertical integration and other affiliate relationships.

b. Bundling of Equipment and Service

Handset equipment and mobile network services have a uniquely interdependent relationship, as they must be used in tandem and may be tied together by a proprietary technology which is distinct from that used by other handsets and networks.

As new mobile network designs are deployed, there is often a need to coordinate the distribution of compatible equipment. To the extent that mobile handsets may not be compatible with different providers' networks, the ability to bundle heavily-discounted equipment with new service sign-ups may be essential to overcome the marketing barrier presented by the need to acquire new subscriber equipment. Also, user devices are continually evolving with an explosion of electronic data devices, so called personal digital assistants and personal communicators, wireless modems and digital computer links, and a multitude of other uses.

In particular, it may make sense to eliminate the Commission's prohibitions against bundling handset equipment prices with service, as well as relaxing the restrictions on commissions and discounts.[23] At present, this issue is being considered in

23 While we would permit commissions and discounting of equipment when purchased with service, we would still require that equipment and service be available separately as well.

Bakersfield Cellular's petition to modify D.90-06-025 in investigation 88-11-040. Consequently, in order to conserve the Commission's resources, we will not duplicate that effort here.

4. Restrictions on Horizontal Integration

In addition to the preceding "vertical" integration problem, in many geographic markets the modest competitive pressure which could have survived the duopoly structure is further diluted by financial ties between the firms investing in each duopolist. In some cases, an individual firm may own an interest in both of the licensees.[24] Alternatively, a firm which competes with a second firm in some geographic markets may be a partner of the second firm in other geographic markets.

Horizontal attachments, even if indirect, serve to exacerbate the tenuous state of cellular radio competition and heighten the burden on regulators to safeguard the interest of consumers. We are interested in investigating possible steps the Commission might take to discourage anticompetitive forms of horizontal integration.

However, certain other forms of horizontal integration may be pro-competitive. In particular, "cluster" affiliations, in which firms establish common marketing identities or channels across regional or national territories, may improve the vitality of competition by facilitating the consumer's ability to identify familiar carriers and benefit from uniform service features.

In D.92-10-026, the Commission affirmed its existing policy of prohibiting duopolists from operating resale affiliates in their home markets. Parties may comment on whether this existing policy should be changed when the wholesale marketplace

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24 Generally firms do not own majority interests in both duopoly carriers, but have varying degrees of minority interest in one carrier while having a controlling or minority interest in the other.

becomes more competitive. Proponents of such a change should state why it is necessary to establish a separate resale entity to establish common marketing identities across cellular serving areas.

In contrast, firms in other industries are able to establish common marketing identities merely through the use of common "brand" names or by advertising that different firms are affiliated for certain marketing purposes. The use of separate legal entities, on the other hand, may further weaken the quality of any accounting information on which the Commission may rely to evaluate the condition of the industry in the future.

G. LEC Interconnection Arrangements

With the entry of new providers of mobile telephone services and the prospect that competitive pressure on incumbent cellular licensees will be intensifying, the availability of fair and reasonable interconnection with landline networks takes on a heightened significance. Thus, replacing the practice of negotiated interconnection arrangements for cellular service providers with tariffed interconnection arrangements for all mobile service providers appears very attractive. Currently, the issue is being addressed in Pacific Bell's petition to modify D.90-06-025.

H. Extended Area Service Concerns

We recognize that allowing cellular carriers to provide seamless service is important and that Extended Area Service provides one means to achieve that goal. We believe that carriers are offering such service because it meets the specific needs of customers. Cellular service, like many other telecommunications services does not stand alone. Cellular service can best be viewed as wireless access and as such is necessarily used in conjunction with other services. We have no intention of standing in the way of cellular carriers providing innovative service offerings to California.

A hypothetical case illustrates EAS service. When Carrier A establishes EAS service within a Carrier B's service territory, Carrier A's customers (some of whom actually reside in Carrier B's territory) are allowed to originate and terminate calls from within Carrier B's service territory and make intraLATA and interLATA calls at a single cellular rate. Carrier A is essentially reselling toll services to its customers and setting rates for cellular service within Carrier B's territory.

Some contend that EAS service results in cellular carriers reselling toll service without authorization, setting rates outside its geographic area, providing intraLATA and interLATA toll service without authorization and reselling cellular service to subscribers outside their service areas. To the extent that EAS results in cellular carriers providing service for which they are not authorized, we seek comment on what remedies are available to this Commission. One such remedy would be to grant facilities based cellular providers broad authorization to offer other telecommunications services, such as toll and cellular resale services, in addition to cellular service.

Allegations that EAS service is anti-competitive have been raised from time to time. We seek comment on what, if any, harmful effects EAS service has on the state of competition, and the long-term effects of cellular extended area service on cellular rates and competition. In addition, we seek comments on the benefits EAS service brings to customers and providers. This Commission seeks to develop rules that allow for the individual needs of customers to be met, that allows for innovative service offerings and marketing by cellular providers, and minimizes unnecessary regulatory burdens while protecting the public from anti-competitive behavior and abuse of market power.

I. Issues remaining in I.88-11-040

In D.93-05-069, the Commission granted limited rehearing of the Phase III decision (D.92-10-025) in I.88-11-040 and

consolidated that rehearing with this OII. The issues remaining unresolved from that proceeding are the USOA modifications, the reseller switch, the unbundling of the wholesale tariff, and the capacity monitoring program. The implementation of any or all of these options remains open at this time and will be considered in this OII to the extent that they are consistent with the alternative regulatory approaches set forth in this OII. This may include revisiting our previously rejected consideration of cost of service approaches to at least institute a price cap program and or implement the use of a reseller switch.

In D.92-04-081, the Commission granted rehearing of Resolution T-14619, which was consolidated with I.88-11-040 in order to modify or clarify Ordering Paragraph 9 of D.90-06-025, which relates to the procedure for cellular carriers to apply for rate increases. Because this issue remains unresolved, it will also be consolidated with this OII. It is unclear at this time whether this issue needs to be resolved. With the adoption of a new regulatory framework, it will probably become moot. However, if parties see a need to resolve this issue in the interim period, they may address it in this OII.

IV. Procedure

We plan to move expeditiously to consider and adopt a comprehensive regulatory framework for mobile telephone services in this proceeding. We invite the submission of comments on the itemized questions in Appendix A and the related discussion in the text of this order, and on the specific policies outlined in Attachment B for a price cap option. Comments should be brief, concise and limited to the issues raised herein. Comments excluding title pages and table of contents, must be limited to eighty pages. Those that exceed the page limit will not be accepted.

Upon the receipt of comments, for those issues involving disputed factual matters, the Commission may conduct evidentiary hearings. The Commission may issue interim rulings or decisions to guide parties for further comments or to dispose of matters ready for early resolution. Additionally, the assigned Commissioner may work with the assigned administrative law judge to identify issues in this OII which should be dealt with on a separate and expedited track for the purpose of meeting FCC filing requirements related to applications made by this Commission for the purpose of retaining authority over the regulation of cellular industry. A prehearing conference should be held as early as possible to determine what issues involve disputed facts and require a hearing, and a schedule shall be set for such hearings.

The existing regulatory framework which is specific to cellular radio telephone utilities will be subsumed within this comprehensive framework for mobile services once it becomes effective. Until that time, appropriate cases which need to proceed under the existing framework will continue to be processed before the Commission, but parties are hereby placed on notice that the regulatory conditions adopted in such decisions may be modified by action in this proceeding.

O R D E R

IT IS ORDERED that:

1. An investigation on the Commission's own motion into mobile telephone service and wireless communications is instituted for the purpose of developing policies to govern all providers of mobile telephone services to the public.

2. The scope of this investigation is limited to the issues identified in this order and attached appendices unless otherwise modified by a further order or ruling of the Commission. The rehearing of Resolution T-14619, which was consolidated with I.88-11-040, and reconsideration of the issues set forth in D.93-05-069 are consolidated with this OII.

3. All regulated firms which provide any form of mobile telephone service, as the term is defined in this order, for compensation to the public in the State, are hereby made respondents to this investigation. Any non-regulated entity that provides mobile telephone service is also invited to participate as a respondent. The respondent category includes all such firms regardless of whether they are facilities-based or pure resellers, "wholesale" or bulk carriers, or provide mobile telephone service at retail as a portion of a package of services.

4. All telephone corporations which provide one or more mobile telephone service firms with interconnection to the landline public telephone network are also made respondents to this investigation.

5. All respondents and other interested parties may file written comments not exceeding 80 pages, excluding title page and table of contents, addressing the issues described in this order on or before February 18, 1994. Rebuttal comments may be filed on or before March 11, 1994 and shall not exceed 40 pages. Parties shall file an original and twelve (12) copies of opening and rebuttal comments with the Commission's Docket Office.

6. Copies of comments and reply comments requested in Ordering paragraph 5 of this order need not be served on all identified respondents. Instead the Commission's process office shall maintain a list of all filed comments and reply comments by name and address. Any party desiring a copy of other parties' comments or reply comments may obtain a copy of the list from the Commission's process office. The party shall then request a copy from the specific party. Said comments shall be provided to requesting party within 3 working days. Reply comments, if any, shall be mailed on the same day that reply comments are filed to those parties requesting initial comments without need for a further request.

7. The assigned Commissioner or any assigned administrative law judge may make such adjustments to the schedule of these proceedings as are deemed necessary or desirable.

8. The Executive Director shall serve this order, by mail, on all known respondents currently holding certificates of public convenience and necessity as radiotelephone utilities or local exchange carriers, as well as other parties to I.88-11-040, R.88-02-015 and I.87-11-033 (see Appendix C).

This order is effective today.

Dated December 17, 1993, at San Francisco, California.

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners

APPENDIX A
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Specific Questions to be Addressed

1. What is the time frame, to the extent quantifiable, for the deployment of personal communications services (PCS) in California? Please take into account both spectrum allocation and technical challenges.

2. What portions of the mobile market will PCS licensees most likely serve in California? What amount of direct competition, to the extent its quantifiable, will PCS licensees provide to existing mobile telephone service providers?

3. Nextel, Inc. has announced its plans to introduce mobile telephone services in California in direct competition with existing cellular licensees. What portions of the mobile market will SMR licensees most likely serve? What amount of direct competition, to the extent its quantifiable, will Nextel, Inc. and additional specialized mobile radio (SMR) licensees provide to existing mobile telephone service providers in California? With regard to the cellular industry, please limit comments to competition at the wholesale level.

4. Comment on this order's characterization of competition in the mobile telephone market. In discussing the cellular industry, please limit comments to competition at the wholesale level.

5. Is mobile telephone service a service affected with the public interest? To what extent has it or will it become ubiquitous? If so, what are the obligations that dominant carriers should bear under a comprehensive regulatory framework?

6. How can the proposed dominant carrier regulation of cellular duopolies best preserve opportunities to improve overall market competitiveness and incentives for innovation?

7. Does the proposed dominant/non-dominant classification appropriately reflect current market conditions and those that can reasonably be expected over the next few years? Over the next decade?

8. Does the proportion of total available spectrum a service provider holds give a reasonable measure of the power that the provider can exercise in the public mobile telephone market? What other factors should be considered in determining market power and what weight should be given to each?

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9. Is the potential for implicit or explicit collusive behavior by cellular duopolists sufficient to classify them as dominant carriers?

10. Does the duopoly structure of the cellular industry ensure that a reasonable amount of competition will occur among cellular providers?

11. What types of regulation, if any, is most likely to spur the development of competition in the wireless market?

12. To what extent does the degree of competition currently existing in urban, suburban and rural California markets or mobile services protect subscribers adequately from unjust and unreasonable rates or rates that rates that are unjustly or unreasonably discriminatory? Indicate the method for determining whether how rates are unjust, unreasonable or discriminatory.

13. To the extent that conditions in a particular market fail to protect subscribers adequately from unjust and unreasonable mobile service rates, or rates that are unjustly or unreasonably discriminatory, indicate the extent to which mobile service is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within California.

14. How well has our existing regulatory structure promoted the development of competition and/or reasonable rates?

15. Should service providers of wireless communications as well as resellers who hold no or small amounts of spectrum be classified as non-dominant carriers? If so, should this classification occur regardless of whether these providers have network facilities? Is it reasonable to streamline entry or price regulation for non-dominant carriers to the extent permissible by law?

16. Is holding no more than 25% of total available cellular spectrum a reasonable trigger to grant non-dominant status to cellular licensees? Is bandwidth an appropriate standard to measure the degree to which new services are substitutes for cellular? Will such a standard ensure that cellular duopolists will not be able to indiscriminately exercise market power through their control of a bottleneck? What other criteria should the Commission consider?

17. Is any firm in which a dominant carrier, i.e., local exchange carrier or holder of more than 25% of mobile spectrum in a geographic market, has any financial interest an affiliate of the dominant carrier for regulatory purposes? Should "new" entrants into the mobile telephone market who are affiliates of dominant carriers be classified as dominant carriers themselves?

18. Is it likely that other new facilities-based entrants into the mobile telephone market holding less than 25% of total available spectrum in a geographic market will not control significant bottlenecks or wield significant market power?

19. Are the requirements for registration described in the order sufficient for non-dominant carriers?

20. Are current sanctions for non-compliance with consumer safeguards adequate? If not, what changes should be made?

21. To what extent is there a need for greater flexibility to waive some or all aspects of tariffing requirements for non-dominant carriers?

22. Is the proposed definition of "mobile telephone service" reasonable for establishing a comprehensive regulatory framework?

23. Is the proposed treatment of Improved Mobile Telephone Service (IMTS) and any other pre-cellular providers reasonable?

24. Which approach to regulation of cellular licensees described in the order best balances the interests of promoting the long-term competitiveness of the mobile telephone market with constraining the potential or actual exercise of market power while a duopoly structure remains in place?

25. If the Commission wishes to examine a cost-based price cap further, what general features should be included?

26. What is the price elasticity of cellular service? Is it inelastic, if so why?

27. Comment on the general approach to spectrum valuation described in the order. What alternative approaches should the Commission consider for the valuation of spectrum?

28. Is the need for regulatory oversight in California different from that of other states? Are market conditions different, if so, does that affect the approach to regulation that is appropriate in California?

29. How do rates for cellular service in states that actively regulate cellular compare to states that do not? Are there other relevant comparison? If so, what are they? (Please provide comparative data for any comparison that you advocate.)

30. Should the Commission require that the radio transmission function (access to tower and transmitter/receiver) be available on an unbundled tariffed basis from all landline transmission and switching functions if the Commission does not adopt a cost-based price cap for cellular licensees ? If so, what level of unbundling is necessary? How should tariff prices be computed?

31. How advisable is it to engage in unbundling if the Commission expects the market to be competitive in the future? Are unbundling requirements needed in a competitive market?

32. Is the need to require the unbundling of radio transmission from all landline transmission and switching functions lessened if the Commission adopts a cost-based price cap?

33. In light of the growing dependence of public agencies on mobile telephone capabilities, should the Commission require mobile telephone service providers to establish special rates for public safety or other public agencies? If so, what criteria should be used to qualify?

34. Is it reasonable to conclude that there are much weaker benefits from the integration of other competitive services, e.g., long-distance and enhanced services, with dominant radio carrier services? Is it reasonable to conclude that other non-dominant providers of service would be able to offer such integration at less risk to the competitive vitality of those markets?

35. If the Commission does not adopt a cost-based price cap for cellular licensees, should it prohibit discounts for the bundling of competitive non-cellular services, e.g., long-distance or enhanced services, with cellular service? Should the Commission take other steps to discourage anticompetitive vertical integration?

36. If the Commission does adopt a cost-based price cap, is the need to prohibit such discounting and to discourage such anticompetitive vertical integration lessened?

37. Should the Commission encourage the development of standards for interoperability among different mobile telephone systems so that users may more readily switch among different technologies and carriers? If yes, how could the Commission adopt this goal?

38. Should the Commission discourage various forms of horizontal integration such as any common ownership interest in both duopoly licensees by subjecting such carriers to stricter price regulation?

39. Are there privacy issues surrounding the establishment of data bases which will be used to track the movement of PCS users that the Commission should address?

40. To what extent is it appropriate to make mobile telephone services subject to universal lifeline service fees and other fees that currently apply to landline telephone service providers?

41. Should a cellular lifeline rate be encouraged to promote greater ubiquity? If so, who should it apply to?

42. What benefits does Extended Area Service (EAS) service bring to customers and providers?

43. What if any harmful effects does EAS service have on the state of competition?

44. To the extent that EAS results in cellular carriers providing service for which they are not authorized, what remedies are available to the Commission?

45. What are the long term effects of cellular extended area service on cellular rates and competition?

46. Under what safeguards or limitations should the Commission allow cellular carriers to set rates in other utilities service areas?

47. What test or monitoring program other than proposed in the Phase II decision is appropriate for measuring whether cellular prices are competitive? And how would the test measure anti-competitive behavior?

48. How would this test or program be administered by the Commission? What type of information would be required to monitor and how difficult would it be to obtain? For example, should CACD collect and monitor data, or should cellular companies supply information to a third party clearinghouse which would compile results for the Commission? How would information from cellular companies be collected by the Commission, and at what intervals, either quarterly, annually, or otherwise?

49. How would the results of pricing information or any other test be translated into regulatory action? For example, what benchmarks or indicators should be used to trigger either more regulation or less regulation by the Commission?

50. Under what conditions, if any, should wireless services be considered either as the equivalent of basic service or as part of basic service?

51. Should wireless service providers be required to offer a lifeline assistance rate?

52. Are there circumstances, either now or in the future, when the Commission should apply universal service standards to wireless providers?

53. If we upgrade basic service to include enhanced features, should wireless services also be required to upgrade basic service packages to include enhanced features at the basic service price?

(END OF APPENDIX A)

APPENDIX B
Page 1

Proposed Policies Governing Mobile Telephone Services

A. General

1. FCC cellular license holders would be considered dominant carriers in the public mobile telephone market unless they qualified for one of the exceptions noted below.

2. All independent (unaffiliated with license holders) cellular retailers/resellers would be considered non-dominant providers and regulated as described below.

3. Independent providers of all alternative types of mobile telephone service would be considered non-dominant providers and regulated as described below unless the Commission finds that such providers hold significant market bottlenecks.

4. The Commission would grant non-dominant status to any cellular license holder (cellular duopolist) that demonstrates (through the application process) that it controls no more than 25% of the cellular bandwidth in a given geographic market, as described below.

5. The Commission would entertain applications for non-dominant status from any cellular license holder that claims to control no more than 25% of all the bandwidth, including non-cellular assignments, being used to provide public mobile telephone service in a given geographic market.

B. Dominant Carriers

1. Price Cap Regulation

Dominant carriers will be subject to a price cap mechanism which will determine the maximum weighted price of bottleneck rate elements. Bottleneck rate elements shall include the radio transmission function and any other functions that have not been unbundled from the radio function and separately tariffed by a dominant carrier.

The price cap shall contain an automatic adjustment for inflation. No index for productivity or for spectrum value changes is contemplated at this time.

An initial weighted price cap level shall be established by determining an estimate of the reasonable operating costs of each carrier, a standard valuation for each cellular geographic serving area (CGSA) of the spectrum held by each carrier, along with an appropriate rate of return.

Dominant carriers may change prices up or down on one day notice providing the weighted average rate does not exceed the price cap level in effect at that time.

2. Special Provision for Granting Non-Dominant Status to Any Cellular Licensee Holding No More Than 25% of Bandwidth in a CGSA

The Commission would automatically grant non-dominant status to any cellular license holder that demonstrates (through the application process) that it has effective control over no more than 25% of the available cellular bandwidth in a given CGSA, or has petitioned the FCC for a waiver of Section 22.902 CFR to transfer enough spectrum to a new carrier or share enough spectrum with a new carrier to fall below this bandwidth limit. With the current FCC allocation of 50 MHz per CGSA, a license holder must have effective control of no more than 12.5 MHz of bandwidth to qualify for consideration under this provision.[1]

New carriers must not directly or indirectly, wholly or in part, have any common ownership interests with any of the entities owning interests in existing cellular carriers in the same geographic market. After the Commission approves a preliminary plan for dividing spectrum with an additional carrier, a license holder may apply for a temporary waiver from dominant carrier regulation for a period of up to 2 years from the date a petition is filed with the FCC while

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1 Any feasible method of dividing "effective control" of a licensee's assigned 25 Mhz at least in half would be considered. A licensee may elect to achieve this division by splitting up the total number of authorized channels in any band into two new blocks, each completely dedicated to one carrier, or by establishing a scheme for sharing access to message channels or use of control channels.

action is pending there; the Commission would treat the applicant as a non-dominant provider during that period. If the FCC grants the waiver the non-dominant status becomes "permanent."

3. **Required Unbundling**

Each dominant carrier is required to unbundle the cell site radio segment of its operations from all landline network functions and ancillary functions for tariffing purposes. Among the functions which should be unbundled from the radio transmission function are:

- o MTSO functions
- o Backhaul from cell site antennas
- o Telephone numbers
- o Billing services
- o Enhanced services
- o Other landline local or toll services

Equipment which is required for a user to receive service from a dominant carrier's network may be priced at a lower level when purchased on a bundled basis. In no instance, however, shall a dominant carrier require that equipment be purchased along with radio transmission service.

C. **Non-Dominant Providers**

1. Non-dominant providers shall meet the regulatory requirements of the Commission by registering the business name, name(s) of principal officers, and address and telephone numbers to which service complaints should be directed.

2. Non-dominant providers need not file public tariffs with the Commission.

3. Non-dominant providers shall comply with minimum consumer information and complaint resolution guidelines established by the Commission.

4. Non-dominant providers need not file financial data, but such providers will still be subject to record inspection by Commission staff (including DRA).

(END OF APPENDIX B)

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