DOCKET FILE COPY ORIGINAL

RECEIVED
AUG 30 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Services	CC Docket No. 94-54 RM-8012

COMMENTS ON NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

Allnet Communication Services, Inc. (Allnet) hereby submits these comments on the Commission's Notice of Proposed Rulemaking and Notice of Inquiry, released on July 1, 1994. Allnet fully supports the Commission's efforts to require that all cellular providers offer exchange access that is equal in type, quality and price, to that provided to any IXC, including an IXC service affiliated with the cellular carrier. The costs of providing equal access from switches used by cellular carriers has proven insignificant. The switches used by the cellular providers typically already have or can be equipped to have the capability to provide equal access. By requiring equal access, barriers to entry in the provision of IXC services to cellular customers will come down. Today, it is practically impossible to provide competitive IXC services to customers of cellular providers where equal access is not being provided. In fact, some cellular providers have withdrawn equal access from their customer base once they are no longer owned by a BOC, even though the capability remains present and implemented in their networks. The ability of these cellular carriers to withdraw such premium access from the marketplace simply demonstrates the

No. of Copies rec'd 0+8
List A B C D E

market power that they continue to possess, and they will be anticipated to continue to possess, in the mobile cellular access marketplace.

I. Cellular Providers Should Be Required to Provide Equal Access

The Notice first inquires as to whether cellular providers should be required to provide full equal access. Notice at ¶¶35-43. The Commission points out that "equal access will benefit consumers by increasing choice and perhaps lowering the price of long distance services originating or terminating on their cellular systems." Notice at ¶36. Second, the Commission points out that "equal access obligations for cellular providers can increase access of end users and other telecommunications providers to networks" thus expanding the "range of IXCs that consumers can choose, which could enhance the usefulness of communications services and foster increased network usage." Notice at ¶37. Third, the Commission points out that "ubiquitous cellular equal access would permit IXCs to develop service offerings for discounted long distance services that, for example, combines all of a customers long distance calling, including residential wireline and cellular usage." Notice at ¶38. Fourth, the Commission notes that "equal access for IXCs would appear to be consistent with the principle of regulatory parity underlying the recent statutory amendment, *i.e.*, regulating similarly situated cellular carriers consistently may require that we adopt equal access for all cellular providers." Notice at ¶39.

Allnet is in a unique position to comment on the current state of cellular services and IXC services because Allnet is the largest IXC with a program for reselling cellular services. See, Affidavit of Greg Jones at Attachment I, herein. There are currently large barriers to entry in cellular resale on both the wireline and

non-wireline sides of the cellular market. However, the barriers are significantly higher on the non-wireline systems because of the lack of equal access. If equal access were available on non-wireline systems, Allnet could combine its feature rich long distance service features with the resold cellular services to its customers. However, where equal access is not available, an IXC who attempts to engage in cellular resale is limited to reselling the long distance services of the cellular provider -- which is typically provided by another underlying IXC. This means that cellular resale in the absence of equal access is a very low margin, arbitrage business. Moreover, the opportunity for arbitrage is highly limited because the duopoly nature of the cellular facilities market has allowed cellular carriers to engage in successful, and defendable price discrimination between resellers and end users. As explained in the accompanying affidavit, the terms and conditions applied to cellular resellers are sometime explicitly or implicitly more onerous than those applied to end users.

In sum, there is little doubt that there would be significant benefits from requiring equal access and also requiring that cellular resale prohibitions (such as common conditions requiring an end user to change their number in order to purchase from a cellular reseller) be eliminated. There is no technical or economic reason why equal access, which is currently being provided by the preponderance of wireline cellular carriers, cannot also be provided by the non-wireline cellular carriers. In fact, non-wireline cellular providers who are owned by Bell Operating Companies typically offer equal access today, and McCaw-associated cellular carriers are now to be required to provide equal access under the agreement between AT&T and the Department of Justice. See, Attachment II. Thus, the switching capabilities are clearly there and only need to be activated in a small minority of cellular providers

who are still holding out from providing equal access. Furthermore, the same equal access conditions being imposed on McCaw and, on the BOCs, should also be imposed on the remaining cellular carriers. See, Attachment II, Letter of DOJ to BOCs.

II. Equal Access From Non-Cellular Systems

The Commission next raises the question of whether equal access requirements should be imposed on non-cellular systems. Equal access requirements should be imposed on any local carrier who has market power in the access market. Clearly all broadband carriers, to the extent that they provide generally offered switched voice services, would come within this class. PCS and CMRS providers, generally, who provide cellular-like voice services would come within this class. In contrast, specialized, non-voice paging systems would not. Such systems are not in the same genre of cellular telephone service. Paging systems are in essence information services. They do not involve an access component because paging users are indifferent to the point of termination point of a call to a paging database. A paging user would not know the difference, nor care, if the paging database were next door or across the continent. Thus, there is no implicit or explicit access or IXC transport component to such services and, in turn, equal access is not necessary.

III. Implementation of Equal Access Obligations, Including Terms and Conditions

The Commission next inquires with regard to implementation questions. Notice at ¶¶50, et seq.. The Commission asks what timetable should apply to

CMRS providers in providing equal access. Notice at ¶54. The same standards that applied to equal access obligations for independent local telephone companies should also apply to CMRS providers. See, CC Docket No. 78-72, Phase III. Equal access should be implemented upon bona fide request by an IXC.

The Commission also seeks information on the boundaries for equal access and whether direct interconnection in the CMRS serving territory should be required. Notice at ¶¶67-70, and 79. The equal access obligations for CMRS providers should conform to the LATA boundaries established for the BOCs. A CMRS provider like the BOCs should be allowed to seek waiver of such boundaries based on a showing of good cause. In any case, a CMRS provider should be required to provide at least one point of interconnection in each LATA. This will assure that full interconnection equality will be achieved.

The IXC should have the option of connecting directly to the cellular system or through a LEC tandem. This option will assure that the most efficient connection configuration will be available for differing circumstances and IXCs. Requiring direct interconnection or, in the alternative, requiring LEC tandem interconnection will tend to either favor larger IXCs or smaller IXCs, with respect to the other. Both options must be made available unless it can be shown that only one is technically unfeasible.

IV. "1+" Form of Equal Access

The Commission next asks whether some form of equal access should be less than "1+" equal access. Notice at ¶85. It is without question that "1+" dialing is a necessary requirement for equal access. Without "1+" presubscription for all

carriers, customers will not have any meaningful choice other than to route all of their IXC calls to the cellular carrier-appointed IXC because without "1+" presubscription, the only carrier that can be reached on a 1+ basis will be the cellular carrier's affiliate IXC. The attached Ameritech ad highlights the disadvantages to a competitor who must be dialed using the 10XXX code. Customers will not reasonably choose to dial 10XXX (soon to be 101XXXX) or 1-800 prefixes in order to dial an alternative carrier.

V. Presubscription and Allocation

The Commission next asks whether presubscription and balloting should be required. Notice at ¶92. Balloting and allocation, as proposed by Bell Atlantic should be imposed. The Commission attempts to draw a difference between the BOC-AT&T relationship at the time of divestiture, and that of the non-wireline cellular providers. Notice at ¶92. This is incorrect. Today, the cellular carriers that do not provide equal access are forcing their users to use the IXC services they provide or those that are provided by an IXC with which the cellular carrier has a financial relationship. Thus, there is a conflict of interest that the cellular carrier has with regard to IXC services. Only through the provision of full equal access (as proposed by the Department of Justice), including presubscription and balloting, can the cellular carrier bias be neutralized.

VI. Cost Recovery

The Commission next asks how costs should be recovered. Notice at ¶95. The Commission should prescribe a non-discriminatory per presubscribed line charge for

recovering equal access costs. Rates for equal access recovery should be supported by detailed cost support materials. This would be consistent with cost causation and benefit flows.

VII. Billing and Collection Services

The Commission next asks about treatment for billing and collection. Notice at ¶99. The Commission has jurisdiction over incidental billing and collection services. Billing and collection is critical to providing services to cellular customers. At a minimum, billing-related data must be provided pursuant to tariffs to assure that such services are provided on a non-discriminatory and reasonable basis. Such minimum requirements for each cellular user must include name, address, and telephone numbers, as well as the cellular screening, routing and delivery data in each customers profile.

VIII. Cellular Resale Obligations and Reseller Obligations

The Commission notes that a strong resale market for cellular services fosters competition. Notice at ¶138. We agree. Resale prohibitions should not be allowed. A general statement to that effect, as well as the publication of tariffs for access will assure that discrimination among resellers will be detectible and hopefully minimal. Stronger measures may be required but need not be imposed now.

As to the resellers themselves, the Commission asks whether interconnection requirements should be imposed on the cellular resellers, themselves. Notice at 128. This is unnecessary because one cellular reseller is always free to supplant another cellular reseller. Thus, as long as full equal access is available and number portability

is not restricted (i.e., a customer can change resale carriers without changing their number), a cellular reseller has no market power and thus no explicit requirements (other than those generally imposed by the Communications Act) need be applied.

IX. Conclusion

For the reasons set forth herein, the Commission should require that CMRS providers be required to provide full equal access, as specified herein.

Respectfully submitted,
ALLNET COMMUNICATION SERVICES, INC

Roy L. Morris
Deputy General Counsel
1990 M Street, NW, Suite 500
Washington, D.C. 20036
(202) 293-0593

Dated: August 30, 1994

Attachment I:

Affidavit of Greg Jones

Attachment to Allnet
August 10, 1994 Response

UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN ELECTRIC CO. INC. and AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Defendants.	Civil Action No. 82-0192 (HHG)

AFFIDAVIT OF GREG JONES

GREG JONES, being duly sworn, deposes and says:

1. I am the Senior Vice President for Allnet Communication Services, Inc. ("Allnet") and as part of my product development responsibility I negotiate with the Bell Operating Companies arrangements that are intended to allow Allnet to resell and/or receive equal access from the Bell Operating Company cellular services. By seeking to resell and/or receive equal access to cellular services of the Bell Operating Companies, it was Allnet's objective to provide Allnet's long distance (interLATA) service customers discounted and feature-enhanced cellular, roaming, and long distance services from their existing cellular telephones. To the best of our knowledge, Allnet is the only major long distance company that has attempted to resell BOC cellular services.

2. Most of the Bell Operating Companies have presented several major obstacles to the successful resale of their cellular services by Allnet.

3. First and foremost, most of the Bell Operating Companies, including Southwestern Bell, have refused to allow Allnet to resell to an existing cellular service customer using that customer's existing cellular telephone number. This refusal to allow resale using existing cellular telephone numbers has effectively prevented Allnet from selling, on a resale basis, to existing cellular customers. Most cellular customers are not willing to change their numbers in order to change their carriers. Thus, there are high barriers to entry for even resale carriers seeking to sell to the embedded base of Bell Operating Company cellular customers.

4. Another major barrier to resale that some Bell Operating Companies have created is through their refusal to allow direct termination and origination of calls to their cellular switches. This refusal to provide direct interconnection explicitly or implicitly forces Allnet to pay access charges to the local telephone company (who is often the cellular affiliate) for each cellular call Allnet will originate or terminate from its cellular customer's telephones. This has resulted in inflated costs for resale of cellular calls and for interLATA calls originated and/or terminated to a cellular telephone.

5. Another major barrier to resale of some Bell Company cellular services is caused by the underling facilities based cellular carrier explicitly or implicitly holding the resale carrier liable for the facilities-based call fraud -- while not imposing the same liability requirement on the facilities based

cellular carrier's retail customers. Due to the choice of cellular technology, cellular services are subject to fraudulent use. A thief can easily intercept over-the-air transmission by the underlying cellular carrier of the billing information for cellular telephones. The cellular telephone call thief then uses that information, obtained from the underlying cellular system, to clone its telephones. Calls made from the cloned telephones are fraudulently billed to the original, legitimate cellular telephone number. When this type of thievery takes place for a retail cellular customer of the Bell Operating Company, the retail customer is not held liable. But a similarly situated reseller is forced to assume liability for this fraudulent use even though the source of the fraud was in the facilities of the Bell Operating Company's cellular system. This is simply another way in which the costs of cellular resale are kept artificially high.

6. A fourth source of increasing reseller costs is accomplished through the "roamer" charging scheme. If a cellular customer roams outside of its home cellular territory, the foreign Bell Operating Company charges the home Bell Operating Company "roaming" charges. The home Bell Operating Company then charges the reseller those charges at the retail rates. The unfairness in this arrangement arises from the fact that the billing relationship between the home and foreign Bell Operating companies is symmetrical -- that is, each charges the other approximately the same amount of roaming charges. Thus, overall there is little or no net payment between the underlying cellular companies.

However, the reseller continues to be charged as if there were a net transfer of funds between the carriers. This results in the reseller being unable to collect any of its own overhead or financing costs on these calls. The roaming charges can be very substantial and, in a resale situation, must be effectively financed by the reseller [The reseller must first be billed by the underlying carrier for these calls, and then can charge no more than the original roaming rate one month later to its own retail customer. The roaming charges must be handled on a "pass through" basis in order to remain an attractive alternative to underlying home carrier and because each foreign cellular carrier charges its own rate which cannot be determined in advance.]

7. Finally, almost all rates, practices, and charges, including access charges, are governed by individually negotiated contracts which often differ from market area to market area, and from reseller to reseller. Thus, extensive and artificial barriers are created by a Bell Operating Company where it forces a reseller to negotiate, de novo, a separate agreement for each cellular property. This practice not only delays entry, it increases its costs. In addition, by offering services on a customer-specific negotiated basis, some Bell Operating Companies have, and continue to, offer services for resale to some customers on terms, conditions, and charges that are more favorable than it offers such services to others.

8. Overall, the underlying cellular carriers are reluctant to allow any opportunity for competition with their embedded base

of customers and have taken aggressive measures to impede such competition by erecting a number of technical and cost barriers to effective resale of their services.

Greg Jones

Subscribe and sworn to before me this 10th day of August, 1994.

Susan Breen

Notary Public

SUSAN BREEN
Notary Public, Oakland County MI
My Commission Expires May 6, 1997

Attachment II:

Letter of DOJ Regarding Equal Access Requirements for Under the MFJ For Cellular Carriers With Affiliate IXCs

U.S. Department of Justice

Antitrust Division

Judiciary Center Building
555 Fourth Street, N.W.
Washington, D.C. 20001

June 14, 1994

BY TELECOPY AND FIRST CLASS MAIL

Michael K. Kellogg, Esq.
Kellogg, Huber & Hansen
1301 K Street, N.W.
Suite 1040 East
Washington, D.C. 20005

Re: *United States v. Western Electric Co., et al.*
Bell Companies' Request for a Generic Wireless Waiver

Dear Mr. Kellogg:

The Department has concluded its investigation and analysis of the Bell Companies' request, submitted as modified on November 12, 1993, for a waiver of the interexchange line of business restriction of Section II(D)(1) of the Modification of Final Judgment ("MFJ") as applied to their "wireless" businesses, and other relief (the "Generic Wireless Waiver"). The Bell Companies ("BOCs") may proceed to file their motion for that waiver with the Court.

The Department intends to support the Generic Wireless Waiver, as proposed in the Bell Companies' submissions of September 24 and November 12, 1993, only to the extent stated in this letter. The Department reserves its right and responsibility to modify its position if it appears to the Department, in light of comments of interested persons, further investigation or subsequent developments, that a change of position is appropriate. The discussion herein follows the form of the BOCs' proposed order of September 24, 1993, as modified by your letter of November 12, 1993.

I. Interexchange Services. The Department intends to support the BOCs' request for a waiver of the interexchange prohibition, subject to the conditions stated in the proposed order and model equal access plan, on the following conditions:

a. That the authority to provide interexchange services is limited to the provision by resale of switched interexchange services. Our current view is that

not more than forty-five percent of any BOC cellular system's resold interexchange service should be purchased from any one interexchange carrier.

b. That the conditions on the proposed waiver apply to any entity that is a BOC within the meaning of the MFJ.[1]

c. That the scope of the authority to provide interexchange services is restricted to

(1) Telecommunications originating in a cellular exchange,[2] as currently configured, or other similarly configured networks, distinct from the landline local exchange, wherein radio is used to connect the network with a customer who is not at a fixed location. The BOCs have based their reasoning supporting a waiver and the design of their proposed order and equal access plan on the architecture of their existing cellular systems, and the Department will not support a waiver that is not limited to such systems or systems with similar architectures.

(2) Telecommunications intended by the originator to be directed to a cellular exchange, as described above, but that the cellular exchange subscriber has forwarded to another destination (including a voice mailbox or similar storage facility). The authority to provide interexchange services under this condition is limited to that portion of the interexchange service from the cellular system to which the telecommunication was directed by the originator to the ultimate destination. This condition specifically does not authorize the provision of interexchange services from the point of origination to the cellular system (*e.g.*, an "800 access to cellular" service), which the BOCs have not sought in this proceeding.

d. That the authority be conditioned on an explicit requirement that:

"Each Bell operating telephone company shall offer to all interexchange carriers exchange access and exchange services for such access on an unbundled basis that is equal in type, quality and price to that provided to any interexchange service provided by the Bell company or any affiliate thereof."

---

[1] These conditions likewise apply to the relief sought in Sections II(b), II(c) and III of the proposed order, and to the transmission of IS-41 or comparable administrative messages pursuant to Section II(a). The Department recommends that Section II(a) be separated into two sections for ease of reference.

[2] "Cellular exchange" within the meaning of this letter refers to an exchange service offering commercial mobile services, as defined in 47 U.S.C. § 332(d)(1), in the 800 MHz radio bands. The Department understands that such exchange services are provided by companies that are, pursuant to FCC regulation, separate subsidiaries from local telephone exchange companies ("LECs"), and that the principal facilities used to provide cellular exchange service, *e.g.*, switching equipment and radio base stations, are physically and operationally separate from LEC facilities.

e. That the authority to provide interexchange services be conditioned on an explicit requirement that:

> "Each Bell operating telephone company shall not discriminate between any mobile service provided by the Bell company or an affiliate thereof and any nonaffiliated mobile service provider or between an interexchange service provided by the Bell company or an affiliate thereof and any nonaffiliated interexchange carrier in the:
>
> > "(a) establishment and dissemination of technical information and interconnection standards;
> >
> > "(b) interconnection and use of the Bell operating telephone company's telecommunications service and facilities or in the charges for each element of service; and
> >
> > "(c) provision of new services and the planning for and implementation of the construction and modification of facilities used to provide exchange access."

f. That the authority to provide interexchange services be conditioned on an explicit requirement that:

> "Each Bell Operating Company or affiliate thereof providing commercial mobile service within the meaning of 47 U.S.C. § 332(d)(1) shall offer to all interexchange carriers exchange access and exchange services for such access on an unbundled basis that is equal in type, quality and price to that provided to any interexchange service provided by the Bell company or any affiliate thereof."

Implicit in this concept and in the concept of equal access is that the price, quality and terms upon which cellular service is offered shall not vary with the customer's choice of interexchange carrier. That proposition should be affirmed explicitly:

> "A Bell Operating Company or affiliate thereof shall not sell or contract to sell wireless service at a price, term or discount that depends upon whether the customer obtains interexchange service from the Bell Operating Company or an affiliate thereof."

In addition, the Department believes that the same proposition should apply to the sale of interexchange service:

> "To the extent that a Bell Operating Company or affiliate thereof provides interexchange services pursuant to this order to unaffiliated wireless services providers or customers thereof, the Bell Operating Company shall not sell or contract to sell interexchange service at a price, term or discount that depends upon whether the customer obtains wireless service from the Bell Operating Company or an affiliate thereof."

Finally, in order for these guarantees to be meaningful, the Department believes that the Bell Operating Companies should be required to state separately the prices, terms or rate plans for (a) wireless services and (b) interexchange services.

g. That the authority to provide interexchange services be conditioned on an explicit requirement that:

"Each Bell Operating Company or affiliate thereof providing commercial mobile service within the meaning of 47 U.S.C. § 332(d)(1) shall not discriminate between any interexchange service provided by the Bell company or an affiliate thereof and any nonaffiliated interexchange service carrier in the:

"(a) establishment and dissemination of technical information and interconnection standards;

"(b) interconnection and use of the Bell Operating Company's or affiliate's telecommunications service and facilities or in the charges for each element of service; and

"(c) provision of new services and the planning for and implementation of the construction and modification of facilities used to provide exchange access."

h. That the BOCs shall file with the Department of a mobile equal access plan, which plan shall not be effective (1) until 90 days after filing, if not disapproved by the Department, or (2) if disapproved by the Department; that there be no authority to provide interexchange services pursuant to this waiver until an equal access plan has become effective; and that the plan at a minimum contains the specifications contained in the BOC Model Equal Access Plan submitted on September 24, 1993, as modified by your letter of November 12, 1993, except in the following particulars:

(1) The Department believes that it is necessary in the provision of equal access that interexchange services not be sold by the persons selling exchange services and who are required to administer presubscription (the "cellular sales force"). It is the Department's contemplation that this restriction would apply to retail store agents and to other BOC salespersons who receive inquiries by prospective subscribers, *i.e.*, salespersons who handle "incoming" prospects or requests for service.

(2) Persons selling long distance services (the "long distance sales force") may sell cellular services and long distance services on the following conditions:

(a) That the long distance sales force be a distinct group of individuals, with separate managers, from the cellular sales force and from any sales force that sells products or services of the Bell Operating telephone companies.

(b) That the long distance sales force receive any list of the BOC's wireless customers on the same terms, and at the same time, as that list is received by competing interexchange carriers. The Department anticipates that a BOC cellular carrier will at regular intervals provide all long distance carriers with listings identifying the names, addresses and telephone numbers of all cellular subscribers, regardless of the distribution channel through which the subscriber was retained. It is a condition to the BOCs' direct marketing of cellular long distance that this information be made available to all competing interexchange carriers.

(c) That the long distance sales force must advise actual or prospective subscribers of their right to presubscribe to competing interexchange carriers.

(d) That the long distance sales force not receive any information about the identity of the BOC's wireless customers' interexchange carrier or the wireless customer's cellular or long distance usage, unless the customer is already a customer of the BOC's interexchange service.

(e) That the long distance sales force be a distinct group of individuals, with separate managers, from any sales force that sells the products or services of any Bell Operating telephone company.

(2) The Department understands that the marketing restrictions applicable to "existing customers" (as specified in your letter of November 12, 1993) apply not only to customers existing as of the date of any Order, but also to persons who become customers of the BOC wireless service thereafter. When such persons become customers, marketing of long distance service to such persons are subject to the provisions on "marketing restrictions: new customers"; after such persons become customers, they are subject to the provisions on "marketing restrictions: existing customers." The Department conditions its support of this waiver on this understanding, and on the further condition that the BOC personnel marketing long distance services not receive wireless customer names, addresses and telephone numbers until that information is also available to competing interexchange carriers.

(3) The Department conditions its support for a waiver on the requirement that, if the BOC or its wireless affiliate bills its long distance customers for that service in the same billing as for its wireless exchange service, it make that billing arrangement available to competing interexchange carriers on reasonable and nondiscriminatory terms. It is the Department's understanding that most BOCs currently make such billing arrangements available to interexchange carriers; if this relief is granted, the Department believes that the BOCs should not be permitted not terminate those arrangements for competing carriers.

(4) The Department opposes any authority pursuant to which the BOC might discriminate in the provision of interexchange routing or in the colocation of interexchange points of presence in cellular MTSOs.

(5) The Department believes that the BOCs should be required to notify competing interexchange providers of changes to existing network services or the addition of new services that affect the interexchange carriers' interconnection at least 60 days prior to implementation.

(6) The Department does not understand the Proposed Order to permit a BOC to treat its long distance service as the default carrier for a customer that fails to make the required selection of an interexchange carrier. The Department understands that customers who fail to select an interexchange carrier will not receive interexchange service from their wireless telephones, and conditions its support for the waiver on that understanding.

Finally, we believe that in this instance it is appropriate to condition the continued provision of interexchange service on compliance with the equal access conditions and requirements of this waiver and of the MFJ. We also believe that the waiver order should grant the Court the authority to impose civil fines, not to exceed $10 million, for violations of equal access conditions and requirements of this waiver or of the MFJ in the provision of interexchange services from wireless exchanges.

II. Paging, etc. The Department intends to support the relief specified in Section II of the Proposed Order, subject to the following clarifications:

a. That the "IS-41 or comparable" functions specified in paragraph II(a) not be used to discriminate in favor of the BOC's own interexchange service.

b. That the default traffic specified in paragraph II(c) be explicitly limited to interexchange telecommunications initiated by roaming customers.

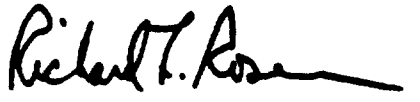
III. Local Calling Areas. The Department believes that this issue should not be presented to the Court at this time and, if presented, intends in the absence of further developments to urge the Court to defer ruling on this issue. On June 9, 1994, the Federal Communications Commission announced the issuance of a Notice of Proposed Rule Making and Notice of Inquiry, pursuant to which the Commission indicated that it has tentatively concluded that imposing equal access obligations on cellular telephone companies would be in the public interest. The text of the Notice is not yet available to the public or to the Department.

The Department understands that any such equal access obligation necessarily requires the adoption of a map defining local calling areas and delimiting the respective areas of local and long distance service. Therefore, if the Commission acts in accord with its tentative decision, it will need to consider the appropriate local calling areas for cellular service, the issue raised by this portion of the BOCs' proposal. The FCC's conclusions may result in the imposition by regulation of a local calling area map that is different from either (1) the current

cellular calling areas, as defined by the MFJ and subsequent orders, and (2) the relief the BOCs seek here. Given the possibility of inconsistent results, it would not be productive for the Court to consider a comprehensive redefinition of local calling areas at the same time that the FCC is considering the same issue. If the FCC does not adopt a final rule on cellular equal access, the Court may then consider whether it wants to make substantial changes to the cellular equal access map. The Department will, during the pendency of the FCC proceeding, evaluate pending calling area waiver requests to determine whether they meet the standards for such relief.

IV. FCC Preemption The Department does not support the relief sought in Section IV of the Proposed Order. If the FCC adopts an equal access order that reasonably achieves the purposes of the Decree, including equal access, but differs in some technical respects in its implementation of those purposes, it may be appropriate for the Department and the Court to consider whether it is necessary or wise to maintain two sets of equal access obligations. However, it would in our view be inappropriate to make that determination before the Commission adopts a final rule on this subject.

Sincerely,



Richard L. Rosen
Chief
Communications & Finance Section

Attachment III:

Ameritech Ad Describing the Disadvantages of Non-Dial-1 Access

YOU WANT SAVINGS ON LOCAL PHONE CALLS?

News paper AD

DO NOTHING