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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 7 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Equal Access and Interconnection )  
Obligations Pertaining to )  
Commercial Mobile Radio Services )

CC Docket No. 94-54  
RM-8012

COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits the following comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-145, released on July 1, 1994, in the docket captioned above ("NPRM/NOI"). By this NPRM/NOI, the Commission is considering imposing equal access obligations upon commercial mobile radio service ("CMRS") providers, creating tariff requirements to govern local exchange carrier ("LEC") interconnection provided to CMRS providers, and requiring CMRS providers to interconnect with each other.

NTCA is a national association of approximately 500 LECs providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural and small-town America. Many of NTCA's member LECs are also involved in providing cellular service to customers in many Rural Service Areas ("RSAs") and a small number of Metropolitan Service Areas ("MSAs"). Many NTCA members also expect to participate in the provision of other CMRS services including personal communications services ("PCS").

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I. MANDATORY EQUAL ACCESS WOULD NOT SERVE THE PUBLIC INTEREST.

A. WIRELESS SERVICES SHOULD NOT BE CONSTRAINED TO DEVELOP ACCORDING TO THE WIRELINE MODEL.

The distinction between exchange access and interexchange that has formed the framework for the market relationship between LECs' and IXC's' operations is not axiomatic to the cellular industry structure or, even more, to the expected PCS and Specialized Mobile Radio ("SMR") industry structures.<sup>1</sup> The Commission has already acknowledged that this framework is difficult to apply to the wireless industry.<sup>2</sup> Non-Bell operating companies ("BOC") cellular operators offer an array of telecommunications services and are free to design their own structure for how end users pay for these services. Equal access would disrupt this pricing freedom and unnecessarily confine the development of wireless services to the wireline model. The service offerings of wireless providers in competition with each other should not correspond to the same point-to-point design or rate recovery structure as that which applies to the LEC/IXC industry offerings or to some new, government determined geographical basis that may be adopted.

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<sup>1</sup> The determination that the public should pay the costs of equal access conversion originated in the Modification of Final Judgement. United States v. AT&T, 552 F. Supp. 131, (D.D.C. 1982) *aff'd sub nom* Maryland v. U.S., 460 U.S. 1001 (1983) ("MFJ"). LATAs form a rigid geographical basis for determining which services are exchange access and are not.

<sup>2</sup> NPRM/NOI at paras. 56-70.

B. NO SATISFACTORY COMMON SERVICE AREA CAN BE SET FOR CELLULAR, PCS, SMR, AND OTHER CMRS SERVICES.

As noted in the NPRM/NOI, equal access requires a definition of what is "access" and what is "toll." Because the various CMRS services have different license areas, no common geographical basis can be found which would not create a competitive disadvantage for one or the other services. None of the license area possibilities can effectively anticipate the changing marketplace as it evolves.

II. EQUAL ACCESS REQUIREMENTS WOULD BE BURDENSOME ON SMALL WIRELESS SERVICES OPERATORS IN RURAL AREAS.

Currently, BOC-owned landline and cellular companies are required to offer equal access choices to subscribers because of the MFJ. Small independent landline telephone companies are only subject to equal access obligations when there is a bona fide request from an IXC. In sparsely populated areas of the country, equal access conversion has been slow and where it has occurred the local impact is often one of disinterest and confusion with little perceived benefits. Also, IXCs have been slow to bring competitively robust service to rural areas.<sup>3</sup>

Requiring small wireless providers to implement equal access would not be the most efficient use of capital resources. Many cellular systems do not experience the volume of long distance traffic from cellular users to justify the costs of equal access. As the NPRM/NOI notes, "[c]ellular providers not currently

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<sup>3</sup> Often, only a small number of IXCs remain after equal access balloting.

subject to equal access obligations would have to modify software in their switches to route traffic to a customer's preferred IXC, and some might even have to replace switches as well as software."<sup>4</sup> These costs would far outweigh the uncertain benefits if equal access were required of areas serving low volumes of traffic.<sup>5</sup>

Since the number of customers served by cellular operations are typically a magnitude smaller than those of the same-area LEC operations, the cost to provide the necessary hardware and software for the equal access-like functions would place a much greater cost on IXCs and their customers from a per-customer, per-call, or per-minute basis than has been the cost recovery burden on users of LEC networks. Furthermore, the public switched network connections that cellular operators have with LECs may not afford an equal access-like arrangement because the LEC may not be converted to equal access.

III. CUSTOMER BENEFITS, IF ANY AT ALL, WOULD NOT OUTWEIGH THE COST OF PROVIDING EQUAL ACCESS.

The provision of cellular service is already a competitive undertaking and will shortly become even more competitive with the anticipated introduction of personal communications services. Cellular providers already compete with respect to service

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<sup>4</sup> NPRM/NOI at 40.

<sup>5</sup> The amount of extra-system or non-local rated traffic may be small in many cases. In other words, the percentage of traffic of the entire cellular system subject to the equal access requirement may be relatively small, at least in comparison to that of LECs.

features, one of which includes the provision of telecommunications to distant locations. Non-BOC cellular operators' extra-system telecommunications services are provided in a variety of ways, but most importantly, these arrangements involve long distance solutions that include relationships with competitive IXCs.<sup>6</sup> That relationship promotes competition between IXCs. The "buying power" that the multiple cellular providers represent to IXCs is a healthy market condition that fosters competition among IXCs.<sup>7</sup>

As NTCA noted earlier in comments on the MCI petition that initiated this proceeding, in many markets served by non-BOC

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<sup>6</sup> Any concern about affiliation of wireless providers with IXCs should be addressed by requiring IXCs to offer the same terms and conditions to terminate long distance calls to all wireless services providers. Then, whatever "deal" an IXC may be offering to its affiliated wireless services provider must also be offered to that wireless provider's competitors.

<sup>7</sup> Cellular providers' buying power is just as robust a competitive force as that of IXCs that buy local wireline exchange access on behalf of their long distance customers. The demand is one of a deferred nature in that the carrier makes demand decisions for end users and passes the consequences on in the rates charged to end users. It is a matter of some coincidence that the LEC access charge system is in the direction of IXCs seeking access to local networks; this process could just as easily been structured such that LECs provide one-stop shopping to end users and buy access to long distance networks to complete long distance calls. The latter structure is what non-BOC cellular providers currently use. Pending legislation in the Senate has described a system by which the carrier that originates calls from end users will pay access to all those other carriers needed to complete the call to its terminating location. The point is, when two carriers interconnect to provide a telecommunications service that involves the networks of both providers, the question of which entity is the one providing the service to the consuming public (or both) and which entity is the one accessing the other is an arrangement that works in either direction.

cellular providers, a BOC-affiliated cellular provider which under the terms of the MFJ must provide the equal access-like interconnection is competing with the non-BOC provider. In other words, in many markets across the country there is one cellular provider subject to the equal access-like requirement and one that is not. If equal access-like requirements lead to such substantial consumer benefits, then it would follow that, in these "mixed" markets, cellular customers would be migrating in substantial numbers to the cellular carrier that is required to provide equal access. No such migration is apparent.

IV. SHOULD AN EQUAL ACCESS REQUIREMENT NEVERTHELESS BE ADOPTED FOR CMRS CARRIERS, A FLEXIBLE CONVERSION AND PHASE-IN PROVISION SHOULD BE ALLOWED.

The Commission asks questions regarding the type of network upgrades and costs associated with conversion to an equal access arrangement. NTCA expects that the variety of existing equipment and other characteristics makes the answer to these questions wide ranging. Equipment vendors may not have equal access solutions in some cases. The number of IXCs interested in competitive long distance carriage may be small for many rural areas. Given the cost potentially involved, there should be maximum per-unit cost thresholds over which the introduction does not make economic sense and there should be minimum IXC participation thresholds under which introduction would be meaningless.

NTCA will examine the comments filed on the questions of implementation and phase-in. However, the number of potential

variables and the complexity of these variables will likely make it difficult to fashion a rigid rule. As such, the Commission, should it decide to adopt an equal access requirement, should also include a commitment to a flexible implementation.

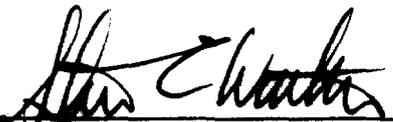
V. CONCLUSION

The Commission has heretofore concluded that competitive forces are more healthy and effective in governing markets than is governmental interference. The cellular industry is currently operating reasonably well by relying on competition to dictate the terms and conditions of service provision without any equal access requirement. Without clear evidence of benefits or the demonstration of a real malady of the current arrangement, NTCA urges the Commission to maintain the current course for all CMRS services of minimizing regulatory rules and requirements in areas that do not need such intervention. There are no clear public policy reasons to constrain the emerging and increasingly competitive wireless industry to a structure developed decades ago for the wireline monopoly industry.

As the discussion above demonstrates, the imposition of an equal access requirement for rural wireless services systems would impose a cost that would not be balanced by any firm objective or benefit and should not be adopted.

Respectfully submitted,

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September 12, 1994

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 94-54 RM-8012 was served on this 12th day of September 1994, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached service list:

  
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