should be unbundled," and states that D.93-05-069, granting limited rehearing of D.92-10-026, did not change this conclusion. But CRA also states that mere publishing of unbundled rates will not ensure fair competition. There must be some assurance that competing providers can interconnect into the cellular carriers' systems on a basis that does not put them at a competitive disadvantage. CRA then cites the OAND Rulemaking[16] as an existing forum where open access and network architechture rules are being developed for the five largest local exchange telephone carriers and for AT&T.

CRA argues that interconnection for switch-based resellers to the duopoly cellular carriers' networks on rates, terms and conditions no different than their retail divisions and affiliates will: (1) promote wholesale and retail rate competition in California, (2) maintain just and reasonable rates, and rates that are not unjustly discriminatory, and (3) ensure the widespread availability of wireless two-way communications for all Californians.

CRA contends that, even in advance of rendering final conclusions on cost-based unbundling, the CPUC should now order the immediate unbundling of at least the market-based elements of existing wholesale tariffs. CRA notes that there are two levels of unbundling, and contends that the first level has already been authorized by D.92-10-026. CRA contends that this first level of unbundling can and should be implemented immediately without further regulatory consideration by unbundling the current tariffed access charges from the minute of usage charges. Accordingly, switched-based cellular resellers would only pay cellular carriers for radio channel time with a credit for switching and local exchange delivery functions corresponding to the currently billed

16 Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services (R. 93-04-003/I. 93-04-002).

access charge. The switch-based reseller would bypass the cellular carrier for the latter functions.

If a reseller were to establish its own switch, it would assume responsibility for number administration, obviating the need for some portion of the current number activation charge. This right to obtain numbers from the North American Numbering Plan Administrator was established in D.90-06-025 and reaffirmed in D.92-10-026. Such resellers would pay carriers an unbundled wholesale air-time charge. The existing mandatory reseller margins should correspondingly apply only to airtime rates after a one-year transition period from the time that switch-based resellers are actually offering service.

CRA characterizes the second level of unbundling as involving the development of cost-based rates for the separable functions of the cellular systems which can be addresed in a separate phase of this Investigation.

CSI and Comtech expect to become switch-based resellers as a result of this proceeding, and support CRA in seeking the immediate unbundling of cellular carriers' wholesale tariffs so they can implement switched-based interconnection with cellular carriers and compete on a level playing field. Like CRA, CSI believes that even before the cost basis of unbundled elements is determined, cellular carriers shoud be directed immediately to unbundle their existing market based rates.

CSI dismisses the alleged technical impediments to interconnection asserted by the cellular carriers as being unfounded. For example, CSI contends that the problem of registration and validation on Ericsson-designed systems cited by LACTC is a contrived one. CSI notes that validation is accomplished in an Ericsson switch by retrieving the mobile phone's home record. Once the switch has created a vistor record for a mobile phone, it does not need to query the home switch for subsequent validation. An Ericsson reseller switch would appear to

the LACTC serving switch exactly the same as any other of LACTC's five switches. (LACTC/McNelly R.T. at 1338/1339.) The reseller switch would retrieve the mobile phone's information and provide it to the LACT serving switch to perform its share of the validation process. The reseller switch would perform the recordation and billing function.

DRA also supports the principle of wholesale rate unbundling as a means of mitigating the market power concentrated in the hands of cellular duopolists and of enhancing competition. DRA recommends, however, that the unbundling requirement not apply to all dominant carriers, but only those who receive a bona fide request for unbundled wholesale services. DRA believes that it would be a waste of time and resources to unbundle wholesale services in rural markets, for example, where demand is too low to attact new providers.

2. **Discussion**

As an interim measure, we find no reason to delay the unbundling of the radio transmission bottleneck from other service functions based upon currently tariffed billing elements for those carriers in markets supported by sufficient demand and to the extent technically feasible. This limited measure requires no cost-of-service determinations since it allows cellular carriers to charge a market rate for these unbundled services. The record previously developed in D.92-10-026 and the comments filed in this Investigation form a sufficent basis to adopt this measure.

We have previously expressed our support for the concept of unbundling in D.92-10-026 in which we directed that switched-based resellers be allowed to purchase NXX codes directly from the LEC administrator of those codes, and to arrange landline interconnection directly with the LEC. In this manner, resellers would no longer be required to purchase bundled access numbers with airtime and other services from the cellular carriers.

Cellular carriers would have less power to control overall prices for cellular service and competition would be enhanced, carriers' denials that they have power to control prices through a "bottleneck" notwithstanding. Although we subsequently deferred implementation of cost-based unbundling as originally directed in D.92-10-026, we did not rescind our findings in D.92-10-026 at pp. 40-41 concerning the need for duopoly cellular carrier tariff unbundling.

This limited unbundling will enable switch-based resellers to acquire number blocks by ordering their own NXX codes and LEC interconnections as allowed under D.92-10-026, and avoid some charges to the cellular duopolist. Instead, switch-based resellers will pay for the direct costs of interconnection of their switches to the cellular MTSOs and maintain their own connections to the local exchange carrier.

Likewise, although the cellular carriers raise questions about what functions a reseller switch can or cannot perform, it is not necessary to determine precisely the technical capabilities of a reseller switch in order to implement the market-based unbundling adopted in this order. We acknowledge, as McCaw points out, that the equipment is not yet available to implement switching functions out to individual cell sites. Thus, the unbundling at this level is premature at this time.

We acknowledge that the reference in Appendix B.3 of the OII to unbundling of the "cell site radio segment" of carriers' operations is erroneous. As noted by CRA, we amend the reference to call for unbundling of the cost of the "bottleneck communications radio channel."

The reseller switch, as proposed by CSI, will not interfere with any of the "unitary" functions performed by the cellular carrier's MTSO. As CSI notes, the reseller switch will not actually switch and route the call on the wireless side, which remains the prerogative of the licensed carrier. The call will

continue to pass through the cellular carrier's MTSO(s). The reseller switch will identify mobile telephones with its NXX and will perform the billing, validation, and recordation function for calls to or from those telephones. As the FCC letter to CSI indicates, such functions are not "unitary" or technically preempted for federal purposes.

Contrary to the view of the cellular carriers, we do not interpret Section 332 of the Communications Act as prohibiting any modifications in specific state regulatory rules and procedures until the FCC acts on the CPUC petition to retain jurisdiction over mobile service carriers, which must occur by August 10, 1995. As stated in the FCC Second Order and Report (Sec. III F.2), it is the authority to regulate, not the specific rules in effect at some point in time which is subject to extension pending a ruling on the petition.

Moreover, there is no federal statute, policy, or rule that inhibits the interconnection and use of the reseller switch, as described in D.92-10-026. This is confirmed by the September 26, 1991 response of the FCC to CSI regarding CSI's query as to the legality of interconnection of a reseller switch to the LEC facilities and to the MTSO of the local cellular carrier. (Attachment A of CSI Reply Comments.) As cited by CSI, the record in I.88-11-040 indicates that there is no significant delay in call set-up time due to a reseller switch. (US West/Simpson R.T. at 1133; CSI/Raney R.T. at 775.)

In any event, we have already addressed the issue of the technical feasibility of the reseller switch in D.92-10-026 and need not relitigate the matter, as we stated in granting limited rehearing in D.93-05-069. In D.92-10-026, we acknowledged that CSI's reseller switch proposal at that time left unanswered questions concerning the specific design and method of interconnection which its switch would use. Nonetheless, we did not require resellers to prove the technical feasiblity of their

proposed switches, just as the facilities-based carriers are not required to do so when they install a switch. We stated our reliance on market forces and technological advances to influence when resellers decide they are ready to move into the market as switch resellers. Our D.92-10-026 Finding 47 still applies that:

> "There is no incentive for resellers to install a switch that is not technically and economically feasible and which cannot communicate with the switches of facilities-based carriers."

As a means of implementing our unbundling policy, we shall adopt DRA's recommendation that unbundling only be imposed for those dominant carriers who receive a bona fide request for unbundled service. As explained by DRA, a bona fide request must be accompanied by a construction or engineering plan describing how the provider would interconnect with the dominant carrier's MTSO. The interconnection plan would have to demonstrate the compatibility between the reseller's switch and the dominant carrier's MTSO.

Once a bona fide request for unbundled service is made, resellers would then follow the procedure as previously outlined in D.92-10-026:

> "Those resellers that want to provide switching services currently being provided by facilities-based carriers should file a petition to modify thier current certificate of public convenience and necessity (CPCN) to operate as a switch reseller. One purpose in modifying the the CPCNs is to eliminate any language in the current CPCNs that prohibits resellers from operating facilities. A second purpose is to ensure compliance with the California Environmental Quality Act (CEQA). As part of its petition to modify, a reseller must compy with Rule 17.1 and include a Proponent's Envirnomental Assessment (PEA) as part of its filing for review by Commission staff. Resellers are reminded that cellualr facilities they wish to install subsequent to that covered in the CPCN modification

> proceeding are subject to General Order 159." (P. 32.)

B. Extended Area Service Concerns

Extended area service (EAS) refers to service rendered to a subscriber of another carrier's system while the subscriber is "roaming" outside his home carrier's system. The subscriber's home carrier re-rates other systems' widely differing roaming charges so that its subscriber pays a predictable roaming rate. Under our current policy, cellular carriers are granted authority to charge EAS, or roaming, rates for one year on a provisional basis, provided that the proposed rates are revenue neutral. After one year, carriers can file an application to make the rates a permanent part of their tariff.

McCaw filed an application requesting permission to set permanent roamer rates (A.93-01-034). In that proceeding, the ALJ issued a ruling on February 18, 1994 stating that before the McCaw or similar applications could be granted,

> "...the legal issues raised in the OII need to be resolved, and the wireless OII now appears to be the most appropriate forum for doing so."

In accordance with the ALJ ruling, we shall resolve in this interim order the outstanding issues regarding EAS, such that outstanding applications to set permanent roamer rates for EAS service can be ruled upon.

As stated in the OII, EAS rules and practices should be consistent with our regulatory framework goals of stimulating market competition while protecting the public from anticompetitive behavior and abuse of market power. As noted in the OII, some contend that EAS results in cellular carriers reselling toll service without authorization and setting rates outside its geographic area. Others, have contended that EAS is anticompetitive.

We solicited parties' comments on the extent to which current EAS policies and practices are problematic or require change, and the long term effects of EAS on cellular rates and competition. We also solicited comments on the benefits offered by EAS for customers and providers.

1. **Positions or Parties**

LACTC notes that the Commission has before it several applications seeking authority for carriers to "re-rate" charges for their own customers when they roam into other markets, including McCaw's A.93-01-034. LACTC believes that if a carrier is willing to absorb a part of such charges for competitive reasons, thereby reducing the overall bill to the end user, the Commission should not hesitate to permit such rerating.

McCaw notes that a carrier's authority to re-rate roaming charges may be unclear because cellular CPCNs typically permit a carrier to construct facilities only in its cellular license area. McCaw does not believe this restriction should affect cellular EAS since no construction of facilities is involved in rendering EAS. McCaw proposes that the Commission simply clarify that mobile service providers are authorized to charge for EAS throughout the state, even though their FCC-defined service areas limit the territory where they may operate radio systems. Alternatively, the CPCNs could be amended to allow for cellular EAS.

DRA is concerned that the roaming rates set outside a carrier's service area may result in rate increases for some customers. For example, under some EAS rate structures, high volume callers or high per-minute callers could receive rate increases. DRA is also concerned that home carriers in some cases may charge its customer less than it is being charged by the foreign serving carrier, and then pass the loss on to the customer indirectly through rate increases for other services. Otherwise, home carriers who are small might be placed at an unfair disadvantage if they had to absorb losses due to differences in home versus foreign carrier rates, and might not be as able to provide similar service offerings as large carriers.

DRA proposes that all roaming customers should pay equal rates within the boundaries of a single service area to avoid discriminatory rates. DRA also believes uniform rates for roaming should be set for adjacent service areas within a predetermined radius as a way to simplify the roaming rate structure. DRA believes that carriers should only be allowed to set roaming rates within the service areas designated by their CPCNs to avoid possibilities of rate discrimination and unfair rate increases.

CRA expresses concern over the fairness of EAS billing practices with respect to resellers. Although resellers' customers roam in the same way as those of duopoly carriers, resellers receive a share of billed roaming revenue only with certain duopoly carriers. CRA finds this practice inconsistent with Commission findings in D.92-10-026 that resellers are to be treated like cellular carriers for interconnection purposes and to share in roaming revenues. CRA further states that duopoly cellular intercarrier roaming agreements have not been publicly filed, contrary to Commission requirements (OII of PT&T, D.50837). In considering allowing EAS, CRA proposes the Commission (1) enforce the requirement that intercarrier agreements be publicly filed; (2) require any serving carrier charge a wholesale rate to the served carrier (including switch-based resellers with their own NXX codes) as well as its nonswitch-based resellers; and (3) require the served carrier only bill the reseller precisely the amount billed it by the serving carrier.

CRA states that AT&T/McCaw have already agreed to such an arrangement as part of a settlement with CRA in A.93-08-035 wherein resellers are accorded a margin on roaming which is superseded under wholesale tariffing arrangements among facilities-based carriers "so long as cellular resellers are accorded the same rates terms and conditions of that arrangement as are provided McCaw/AT&T and so long as the rates, terms, and conditions are no less favorable than those provided hereunder." CRA proposes that those settlement terms be made industry wide as part of this Investigation.

2. **Discussion**

While we are interested in promoting a policy of EAS pricing which is conducive to competition, we are also concerned with the need to protect subscribers against hidden bill increases or discriminatory billing practices.

As to the legal authority of cellular carriers to set roaming rates for EAS service, we find no legal restriction prohibiting cellular carriers from engaging in re-rating of charges. In the case of cellular EAS, there is no extension of constructed facilities to other areas, merely provision of service using facilities owned by a foreign carrier. In any event, PU Code § 1001's prohibition of extension of facilties into a area served by an existing utility has more application in the traditional context of protecting franchised monopoly rights. By contrast, we are trying to encourage just the opposite result here. For the sake of clarity, however, we amend all CPCNs for cellular carriers to include a blanket authorization permitting EAS service anywhere within California.

We recognize that by setting EAS rates for service rendered outside its MSA, a cellular carrier may recover either more or less revenue from its customer that the home carrier itself pays to the serving carrier. On average, the goal should be that the cellular carrier is revenue neutral with respect to the transaction. In practice, any estimate is subject to error, and actual results may vary. Some carriers may realize a revenue surplus while others, a deficit. This is a risk of doing business. Of course, the specific rate levels set for EAS service shall remain subject to Commission approval consistent with our existing rate band guidelines, or subsequent rules adopted through this Investigation.

Carriers' re-rating of charges for EAS necessarily results in different charges being billed for similar use of air time by customers from different home carriers roaming within a single service area. The practice of re-rating charges in this manner does not constitute rate discrimination as prohibited in PU

Code § 453(c). Rate discrimination would involve a single carrier treating its own customers differently without any reasonable basis. By contrast, the differences in charges experienced by customers who roam from their own carrier's home service area involve service originating from different home carriers and is not discriminatory.

We agree with CRA that revenues from re-rating for EAS service should be shared in an equitable manner with cellular resellers in the interests of promoting a competitive market. This is consistent with our earlier finding in D.92-10-026 that for interconnection purposes, resellers are to be treated like cellular carriers. In practice, resellers have been treated in an inconsistent manner by cellular carriers. We find it reasonable to adopt the terms of the settlement into which CRA entered with McCaw/AT&T in A.93-08-035 as a basis for sharing of EAS revenue.

Findings of Fact

1. The Commission instituted an investigation into the mobile telecommunications industry on December 19, 1993.

2. The OII solicited respondents' comments on a variety of issues relating to development of a comprehensive regulatory framework for the MTS industry.

3. The OII indicated that issues would be identified which could be resolved on an expedited basis in advance of resolution of all other OII issues.

4. Based upon respondents' comments and the prior record developed in I.88-11-040, the following issues can be addressed without the need for evidentiary hearings: (a) market dominance of cellular carriers, (b) appropriateness of cost-of-service regulation, (c) unbundling of market-based rates capped at current levels, and (d) Extended Area Service (EAS) re-rating practices.

5. Respondents disagree on various issues in the OII including whether the market power of cellular carriers justifies continued regulatory oversight, and the form of regulation, if any, appropriate for regulating the MTS market (e.g. cost-based unbundling and price caps for cellular carriers).

6. The OII proposes a regulatory framework that classify MTS providers as either "dominant" or "nondominant."

7. A provider would be classified as "dominant" if it controlled essential facilities (constituting a bottleneck) to which other nondominant providers require access in order to serve customers.

8. At the present time, the only providers who meet the definition of dominant carriers are facilities-based cellular carriers.

9. The federal licensing of only two facilities-based duopolists who between them exclusively control the allocated cellular spectrum creates a radio transmission bottleneck.

10. Although control of bottleneck facilities generally is in the hands of a monopoly, the control can also be shared between duopolists.

11. The determination of whether regulatory oversight of cellular carriers should continue requires a assessment of their market power and ability to extract prices above competitive levels

12. The assessment of cellular carriers' market power requires a definition of the relevant market in which they operate.

13. The criteria for defining a market used by the the U.S. Department of Justice are generally recognized as valid and are appropriate for use in defining the cellular carriers' market.

14. Under the DOJ guidelines, a principle criterion in defining a market is identification of close substitutes for the product or service.

15. The most likely candidates for substitution with cellular service are emerging technologies such as PCS and ESMR services.

16. Although these new technologies offer promising prospects for becoming close substitutes for cellular on a wide basis in future years, their market is not sufficiently developed at the present nor is it likely to be in the near term future due to various market, technical, and regulatory impediments.

17. Given the anticipated time lag in full-scale deployment of alterantive technologies, the cellular carriers shall continue to exercise market dominance for the near term.

18. The cellular market is composed of a wholesale level restricted to two facilities-based licensed carriers and a retail level with relatively unrestricted entry by cellular resellers.

19. Cellular resellers' ability to compete against the facilities-based duopolists at the retail level is largely constrained since about 75% of resellers costs are controlled by the duopolists.

20. Cellular resellers' share of the market has been steadily declining over the last decade.

21. Cellular pricing patterns are relevant as an indicator of market power of cellular carriers.

22. High cellular prices, particularly in the largest California metropolitan markets, provide additional evidence of market power.

23. A 1992 study of cellular prices by the U.S. General Accounting Office found that "A market with only two producers--a duopoly market--is unlikely to have a competitively set price that is at or near the cost of producing the good."

24. Cellular carriers have generally developed two categories of billing options: (1) a "Basic Service" option which offers the maximium flexibility in usage or choice of carrier; and (2) various "Discount" options which generally entail restrictions as to usage or choice of carrier in exchange for targeted price discounts.

25. While an increasing share of subscribers have been migrating to discounted rate plans, a significant number continue to be billed under basic service plans.

26. While costs of cellular equipment have declined significantly over the past decade, the nominal rate for basic service has remained unchanged in most California cellular markets.

27. A study by the U.S. General Accounting Office found that duopolists set their best prices within 10% of each other in two-thirds of the nation's markets.

28. In California, the rates charged by duopolists for basic service are nearly identical or vary by no more than 11% between any two comparable rate plans.

29. A study by the National Cellular Resellers Association found that among the top 30 U.S. markets, LA. was the second highest and San Francisco was the seventh highest priced cellular market, based even upon the best rates available for 30 minutes of monthly airtime.

30. Although various carriers filed advice letters to reduce certain rates since adoption of pricing flexbility, most of those reductions were targeted to very specific user groups and were only temporary promotions which have since expired and provide no ongoing savings.

31. A particular reduction in a price or charge is not necessarily evidence of competitive pricing, but can simply be a response to changes in consumer demand, technology, or marginal costs.

32. Cellular carriers' costs in relation to prices provide another indicator of market power.

33. To the extent carriers can raise prices to levels well in excess of costs and command above-market returns on investment over an extended time period, this can be an indicator of insufficient competition.

34. As a general class of investments, cellular licensees offer returns among the highest available in the investment securities market, based upon 1991 data from the National Telecommunications Information Administration.

35. In a competitive market, excessively high returns would be expected to only be temporary as new competitors looking to maximize wealth discovered the high returns and entered the market, bidding down prices to garner a share of the high returns.

36. In the case of cellular carriers in major California markets, returns have remained at high levels over an extended period, compared with returns realized by other entities regulated by the CPUC.

37. In I.88-11-040, the DRA demonstrated that cellular carriers' returns exceeded returns of industries with comparable risks.

38. D.90-06-025 provided a guideline for detecting the profits which exceeded acceptable levels for cellular duopolists, by distinguishing profits explained by the scarcity of spectrum from profits due solely to a failure to compete.

39. Evidence of profits due to a failure to compete would be pricing of services so high as to discourage full system utilization or failure to invest in system expansion when it is economically justified.

40. While cellular usage and system expansion have grown dramatically over the past decade, this is indicative of the demographics of the market demand for cellular service during the earliest stages of the initial birth and growth of a new market.

41. In detecting whether cellular carriers profits reflect a failure to compete, the question is not whether expansion has occurred, but how much more rapidly expansion would have occurred had uncompetitively high prices not inhibited demand.

42. Despite the growth rate of cellular in California, still only about 5% of the population use a cellular phone.

43. According to a study by DRA, the L.A. market has an efficiency ratio of 635 subscribers per each frequency which is at least three times larger than the next largest market, indicating ample capacity for new subscribers, at least in other markets.

44. DRA's study found that even for the L.A. market, only certain parts were capacity constrained and would need significant investment to expand service.

45. With the growth among cellular carriers of digital technology as a replacement for analog, the previous constraints of spectrum scarcity should eventually be eliminated.

46. The presence of excessive duopoly rents extracted by cellular carriers is evident from the relatively high valuations which investors ascribe to the cellular spectrum compared with other spectrum valuations.

47. A 1991 Morgan Stanley Wall Street analyst report advised investors that an investment value for cellular spectrum of between $170 to $200 per POP was reasonable only because of the enormous returns possible from a shared-monopoly business.

48. By contrast to cellular spectrum, the valuation, spectrum used for SMR mobile communications was only valued at $42 per POP by MCI in its investment in NEXTEL.

49. In his testimony before the California Board of Equalization, the expert witness of LACTC testified that the high cellular license value is because of the market control provided by the FCC license and the resulting high earnings that result from the duopoly market in contrast to a competitive market structure.

50. As a result of market entry restrictions, lack of competitive substitutes, control over essential bottleneck facilities, uncompetitive pricing practices, excessively high duopoly rents, and cellular spectrum valuations, it can be seen that wholesale cellular carriers exert dominant market power.

51. The OII sets forth the policy goal that the radio transmission bottleneck should be made available on an unbundled basis from all other aspects of services cellular duopolists offer.

52. Beyond the mere publishing of unbundled rates, competing providers need the opportunity to interconnect into the cellular carriers' systems on a basis that does not place them at a competitive disadvantage.

53. Although there remain technical uncertainties as to the specific interconnection functions feasible for a reseller switch, we found in D.92-10-026 that market forces could be relied upon to influence when individual resellers elect to install a switch and no further showing of technical feasibilty was required.

54. It would require an excessive commitment of time and resources to undertake cost-of-service studies and to implement cost-based unbundling of rate elements for cellular service.

55. The comments filed in this investigation, together with the record developed in D.92-10-026, however, form a sufficent basis to implement a more limited market-based unbundling, based upon existing tariffed elements with prices capped at existing levels.

56. EAS is provided when a carrier serves a subscriber of another home carrier while the subscriber is temporarily roaming within the service territory of the foreign carrier.

57. In billing a subscriber for EAS service, the home carrier will re-rate the charges it incurs from the foreign carrier which may result either in an over or underrecovery of costs by the home carrier.

58. Certain parties, such as DRA, contend that carriers' CPCNs do not permit EAS service since it extends outside the authorized service territory specified in the CPCN.

59. Cellular resellers are to be treated as cellular carriers for interconnection purposes according to D.92-10-026.

Conclusions of Law

1. There is no provision of the Federal Communications Act Section 332 prohibiting modifications in specific state regulatory rules prior to the date when the FCC acts on California's petition to retain jurisdiction over ratemaking of cellular carriers.

2. The proposed framework for regulating service providers based upon a "dominant"/"nondominant" classification is appropriate and should be adopted as a standard for further development of a regulatory framework.

3. Facilities-based cellular carriers should be classified as "dominant" for purposes of regulation under our framework as set forth in the OII.

4. California regulatory jurisdiction over facilities-based cellular carriers should continue under existing Rateband Guideline rules (incorporating interim changes adopted herein) pending adoption of a comprehensive regulatory framework for the mobile services market through a final order in this Investigation.

5. Continued regulation of cellular carriers is required to protect consumers from unreasonable or discriminatory rates until future market changes indicate that cellular carriers no longer hold market dominance.

6. There is no federal statute, policy, or rule that inhibits the interconnection and use of the reseller switch as defined by D.92-10-026.

7. It is reasonable to adopt market-based unbundling of cellular carrier rates, based upon the terms prescribed in the order below.

8. Cost of service regulation should not be pursued as a regulatory option for facilities-based carriers.

9. There is no legal prohibition against cellular carriers re-rating of charges for EAS since no construction of facilities outside of the designated service territory of the carrier is involved in offering the EAS service.

10. It is reasonable that intercarrier agreements for EAS service be publicly filed, and that any serving carrier charge the same wholesale rate to resellers as to other serving cellular carriers.

11. It is reasonable that a serving carrier providing EAS service charge a wholesale rate to the served carrier (including resellers).

12. It is reasonable to retain price caps at existing rate levels to protect consumers against duopoly market power until the market becomes competitive.

13. Remaining issues pertinent to this Investigation not resolved by this order should be addressed in the next phase of this Investigation.

O R D E R

IT IS ORDERED that:

1. Cellular resellers are authorized to file applications amending their certificates of public convenience and necessity (CPCNs) from a switchless to a switched reseller status upon meeting the following conditions:

   a. The reseller must submit to the cellular carrier a bona fide request for unbundled service, accompanied by an engineering plan describing how the provider would interconnect with the dominant carrier's mobile telephone switching office (MTSO). The plan would have to demonstrate the compatibility between the reseller's switch and the dominant carrier's MTSO.

   b. Once the bona fide request is submitted to the cellular carrier, the reseller must file a petition to modify its existing CPCN to change its status to that of a switch-based reseller and to ensure compliance with the California Environmental Quality Act.

2. The Commission order approving the change in the reseller CPCN as described in Ordering Paragraph 1 above shall also be served on the cellular carrier which received the request for interconnection.

3. The Commission order shall direct such carrier to promptly file an advice letter with the Commission to amend its wholesale tariff reflecting a market-based unbundling of access charges billed to such switch-based resellers which have entered into interconnection agreements.

4. Upon activation of the interconnection arrangement with the reseller, its billing shall be adjusted by applying a credit equal to the access charge on the reseller's bill.

5. Carriers engaged in Extended Area Service (EAS) intercarrier agreements shall publicly file such agreements with the Commission.

6. Any serving carrier providing EAS service shall charge a wholesale rate to the served carrier (including resellers).

7. This Investigation shall remain open for further study of outstanding issues not resolved by this interim order and adoption of a comprehensive framework for the mobile telephone service market.

This order is effective today.

Dated August 3, 1994, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners

I dissent.

/s/ PATRICIA M. ECKERT
Commissioner

I dissent.

/s/ NORMAN D. SHUMWAY
Commissioner

Source: Opening Comments of Cellular Services, Inc.

NCRA

NATIONAL CELLULAR RESELLERS ASSOCIATION

COMPARISON OF CELLULAR SERVICE PRICES IN THE 30 LARGEST MARKETS FOR PERSONAL SAFETY AND CONVENIENCE USE: JANUARY, 1988 - JANUARY, 1994

January 24, 1994

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1/24/94

NATIONAL CELLULAR RESELLERS ASSOCIATION

COMPARISON OF CELLULAR SERVICE PRICES FOR PERSONAL SAFETY AND CONVENIENCE USE: JANUARY, 1988 - JANUARY, 1994

The following table shows the best rates available in the 30 largest cellular markets for 30 minutes of monthly airtime in January, 1988 and January, 1994. NCRA believes this amount of airtime, divided into 20 minutes of usage during peak hours and 10 minutes of usage during off-peak hours, represents a reasonable calling pattern for individuals using a cellular phone chiefly for personal safety and convenience.

1988 $ Diff	Market #	City	System	1988	1994	% Change	1994 $ Diff
	1	New York	A	$32.50	$39.99	23.0%	
$3.50			B	$36.00	$45.65	26.8%	$5.66
	2	Los Angeles	A	$45.00	$45.00	0.0%	
$0.00			B	$45.00	$45.00	0.0%	$0.00
	3	Chicago	A	$20.00	$28.35	41.8%	
$1.00			B	$21.00	$24.21	15.3%	$4.14
	4	Philadelphia	A	$22.95	$34.95	52.3%	
$1.00			B	$23.95	$34.65	44.7%	$0.30
	5	Detroit	A	$16.10	$30.95	92.2%	
$0.00			B	$16.10	$30.95	92.2%	$0.00
	6	Boston	A	$22.50	$33.15	47.3%	
$3.00			B	$19.50	$27.95	43.3%	$5.20
	7	San Francisco	A	$56.00	$44.74	-20.1%	
$0.00			B	$56.00	$45.00	-19.6%	$0.26
	8	Wash/Balt	A	$22.00	$33.70	53.2%	
$1.95			B	$23.95	$34.65	44.7%	$0.95
	9	Dallas	A	$30.00	$42.39	41.3%	
$0.00			B	$30.00	$41.95	39.8%	$0.44
	10	Houston	A	$28.95	$31.99	10.5%	
$2.75			B	$28.20	$39.95	52.5%	$7.96
	11	St. Louis	A	$23.00	$26.95	17.2%	
$0.00			B	$23.00	$29.95	30.2%	$3.00
	12	Miami	A	$30.00	$52.70	75.7%	
$4.50			B	$34.50	$49.55	43.6%	$3.15
	13	Pittsburgh	A	$14.20	$39.99	181.6%	
$18.75			B	$32.95	$38.05	15.5%	$1.94

	15 Minneapolis	A	$28.95	$32.24		11.4%	
$8.80		B	$35.55	$35.85		0.8%	$3.61
	16 Cleveland	A	$27.95	$30.95		10.7%	
$0.05		B	$28.00	$29.75		6.3%	$1.20
	17 Atlanta	A	$40.00	$33.70		-15.7%	
$0.00		B	$40.00	$41.75		4.4%	$8.05
	18 San Diego	A	$45.00	$36.55		-18.8%	
$8.35		B	$36.65	$38.00		3.7%	$1.45
	19 Denver	A	$29.50	$36.59		24.0%	
$6.05		B	$35.55	$36.95		3.9%	$0.36
	20 Seattle	A	$29.50	$29.99		1.7%	
$11.75		B	$41.25	$29.95		-27.4%	$0.04
	21 Milwaukee	A	$20.00	$29.95		49.7%	
$1.30		B	$21.30	$27.00		26.8%	$2.95
	22 Tampa	A	$26.80	$34.95		30.4%	
$0.80		B	$27.60	$46.45		68.3%	$11.50
	23 Cincinnati	A	$17.95	$30.95		72.4%	
$0.05		B	$18.00	$24.91		38.4%	$6.04
	24 Kansas City	A	$25.50	$33.45		31.2%	
$0.00		B	$25.50	$35.85		40.6%	$2.40
	25 Buffalo	A	$25.10	$27.65		10.2%	
$13.10		B	$12.00	$23.35		94.6%	$4.30
	26 Phoenix	A	$28.95	$39.25		35.6%	
$6.60		B	$35.55	$40.25		13.2%	$1.00
	28 Indianapolis	A	$12.00	$26.95		124.6%	
$3.00		B	$15.00	$24.95		66.3%	$2.00
	29 New Orleans	A	$42.90	$33.95		-20.9%	
$9.40		B	$33.50	$33.95		1.3%	$0.00
	30 Portland	A	$25.00	$35.00		40.0%	
$1.50		B	$23.50	$33.50		42.6%	$1.50
$3.75	Averages		$28.67	$35.12		+32.4%	$2.84

The monthly airtime charges contained in this report were calculated by using data obtained from Information Enterprises and the customer service departments of the licensed carriers in each market listed above. The monthly airtime charges reflect the best rates available on service contracts not exceeding one year in length.

(END OF APPENDIX 1)

APPENDIX 2

Source:

Calif Legislative Hearings
1-12-93
Hearing Record

TABLE 2

DRA AND McCAW
CELLULAR RATE COMPARISON CHART

(REGULATED MARKETS ARE IN BOLD ITALICS.)

CITY	DRA (A)		DRA (B)		MCCAW(1)		
LOS ANGELES	***$99.00***	***100.00%***	***$99.00***	***98.02%***	***$98.84***		***98.05%***
NEW YORK	***$99.00***	***100.00%***	***$101.00***	***100.00%***	***$100.81***	*	***100.00%***
PHILADELPHIA	$97.24	98.22%	$86.00	85.15%	$69.53	*	68.97%
SAN FRANCISCO	***$95.00***	***95.96%***	***$95.00***	***94.06%***	***$92.58***		***91.84%***
MIAMI	$93.00	93.94%	$92.00	91.09%	$86.07	*	85.38%
SEATTLE	$93.00	93.94%	$95.00	94.06%	$81.28		80.63%
DENVER	$83.00	83.84%	$88.00	87.13%	$73.32	*	72.73%
DALLAS	$80.40	81.21%	$89.35	88.47%	$74.69		74.09%
HOUSTON	$77.00	77.78%	$92.00	91.09%	$72.44	*	71.86%
MINNEAPOLIS	$76.00	76.77%	$76.00	75.25%	$73.41		72.82%
BOSTON	***$74.00***	***74.75%***	***$78.00***	***77.23%***	***$73.33***		***72.74%***
DETROIT	$72.44	73.17%	$70.31	69.61%	$55.72	*	55.27%
WASHINGTON, D.C.	$72.00	72.73%	$73.00	72.28%	$63.06	*	62.55%
SACRAMENTO	***$60.00***	***60.61%***	***$52.00***	***51.49%***	***$58.20***		***57.73%***
CHICAGO	$59.00	59.60%	$62.00	61.39%	$53.84		53.41%
PITTSBURGH	N/A	N/A	N/A	N/A	$74.15	*	73.55%
TAMPA	N/A	N/A	N/A	N/A	$75.91	*	75.30%

PERCENTAGES ARE RELATIVE TO LOS ANGELES RATES.

** REQUIRES COMMITMENT TO ONE YEAR CONTRACT*

(1) REVISED TO INCLUDE ACTIVATION FEE & ALLOCATION OF FREE MINUTES

(A) NON-WIRELINE CARRIER

(B) WIRELINE CARRIER

ASSUMPTIONS:

1. ALL RATES ARE BASED ON 120 MINUTES OF USE (80% PEAK/20% OFF PEAK).

2. RATES FOR BOSTON, HOUSTON, PHILADELPHIA, AND SACRAMENTO WERE ADDED BY DRA USING MCCAW ASSUMPTIONS.

(END OF APPENDIX 2)

Source: Opening Comments of Cellular Resellers Association

MARKET-BY-MARKET RATE MARGIN ANALYSIS

Existing resellers generally have more than 1000 customers and the average reseller uses more than 300,000 peak minutes and 50,000 off-peak minutes of airtime. This analysis reflects these facts.

Los Angeles

Los Angeles SMSA (PacTel/GTE)

	Retail Rates	Wholesale Rates	Margin
Access	$45.00	$32.26	28.31%
Peak	$ 0.45	$ 0.366	18.67%
Off-Peak	$ 0.27	$ 0.22	18.52%

Los Angeles Cellular Telephone Company (McCaw/AT&T/BellSouth)

	Retail Rates	Wholesale Rates	Margin
Access	$45.00	$32.26	28.31%
Peak	$ 0.45	$ 0.366	18.67%
Off-Peak	$ 0.27	$ 0.22	18.52%

San Francisco/San Jose

GTE Mobilnet

	Retail Rates	Wholesale Rates	Margin
Access	$45.00	$28.25	37.22%
Peak	$ 0.45	$ 0.36	20%
Off-Peak	$ 0.20	$ 0.16	20%

Bay Area Cellular Telephone Company (PacTel/AT&T/McCaw)

	Retail Rates	Wholesale Rates	Margin
Access			
(Ceiling Rates)			
0-99 mins. per number	$45.00	$28.25	37.22%
100-199 mins. per number	$42.50	$26.70	37.18%
200-299 mins. per number	$40.00	$25.15	37.13%
300 + mins. per number	$37.50	$23.55	37.20%
(New Rates effective 4/26/93)			
0-399 mins. per number	$39.99	$25.10	37.23%
400 + mins. per number	$37.50	$23.55	37.20%
Peak	$ 0.45	$ 0.36	20%
Off-Peak	$ 0.20	$ 0.16	20%

Napa

GTE Mobilnet

	Retail Rates	Wholesale Rates	Margin
Access	$45.00	$28.25	37.22%
Peak	$ 0.45	$ 0.36	20%
Off-Peak	$ 0.20	$ 0.16	20%

Napa Cellular (AT&T/McCaw/PacTel)

	Retail Rates	Wholesale Rates	Margin
Access			
0-99 mins. per number	$45.00	$28.25	37.22%
100-199 mins. per number	$42.50	$26.70	37.18%
200-299 mins. per number	$40.00	$25.15	37.13%
300 + mins. per number	$37.50	$23.55	37.20%
Peak	$ 0.45	$ 0.36	20%
Off-Peak	$ 0.20	$ 0.16	20%