ALLTEL MOBILE

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FEDERAL COMMUNICATIONS COMMISSION
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September 12, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, DC 20554

RE: In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54 (RM-8012)

Dear Mr. Caton:

Enclosed for filing on behalf of ALLTEL Mobile Communications, Inc. are an original and nine copies of its comments in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned counsel.

Sincerely,

Diane Smith

Diane Smith

/rf
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cc: International Transcription Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

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

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To: The Commission

COMMENTS OF ALLTEL MOBILE COMMUNICATIONS, INC.

ALLTEL Mobile Communications, Inc. on behalf of itself and its cellular subsidiaries (hereinafter collectively referred to as "ALLTEL"), hereby submits its comments on the Notice of Proposed Rule Making and Notice of Inquiry (FCC 94-145, released July 1, 1994; hereinafter cited as the "Notice") in the above-captioned proceeding.

I.

INTRODUCTION

The Notice proposes to extend to all cellular carriers the equal access requirements currently applicable to the Bell Operating Companies ("BOCs") alone. In addition, the Notice addresses issues pertaining to interconnection of Commercial Mobile Radio Service ("CMRS") providers and local exchange carriers ("LECs"). In the Inquiry portion the Notice seeks comment as to whether the Commission should require CMRS-to-CMRS interconnection and CMRS resale.

ALLTEL is heavily involved in the cellular telephone business. ALLTEL serves over 350,000 cellular subscribers in 19 states chiefly located in the South and Southeast. Principal areas of operation include Little Rock, AR; Charlotte, NC; Ocala/Gainesville, FL; Savannah, GA; Springfield, MO; Montgomery, AL; and Augusta, GA/Aiken, SC. Hence, ALLTEL is well qualified to address the issues raised in the subject Notice.

II.

DISCUSSION

A. The Commission Should Not Impose Equal Access Requirements on Non-BOC Cellular Carriers.

The Commission's proposal to impose equal access requirements on non-BOC carriers such as ALLTEL will impose unnecessary administrative and operational burdens on these cellular carriers, will impede their responsiveness to market forces, and is contrary to the public interest.

1. Equal Access is Unwarranted as a Matter of History or Policy

In proposing to impose equal access obligations on non-BOCs the Commission would extend a concept fashioned for a specific antitrust settlement to a completely different context.

Equal access obligations for interexchange service, information services and, ultimately, BOC-affiliated cellular carriers stem from the break-up of the monolithic Bell System over a decade ago. Those obligations, embodied in Section II of the Modification of Final Judgment

("MFJ")[1], were, like the MFJ's line of business restrictions, unique to that case and the particular landline exchange environment of the Bell System. There are several reasons why these requirements were imposed, none of which are currently relevant to today's cellular marketplace.

First, these obligations were intended to preclude the kind of leverage which the new AT&T could exert over its then recently-divested subsidiary exchange operating companies, the BOCs, a leverage which could be used to disadvantage competing long distance companies by providing them with exchange interconnection inferior in quality or price.[2]

Second, long distance carrier access equal to that enjoyed by AT&T was deemed essential due to the bottleneck characteristics of the BOC exchanges. At that time, AT&T had virtually 100% of the interexchange market. The MFJ's requirements were intended to break that monopoly grip. Thus, equal access obligations were intended to ensure that a competitive long distance market had a chance to develop.[3]

Notably, imposition of equal access obligations to BOC cellular operations occurred only later -- only after equal access for long distance was in place -- and then only as a mechanism to enforce the decree's inter-LATA prohibition. Because the Court of Appeals had defined BOC cellular service as a form of "exchange telecommunication", it followed that BOC equal access

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[1] United States v. AT & T, 552 F. Supp. 131 (D.D.C. 1982), app'd. Mem sub nom. Maryland v.U.S., 460 U.S. 1001 (1983).

[2] Id. at 195.

[3] Ibid.

requirements would also be imposed on BOC cellular operations.[4]

In short, equal access obligations were created in the context of a specific case based upon the facts of that case, which is illustrated by the fact that similar obligations were not imposed upon the cellular operations of GTE despite entry of a consent decree (including landline equal access obligations) otherwise imposed upon that entity.[5]

By contrast, non-BOC cellular carriers are not part of a historically commonly-controlled network; there are numerous such carriers controlled by a host of different entities. In no case can it be said that a cellular switch even remotely resembles a "bottleneck" exchange like that possessed by the regionally dominant BOCs at the time of divestiture. Not only is there the presence of at least one ubiquitous landline exchange in each market, but also two competing cellular carriers per market, in addition to cellular resellers. These entities all compete in the local market and one of the points of that competition includes the terms and conditions of associated services, including long distance.[6]

Additionally, neither of the two cases where the Commission itself has imposed equal access obligations supports their extension to cellular services. In the first case (landline exchanges of independent telephone companies), the Commission expressly concluded that such

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[4] See United States v. Western Electric Co., 797 F.2d 1082, 1089, 1091 (D.D. Cir 1986); see cases cited in Notice at n.27.

[5] See United States v. GTE Corp., 1985-1 Trade Cas. paragraph 66, 355 (D.D.D. 1984).

[6] The Notice suggests that regulatory parity might require imposition of BOC-type equal access obligations on non-BOCs. ID, at para. 39. Such a notion proves far too much. Were it so, Commission jurisdiction over CMRS would be a mere appendage to any and every antitrust judgment entered against a major CMRS industry group or player.

carriers "often represent [ ] the sole means for competitive carriers to access their customers".

In the other instance (pay telephone operators), a situation existed which the Commission and Congress concluded had resulted in widespread consumer dissatisfaction.[7] As discussed further below, there has been no evidence of widespread dissatisfaction among cellular customers relative to the current means of making cellular long distance calls.

2. Equal Access Requirements Will Impose Unnecessary and Counterproductive Burdens on Affected Cellular Carriers

As demonstrated above, there is no compelling existing or historical reason for extending equal access to non-BOC cellular companies. Imposition of equal access obligations would impose substantial increased administrative and operational burdens for cellular carriers. These additional obligations include increased costs for equipment upgrades (e.g. additional trunks), software modifications, and the operational and administrative burdens associated with balloting, presubscription, and tariffing, and other related tasks. Such regulatory impositions would needlessly increase costs to customers and limit responsiveness by these cellular companies to their customers.

Imposition of onerous new requirements at this time would be especially troublesome given the fact that in many areas of the country, especially rural and less densely populated areas, cellular carriers like ALLTEL are heavily involved in developing infrastructure and attracting subscribers. Equal access conversion requirements would divert resources from on-

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[7] See Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 4736 (1991).

going efforts to expand cellular coverage within MSAs and RSAs served by the affected carriers.

While the burdens of equal access conversion would be substantial, the benefits to be gained are marginal at best.

First, in contrast to the public discontent over pay telephone providers, there is no demonstrated public dissatisfaction among cellular subscribers over the way in which long distance service is provided. ALLTEL is certainly unaware of any such dissatisfaction among its own subscribers.

Second, if there is concern that cellular customers do not have sufficient freedom of choice, it need only be recalled that any one of them who truly values selecting his or her own IXC can generally do so. The other cellular carrier may be using a different IXC. The other carrier may even be a BOC-affiliated carrier offering equal access. Notably, BOC-affiliated carriers cover 95% of the population in the top 50 markets. Yet there has been no evidence of widespread migration to such carriers. This indicates the absence of any strong consumer demand for equal access and presubscription. IXC and LEC calling cards also offer cellular customers additional opportunities for IXC selection.

Third, concerns about consumer choice are further alleviated by the fact that, in the near future, customers will enjoy a number of new, additional options, including Enhanced SMR services, services which will represent a third cellular carrier in the major metropolitan areas; Personal Communications Services; and Mobile Satellite Services. Rather than lurching in the direction of further regulatory burdens, the Commission should permit customer demands and sound business and investment decisions to guide the marketplace. Only then will the Commission be able to determine whether further competition at the retail level has provided

cellular subscribers with the additional choices the Commission has in mind.

Fourth and most important, the equal access proposal treats the cellular market as if it were a monopoly bottleneck (notwithstanding statements in the Notice to the contrary, see id. at para. 222). Nothing could be further from the truth. As discussed previously, the cellular marketplace is not only fully competitive today, but is on the verge of radical new growth. The appropriate course at present is to let the marketplace do what it does best -- sort out those services which consumers prefer -- not those services which the federal government thinks they prefer or which vested interests (such as MCI) would have them prefer.[8]

B. The Commission Should Not Adopt Tariff Requirements for CMRS-LEC Interconnection.

In this portion of the Notice the Commission has proposed two different solutions to problems perceived in the CMRS-LEC interconnection arena: (1) require the development and filing of LEC interconnection tariffs for CMRS; or (2) require that (a) interconnection contracts contain a clause ensuring that the most favorable terms, rates and conditions available to one CMRS provider be made available to all, and/or (b) that all such agreements be filed with the Commission.

ALLTEL supports the Commission's efforts to ensure equity and balance with regard to CMRS-LEC interconnection. However, tariffing is not the answer. Tariffing would not only entail substantial administrative costs but would diminish the flexibility which is essential to

[8] To impose equal access on cellular carriers like ALLTEL in an effort to replicate conditions in the wireline industry is flawed on another count as well. It amounts to a search for "regulatory parity" between wireline and wireless industries -- something which Congress never intended and which represents a distortion of the purpose of Section 332 (c).

continued growth in the cellular industry. Technology is undergoing such rapid development that tariffing could unduly restrict the ability of cellular carriers to develop new services, features and system configurations, all of which could depend in one way or another on interconnection arrangements tailored to meet the particular needs of CMRS providers.

Continued reliance on the contracting process, on the other hand, would safeguard this flexibility. Moreover, it would properly recognize that the interconnection negotiation processes have been established and are now readily understood by all affected parties.

III.

C. OTHER INTERCONNECTION ISSUES AND CMRS RESALE

In the Inquiry portion of the Notice the Commission asks whether interconnect and resale obligations should be imposed upon all CMRS providers. The answer to these questions is negative.

As to interconnection, the Notice itself observes that the basis for applying such obligations to LECs was their control over the bottleneck access to the public switched network and that "CMRS providers do not have control over bottleneck facilities". Id, at para 124. Given the rapid evolution in the mobile communications marketplace and the increasing competition on the horizon, it would be unwise to saddle providers with interconnection obligations at this time. Instead, the Commission should allow the forces of competition to further develop and avoid unnecessary new regulatory requirements absent a proven and

demonstrable need.[9]

Moreover, CMRS providers will be able to establish interconnection with each other via their guaranteed access to the local exchange or via voluntary interconnection agreements; hence, mandatory CMRS-to-CMRS interconnection is unnecessary to ensure connectivity.[10]

Likewise, ALLTEL submits that there is no need to adopt additional resale rules. Once again, the advent of multiple, facilities-based providers will ensure that consumers have sufficient choice and that price competition is vigorous. Moreover, by avoiding imposition of cellular resale obligations, the Commission will ensure that incentives to build-out new services expeditiously are not diminished.

Any resale requirements presently in place or that may be adopted, however, should be applied to all CMRS providers, including new entrants. Any differences between and among CMRS services are insufficient to outweigh regulatory symmetry in this respect. See, e.g., CMRS Second Report, 9 FCC Rcd at 1420 (FCC interprets CMRS as requiring that competitors providing similar services be subject to "similar rules and regulations").[11]

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[9] The Notice correctly asks whether the Commission should refrain from exercising its authority under section 201 (a) of the Act to impose interconnection obligations on CMRS providers. Id. at para. 125. Given their lack of market power (and the right of each provider to interconnect with the local exchange), there is no need to impose a regulatory straight-jacket on this developing industry. Instead, competition and the market-place should be allowed to shape the direction of CMRS-to-CMRS interconnection arrangements.

[10] Given the ubiquity of the local exchange facilities there is no reason to fear any significant inefficiencies if CMRS-to-CMRS calls are routed via the nearest local exchange.

[11] The Commission has indicated an intention to continue its cellular resale policies during this proceeding. Notice at para. 123. Upon its conclusion the Commission should revisit those policies as well.

IV.

CONCLUSION

For the foregoing reasons, ALLTEL urges the Commission not to extend equal access obligations to independent cellular carriers and to adopt rules otherwise consistent with the points made herein.

Respectfully submitted,

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By: _____

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Its Counsel

September 12, 1994