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Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications

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Comments of the
County of Los Angeles
to the
Order Instituting Investigation

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I.

Introduction and Summary

The County of Los Angeles ("County") hereby respectfully submits these comments in response to the Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, filed December 17, 1993.

While this investigation covers a broad range of existing and future mobile telephone services, the County's comments focus primarily upon cellular services as they exist and are offered at the present time; many of the County's concerns, however, are equally applicable to future wireless services and technologies, and are offered in the hope that they may provide guidance toward the development of a more effective regulatory structure for these new services. As the County will demonstrate, many of the current inadequacies in the manner by which cellular services are regulated in California — conditions that have resulted in egregious overpricing of these services — are largely attributable to policies adopted and implemented by the Federal Communications Commission (FCC) at the time that cellular licenses were awarded in the early to mid 1980s. Notwithstanding the obstacles to effective regulation created by the FCC, however, the California PUC can and the County believes should take the necessary remedial steps to assure that these increasingly essential services are offered to public service agencies — and to the public at large — at prices that are fair,

just and reasonable, not unduly discriminatory, and that will not provide "monopoly rents" to the franchise holders to whom scarce radio frequency spectrum was granted in the public interest. Los Angeles County has long led the state and the nation in pursuing innovative uses for new telecommunications technologies, and looks forward to the emerging technologies of Personal Communications Systems ("PCS") and Enhanced Specialized Mobile Radio ("ESMR") carriers. Indeed, if technologically and financially beneficial, the County is likely to utilize these new services. At the present time, however, we do not consider the potential future availability of alternative wireless mobile services to constitute a consequential competitive threat to the incumbent cellular carriers, and do not consider the potential introduction of these new services to diminish the need for effective and continuing regulatory constraints on the pricing practices of the incumbent dominant cellular carriers.

II.

Cellular is an essential telecommunications service and requires the same level of regulatory attention as any other public utility under the Commission's jurisdiction.

The County strongly agrees with the OII [at 8] that mobile service has become an integral part of the telecommunications services relied upon by many businesses and institutions in the State. Of even greater importance, the County agrees with the OII [at 9] that public safety and community institutions rely on mobile telephony to improve their emergency response capability. We further agree with the OII [at 25] that mobile telephony has

become a service whose availability can critically affect the welfare of all residents of the State. It is the County's position and experience that cellular service has reached a point in government, and particularly in public safety/emergency uses, where cellular companies fill a vital public utility role.

At Appendix A of the OII, Question 33, the Commission asks specifically: "In light of the growing dependence of public agencies on mobile telephone capabilities, should the Commission require mobile telephone service providers to establish special rates for public safety or other public agencies? If so, what criteria should be used to qualify?" While prevailing price levels for cellular services have been set far in excess of any reasonable relationship with cost including a fair return on the cellular carriers' investments, there is a particularly compelling public interest in assuring that government agencies and institutions charged with responsibility for protecting life and property and the public health and safety not be subjected to excessive monopoly prices for these essential telecommunications services.

In addition to considerations of <u>price</u>, the <u>availability</u> of cellular communications in <u>emergency situations</u> has become a critical concern to local public safety agencies. Accordingly, the County believes that regulatory measures are required to assure priority access to cellular telecommunications services for emergency services personnel during emergency conditions, and that the Commission should direct cellular carriers <u>as well as</u>

connecting landline carriers to take all steps necessary to assure such priority availability of essential communications where the public health and safety are involved.

II.A. The scope and character of the applications of cellular telephony by County of Los Angeles government departments demonstrates the vital role of these services in helping to protect life, health, safety, and property, and the public interest generally.

The County of Los Angeles operates an extensive network of telecommunications systems and services that interconnect and support the more than 83,000 County employees in 36 County departments. Long before the entry of cellular, mobile telecommunications has been an integral component of the County's overall telecommunications capabilities and resources.

Cellular telephone service augments the County's two-way radio systems in several critical ways. The two-way systems are built to Public Safety standards and are very reliable. However (with the exception of a manual dial tone patch), the County's radio systems are not connected to the Public Switched Telephone Network (PSTN), and provision of such connectivity is not practical given existing channel allocations and loading. Therefore, cellular communications must provide nearly the same level of availability, for public safety use as the County's other radio systems.

The Internal Services Department, County of Los Angeles, surveyed all County Departments with respect to their use of cellular telephones. One characteristic common to many

respondents was the fact that cellular is integral to all emergency/disaster plans and actual operations, landline backup, efficiency/productivity, and personal safety. A summary of key statements follows:

1. The Sheriff's Department relies on cellular for hostage negotiations, major crime scene intercoordination, undercover narcotics investigations, protocol arrangements incident to visits by various dignitaries, public information officers' communications, and all natural and man-made disasters.

2. The Fire Department requires cellular telephones for coordination of agencies involved in containment and clean-up of hazardous materials spills. Each Battalion Chief carries a cellular telephone to every major incident. Thus, if the gas company or electric company requires immediate notification to shut down a utility at the fire scene, it can be handled rapidly.

3. The Department of Children Services uses cellular for its field services people to immediately call the Sheriff's Department and other agencies upon discovery of an actual case of child abuse. Field staff often work in dangerous neighborhoods and therefore carry portable cellular telephones for safety.

4. The Department of Beaches and Harbors requires cellular telephones to participate in the Interagency Swift Water Rescue Operation. A project was undertaken to link every Lifeguard tower and all main lifeguard stations together via cellular. This would replace the wire lines to each tower, which were subject to frequent outages. After an initial free demonstration period provided by the carrier, the system was removed solely because of the exorbitant air time charges.

5. The Department of Health Services - Antelope Valley Rehabilitation division is located in a rural section of the County. During last year's floods, cellular service was the only means of communications available. After the Northridge earthquake, most landline telephones in the earthquake area were out of service. However, some cellular services were functional.

6. The Department of Public Social Services reports that cellular telephones were crucial following the Northridge earthquake. Many of their offices were unusable and unsafe to enter. Even pay telephones were out of service. Cellular was the only means to relay building damage reports to headquarters. In addition, cellular bridged the communications gap when temporary facilities were set up but land lines were not yet installed.

7. The County of Los Angeles Animal Care and Control Department put cellular into action both during the Altadena/Malibu/ Topanga fires and the Northridge earthquake. During both disasters, cellular telephones were vital in keeping field offices in contact with the emergency operating center. Finding shelter for lost animals, including horses, was handled by cellular, with great efficiency.

8. The Department of Coroner stocks cellular telephones for disaster response operations. Field investigators utilize cellular in their daily response to homicide, traffic accidents and other deaths. Following the Northridge earthquake, cellular was a vital means of communicating with the staff at the Santa Clarita Valley Regional Office.

9. The Department of Parks and Recreation relies on cellular telephones to maintain command of incidents within the jurisdiction of the park police. During the 1992 civil unrest, the Administrative Services Agency building was evacuated. Landline telephones could not be accessed, but cellular took their place. During the 1993 fires, Eaton Canyon Nature Center completely burned down. Emergency assistance was summoned by cellular telephone. After the Northridge earthquake, field command decisions for deployment of park police were handled by cellular telephones. In addition, many parks/sites were utilized as emergency shelters and first aid stations. Primary

communications with disaster relief agencies was handled via cellular telephones.

10. The Law Offices of the Los Angeles Public Defender use cellular telephones in the field conducting investigations and interviewing witnesses where the actual crimes occur. Many times staff have been faced with dangerous and hazardous conditions while working in the field. Before the utilization of cellular, investigators would have had to locate a public telephone often in dangerous areas of the County to answer a pager call. Several investigators have been assaulted while searching for or using a public telephone.

11. The Treasurer and Tax Collector acquired cellular telephones specifically for use in emergencies. Contact would be made with the departmental emergency coordinator, the Office of Emergency Preparedness, and the Internal Services Department to ensure that physical security of departmental buildings is maintained and to assess the condition of County property. Staff would also be in contact with banks and investment advisers to ensure that available funds are appropriately handled.

12. The Department of Health Services provided this summary of post-Northridge earthquake cellular situations:

- Olive View Medical Center - most telephone lines out of service. Cellular service generally off line.

- Public Health Services - Cellular used for coordinating the inspection of water supply, solid waste for home and business.

- LAC/USC Medical Center - cellular used to coordinate staffing at all health safety net services for the residents of the Northeast Network.

- Harbor/UCLA Medical Center - power failure and telephone systems down. Cellular telephones were the only way to communicate with supervisors and outside agencies (for evaluation of structural damage, equipment repairs, and overall conditions).

These case histories clearly demonstrate that the primary use of cellular telecommunications by agencies of the County of Los Angeles is in support of essential public safety and other public services, the efficiency and effectiveness of which are facilitated by the availability of high quality mobile telephone communications. Cellular telephone service is a natural extension of and enhancement to the wireline telephone network, and is no more discretionary to the efficient functioning of a government entity than any of a large number of "business telephone services," such as private lines, digital data services, and local/long distance calling.

II.B. Prices charged for cellular services are excessive and have the effect of preventing valuable public service applications from being adopted.

The County believes that cellular telephone service is an essential public utility service that is furnished on a non-competitive basis by franchised carriers who, absent some regulatory constraints, have the ability to and in fact do exert substantial market power in the setting of prices. Indeed, even in the absence of explicit collusion, the non-competitive character of the cellular market is entirely consistent with the duopoly market structure adopted by the FCC and under which this industry operates.

The only element of cellular telephony that may be considered "competitive" is the market for the cellular mobile and portable telephone units themselves. In some cases, in fact, the facilities-based cellular carriers have employed aggressive, highly discounted pricing of the mobile and portable transceivers as the primary means for attracting new subscribers, and as such have offered these units at seemingly attractive prices. However, any such "discounts" are more than recovered through the excessive monthly access and per-minute air time usage charges imposed by the dominant facilities-based carriers.

More than 1,800 mobile telephone sets are presently in use by various County Departments and agencies, who together spend in excess of $1.3-million annually for cellular service. Many other potentially valuable applications are not being served by cellular simply because the price level being charged for these

services at this time is excessive and unreasonable. The County would like to equip every Children Services field investigator with a cellular telephone, to immediately report child abuse and dangerous situations. We would like to provide every sworn officer who is a certified hostage negotiator with a cellular telephone. The list of applications that serve important public needs is long.

The presence of exorbitant monthly rates and air time usage fees directly interferes with the County's goals of enhancing public safety with additional cellular service. During the riots, floods, fires, and earthquakes, both of the cellular carriers serving the Los Angeles SMSA provided, at no charge, hundreds of desperately needed cellular telephones and air time. While these important contributions of needed resources in emergency situations are readily acknowledged and appreciated, the County should not have to wait until after a major disaster to obtain the needed cellular services, and would not have to call upon the charity of the facilities-based carriers if cellular rates were significantly lower to begin with.

Finally, we would note that cellular carriers in other parts of the country go out of their way to help governmental agencies. Through an enhanced routing system developed by Cellular One in Florida, emergency units are dispatched to serious accidents and crimes in progress faster than ever before. Enhanced 9-1-1 automatically connects cellular calls to the nearest 9-1-1 location. This shortens emergency response time. This key feature is not

available in Los Angeles County. Cellular One carriers in Florida donated portable telephones to the City of Miami's Neighborhood Enhancement Team (NET) program. NET service centers have helped public safety respond to emergencies. Some cities have Neighborhood Cellular Watch projects, operating with cellular telephones and some air time donated by cellular carriers. Los Angeles County believes that it is time for the Los Angeles carriers to make similar accommodations to the government, in the form of reduced charges, Priority Access, and E-911, as small compensation for the incredibly valuable licenses that were granted without charge.

III.

Priority access to cellular communications during emergency conditions is essential, and carriers should be directed to make all necessary modifications to their systems so that such access can be assured.

During times of general emergency (e.g., the recent earthquake, fires, riots), public telecommunications networks become jammed with traffic. Unfortunately, it is precisely during these conditions that communications in support of public safety and emergency response becomes most essential. This problem is particularly acute with respect to cellular, due in large part to the extremely limited number of channels that are potentially available on these systems.[1]

1. Typically, only about 25 individual channels will be available in each cell for each of the two ("A" and "B") carriers. In densely-populated urbanized areas, as many as 1,000 or more cellular mobile units may be contending for this limited (continued...)

It is thus critical that bona fide public safety needs be satisfied on a priority basis. The Commission should order that all cellular carriers in the State provide Priority Access to selected public safety and critical cellular telephone numbers. Qualifying guidelines should be established for granting Priority Access availability. This will eliminate any concerns the cellular carriers may have about the legal liability as to who is entitled to Priority Access. First, the subscriber must be an officially incorporated government recognized by the State of California. Second, the government agency must be engaged in operations involving safety of life and property. Third, the governmental entity must have at least one Federal Communications Commission license granted under the following:

1. Section 90.19 Police Radio Service
2. Section 90.21 Fire Radio Service
3. Section 90.27 Emergency Medical Radio Service
4. Part 90, Subpart C Special Emergency Radio Services

The technology allowing Priority Access is available. Originally, the access overload class programming of the subscriber unit could accomplish this. As this feature became unworkable, the utilization of Mobile Telephone Switching Office ("MTSO") software, on a per-number basis, can provide this much-needed capability. Certain cellular telephones are used by County personnel in emergency/disaster situations. Due to

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1. (...continued)
channel capacity at any one time, particularly during emergencies.

possible blocking of the cellular MTSO and/or the public switched network, cellular telephones might not be usable at the most critical times. The Priority Access service would mitigate this serious deficiency. This service is similar in nature to the County's "essential service" arrangements with the local wireline telephone carriers. During the recent civil disturbances, floods, fires, and earthquakes, the need for Priority Access was amply demonstrated.

Priority Access to cellular service must also be coordinated with the landline carriers where calls are switched through the MTSO onto the landline public network. The County is willing to work closely with cellular and landline carriers to effectuate and implement the necessary emergency arrangements.

IV.

"Bottleneck elements" of cellular service furnished by facilities-based carriers should be subject to cost-of-service regulation and be unbundled from non-bottleneck "competitive" components.

Cellular radiotelephone service is constructed out of a number of separate system components, principal among which are the following:

(1) Mobile or portable telephone transceivers capable of originating and receiving cellular calls ("mobile units");

(2) Two-way radio links between individual "cell sites" and customer mobile or portable cellular telephone units;

(3) Telecommunications links interconnecting the individual cell sites with the MTSO, which links may be provided via point-to-point microwave or other facilities owned by the cellular carrier, and/or via dedicated facilities leased from one or more common carriers;

(4) The MTSO, which manages channel assignments for each "cell" and controls "hand-offs" from one cell to another as the mobile unit travels; provides switched interconnections between the dedicated telecommunications links connected to individual cell sites (for communication between two mobile telephone units) or between a cell site telecommunications link and the local or interexchange public switched network; manages and effects hand-offs to and from other cellular systems where such capability has been established; and provides call detail recording and billing functions;

(5) Trunk lines interconnecting the MTSO with landline LEC or IXC switches for connections to/from the public switched network; and

(6) Dedicated telecommunications links to other MTSOs for the purpose of effecting inter-system handoffs.

Only item (2) on this list is covered by the FCC license per se, all of the other system elements are peripheral (although certainly not unimportant) to the radio transmission systems that operate over frequency blocks granted on an exclusive basis to each facilities-based cellular carrier. In principle, then, only the basic two-way radio links could be seen as constituting the "bottleneck" element of the cellular system, in that each and all of the other components are (at least potentially) available from multiple — and competing — sources.

In general, that proposition is fundamentally correct, with the exception of item (3), the interconnecting links between the individual cell sites and the MTSO, and certain of the cell management and control functions that are performed by the MTSO, item (4). It should, in principle, be possible for a facilities-based cellular carrier to unbundle these primary bottleneck elements - the two-way radio links and the associated interconnection and cell management functions — from the balance of its system, and offer this base capacity to resellers and others at cost-based rates.

The supply of the mobile unit, the switching and signalling interface functions between the cellular system and local and long distance landline public switched networks, and various ancillary functions such as voice mail, call forwarding, etc., all constitute retail activities that are potentially subject to competition if the essential facilities were made available on a

cost-based, non-discriminatory basis to competing resellers and large users.

As we discuss below, the existing duopoly structure of the facilities-based cellular market, together with the finite traffic-handling capacity of these systems, has resulted in pervasive overpricing of cellular service. Cost-of-service type regulation of unbundled basic bottleneck components of the facilities-based carriers' services would facilitate competition in the balance of the retail cellular services market, and result in substantially lower price levels overall.

Indeed, the absence of unbundling has the effect of reducing the activities of cellular "resellers" to largely an "agency" role. The resellers may produce customers, but (with the exception of the mobile units) the actual cellular service will in all cases be furnished by the facilities-based carriers. The reseller cannot, for example, offer pricing options and arrangements that differ materially or structurally from the basic rate plans defined by the facilities-based carrier(s) whose services it resells. It cannot "own" cellular telephone numbers, but must instead obtain blocks of numbers for its customers from the facilities-based carrier. Suppose, for example, that a reseller of the A=block carrier's service in a particular market were able to negotiate a better wholesale price with the B-block carrier and thus wanted to switch all of its customers to the B-block carrier. In order for this to occur, the reseller would be required to enforce a telephone number change upon each of its

customers and to physically reprogram each customer's cellular telephone with the new telephone number and system ID. Contrast this with other "retail" type activities. If a neighborhood grocer were able to obtain a better wholesale price for milk from a new supplier, he could switch to that new source without encountering any significant customer inertia, except perhaps to the extent that the original supplier had developed brand loyalty among perhaps a small fraction of consumers. And even in that event, the consumer would be confronted with the choice of accepting the change in milk brand or of finding a new grocery store that still carried the other brand. In that example, it is more than likely that the grocer, rather than the milk distributor, commands greater consumer loyalty, permitting the grocer to convert his management skill and investment into a stable market base of retail customers. As long as the facilities-based cellular carriers continue to require that bottleneck and ancillary components of cellular service be sold to resellers on a bundled basis, there is no serious likelihood that the existence of resellers will impose any consequential competitive discipline on the facilities-based carriers.

V.

The duopoly market structure adopted by the FCC is incapable of assuring adequate price competition between the franchised facilities-based carriers.

Both economic theory and a decade of experience compels a conclusion that the duopoly market structure that was created by the FCC for facilities-based cellular carriers is fundamentally incapable of producing a competitive result. It has been sug-

gested that collusive behavior on the part of the two facilities-based carriers may explain this effect.[2] However, such a view conveys a fundamental misunderstanding of the operation of duopoly markets and misconstrues as being overtly collusive the fully legal responses that are predicted by economic theory. This is a central issue to any assessment of the efficacy of the cellular marketplace. Accordingly, an understanding of the manner in which the present duopoly came to exist, and its consequences for the pricing and competitiveness of cellular service, is essential to the formulation of a sound regulatory policy.

V.A. The genesis of the cellular duopoly was the FCC's goal of creating a competitive market for cellular service.

When the Federal Communications Commission in 1979 initiated its efforts to create a regulatory framework for the yet-to-be-established cellular radio service industry, it confronted the conflicting goals of creating a competitive industry structure while at the same time assuring rapid development and deployment of the new technology to the public. The Bell System (pre-divestiture AT&T) had argued that by virtue of cellular having been invented and developed by Bell Telephone Laboratories (the Bell System's R&D affiliate), Bell and Bell alone could assure rapid deployment of cellular into a nationwide network. A number of firms anxious to enter this market urged the FCC to award licenses on a competitive basis. The FCC's response to this dilemma was to "split the baby," to allocate half of the available frequency spectrum earmarked for cellular to an

2. See, e.g., I.88-11-040, Proposed Decision at 42.

indigenous wireline telephone utility while reserving the other half for non-wireline applicants (who were defined, for this purpose, as any entity other than a wireline telephone company serving the same market area).[3] In designing this duopoly market structure, the Commission had expected that the presence of two competitors of approximately equal size in each cellular market area would assure effective competition with respect to prices and service. Unfortunately, several events, some beyond the FCC's direct control, transpired to reshape the original model into something that was quite unexpected.

The FCC had several objectives in establishing the duopoly arrangement. Since the late 1960s, the Commission had been pursuing policies aimed at permitting and indeed encouraging the development of competition in the telecommunications industry.[4] The FCC's decision to award two cellular radio licenses in each market, with equal numbers of channels, was thus for the specific purpose of promoting the competitive provision of this service. At the same time, the Commission was anxious that cellular radio-telephone service become available to the public with minimum delay, and believed that wireline telephone companies would be

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3. CC Docket 79-318, Report and Order, issued May 4, 1981.

4. See, Use of the Carterphone Device in Message Toll Telephone Service, 13 FCC 2d. 420 (1968); In the Matter of "Specialized Common Carrier Services," Report and Order, 29 FCC 2d. 870 (1971).

capable of constructing and operating their systems sooner than would occur without the wireline set-aside policy.[5]

Having concluded that this duopoly would result in a competitive market, the FCC declined to exert any regulatory influence over the ratemaking process, and deferred this responsibility to the state commissions. State regulators, in turn, have generally not involved themselves in the cellular ratemaking process, having concluded (either implicitly or explicitly) that cellular is both a discretionary service and, because of its duopoly market structure, is also a competitive service. Either or both of these premises would (arguably) serve to rationalize regulatory forebearance or non-regulation of this service; as time and experience have demonstrated, however, both of these premises are decidedly in error.[6]

At the time that the Commission established its "wireline set-aside" policy, one wireline carrier - the pre-divestiture Bell System - controlled some 80% of the geography in the conti-

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5. See, Cellular Communications Systems, Report and Order, 86 FCC 2d. 469 (1981) (hereinafter "1981 Cellular Order").

6. It is perhaps ironic that Congress has now acted to preempt state regulation of cellular rates, except where such regulation had already been in effect and then only if the state regulatory authority petitions the FCC for continued jurisdiction. That this regulatory meddling occurred in federal budget and tax legislation can only leave one awe-struck as to the lobbying prowess of the cellular industry, but in view of the scant legislative history surrounding inclusion of this particular provision in the Omnibus Budget Reconciliation Act (OBRA), one could hardly ascribe any serious policy credibility to this action.

nental United States.[7] With the break-up of AT&T and the ensuing ability of the divested Regional Bell Holding Companies (RBHCs) to engage in certain non-regulated lines of business, the grant of the wireline cellular license to the divested wireline operating companies created what was perhaps the first of many such non-regulated business ventures for the parent corporations of the wireline BOCs. During the 1982-85 period, the FCC continued to process non-wireline applications as provided in its Report and Order, but eventually most of the "top-90" market franchises were issued either as a result of full market settlements among the applicants (each one of which generally received an equal partnership interest in the franchise) or through a lottery conducted by the Commission. This process in turn stimulated trading in partnership shares and licenses, but for the most part these were confined to non-wireline buyers and sellers.

In 1986, however, the United States District Court overseeing the Modification of Final Judgment (MFJ) issued an order that explicitly permitted the divested BOCs to acquire, through purchase, non-wireline cellular licenses outside of areas in

7. The FCC's Report and Order in CC Docket 79-318 was issued May 4, 1981, some eight months before the settlement of U.S. v. Western Electric Company et al and the break-up of the Bell System was announced. Thus, the FCC's ruling did not contemplate that seminal event in the history of the US telecommunications industry, nor did the Commission subsequently modify its original market model when the divestiture plan was made public. This turned out to be most unfortunate, since the divestiture had a profound impact upon the efficacy of the FCC's cellular industry model and vision.