

1 necessity must be issued by the PSC before an
2 intrastate motor carrier can operate as a common
3 carrier. Moreover,

4 No new or additional certificate shall
5 be granted over a route where there is
6 an existing certificate, unless it be
7 clearly shown that the public
8 convenience and necessity would be
9 materially promoted thereby.

10 (Sec. 164).

11

12 Similar to RCCs, intrastate motor common carriers are
13 regulated with respect to entry, service territory,
14 terms and conditions of service, tariffs, and rates.

15

16 Q. HOW HAS ENTRY REGULATION SERVED THE STATE WITH REGARD
17 TO THE ECONOMIC WELLBEING OF THE INTRASTATE TRUCKING
18 SECTOR?

19 A. As noted above, the Louisiana PSC is vested with the
20 statutory authority to oversee entry into (and exit
21 from) the motor common carrier markets in the State.
22 At a time when intrastate truckers are enduring
23 business declines, idle capacity, layoffs, and
24 financial losses reflective of difficult economic times
25 in the State, the PSC has invoked this authority to
26 examine the public desirability of additional entry in
27 the Sector -- and rejected it. This effort to promote
28 the economic health of the industry was recently
29 affirmed by the Louisiana Supreme Court (Miller Trans-
30 porters, Inc. v. Louisiana Public Service Commission,

1 Docket No. 87-CA 1919 which upheld this Commission's
2 denial of a new certificate for a motor carrier). This
3 type of prescription would be available if needed with
4 respect to the RCC sector under the current regulatory
5 regime in the State.

6
7 Q. HOW COMMONPLACE IS ENTRY REGULATION IN OTHER STATES?

8 A. Entry regulation is still widely used in U.S. telecom-
9 munications markets. According to NARUC, 31 States
10 (including Louisiana) and the FCC required RCCs to file
11 certificates of public convenience and necessity as of
12 1986. 9/ Among those that utilize certification, most
13 (29) grant RCCs specific service areas in which to
14 operate.

15
16 No U.S. local wireline (exchange) market has been entry
17 deregulated, not even in the deregulation flagship
18 state of Nebraska, where local telephone companies
19 petitioning for deregulation must demonstrate financial
20 and technical capabilities. Indeed, the Nebraska PSC
21 has recently reported to its state legislature that the
22 deregulatory law there will, among other things, result
23 in excessive rates and, accordingly, should be

24 9/ NARUC, Annual Report on Utility and Carrier Regulation
25 1986, op cit., Table 77, pp. 602-605.

1 reevaluated. 10/ Many requirements have been relaxed
2 by State PSCs in interexchange (long distance) toll
3 markets, but no commission has apparently deregulated
4 entry into interexchange service entirely. For
5 example, California, Illinois and Nevada have author-
6 ized full detariffing of State toll service, but retain
7 certification and filing requirements for interexchange
8 carriers. Even resellers must be certified before they
9 are allowed to operate in approximately half the
10 States, an increasing trend as PSCs attempt to protect
11 ratepayers from financially unstable suppliers.

12
13 Q. DO YOU HAVE ANY CONCLUDING REMARKS?

14 A. Yes. Entry deregulation in Louisiana's mobile radio
15 telephone market is, neither advisable nor warranted at
16 this time. Inadequate safeguards apparently exist
17 which would not effectively prevent the potential for
18 anticompetitive cross subsidization by LECs entering
19 RCC service areas. NARUC, Judge Greene, GAO, Congress
20 and others have identified such potential and, in some
21 cases, documented their existence. In Louisiana
22 itself, evidence of such cost shifting has apparently
23 been uncovered, and the possibility of future
24 recurrences cannot be summarily dismissed.

25
26 10/ "Nebraska PSC Asks Legislature to Reevaluate Deregula-
27 tion Law, In First Annual Report," Telecommunications
28 Reports, February 15, 1988, p. 11.

1 Given this unchecked market power and the likely
2 dislocations imposed by its introduction, open entry
3 into nonLEC mobile markets in the State seems ill-
4 advised at present. Until more insulating accounting
5 safeguards and other measures, e.g., structural separa-
6 tion, can be achieved, entry regulation policies for
7 RCC markets should be retained.

8

9 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

10 A. Yes, it does.

FEB 14 1990
JAN 1 1989

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

LPSC COMM

IN RE: DETERMINATION AS TO WHETHER
DEREGULATION OF CELLULAR
TELEPHONE SERVICE IS APPROPRIATE

DOCKET NO. U-18619

MEMORANDUM IN OPPOSITION TO
DEREGULATION SUBMITTED ON
BEHALF OF RADIOFONE, INC.

Radiofone, Inc. ("Radiofone"), a certificated Radio Common Carrier providing cellular telephone service opposes deregulation of cellular telephone service in the State of Louisiana by the Louisiana Public Service Commission ("LPSC" or "Commission") and submits this Memorandum:

I.

TECHNOLOGY OF LAND MOBILE COMMUNICATIONS

Developments in radio technology have been utilized to provide "mobile" telephone communication between and among individuals.¹ Through interconnection of the mobile radio telephone service with the wireline telephone system, the individual with the mobile unit can place calls to and receive calls from subscribers of the wireline telephone system or other mobile telephone subscribers

¹ For example, an individual may have a telephone in his car which is connected to the wireline telephone system via radio.



similarly interconnected to the wireline network. Two-way communications generally are referred to as "mobile telephone service," and are provided pursuant to conventional technology, e.g. IMTS, and more recently, cellular telecommunications technology.

Mobile telephone services are provided directly by wireline telephone companies (primarily South Central Bell in Louisiana) or their affiliated entity and by independent companies known as Radio Common Carriers ("RCC").² The RCC's mobile communications system is interconnected with the wireline telephone system. Rates charged the RCCs by the wireline telephone companies for interconnection are established in tariffs filed with federal and state agencies. Regardless of whether a telephone company or RCC provides the mobile telephone service, they are functionally indistinguishable and fungible services in the eyes of consumers.

Cellular telephone service is clearly a public utility or common carrier service which, under Louisiana law, must be regulated by this Commission. The standard for such service is that it must be offered on a non-discriminatory basis to the general public. Since the Commission and Legislature have made the determination that competition between the wireline and the nonwireline carrier is in public interest, it must continue to regulate in order to ensure that the two entities continue to

² Non-wireline carriers may also provide cellular service indirectly by the wireline telephone company's cellular service as it is made available for re-sale.

exist. Presently, approximately 70% of the top 30 cellular markets in the United States are owned by the wireline carriers. The wireline carriers have been aggressively purchasing the nonwireline operators, thus eliminating the nonwireline operators in the marketplace. The wirelines then control the entire market. Louisiana still has competition, and currently has some of the lowest, if not the lowest, rates in the nation. Recent history serves as a lesson to this Commission that predatory pricing and "misinterpretation of tariffs" is within the capability of the wireline carrier. Such predatory practices, unchecked, would eventually drive the nonwireline carrier, such as Radiofone, out of the marketplace.

II.

REGULATION OF LAND MOBILE COMMUNICATIONS

The FCC licenses the use of radio frequencies, whether the services to be provided are interstate or intrastate in nature. The licensed service is called the Public Land Mobile Radio Service ("PLMRS"). Under current cellular rules promulgated by the Federal Communications Commission ("FCC") two (2) cellular systems may be authorized per market, known as Metropolitan Statistical Areas (MSAs) or Rural Service Areas (RSAs), on separate frequency blocks. One block of frequencies is set aside for wireline telephone carriers, (wireline local exchange telephone service), and the other frequency block is made available to non-wireline applicants. This allocation of frequencies is consistent with the

classification of the service as being offered on a monopoly basis, especially when one of the two providers, the wireline telephone carrier, controls the bottleneck facilities, i.e. the wireline network, to which both cellular systems are interconnected. Unlike the wireline telephone company, to which one frequency block was allocated merely by virtue of its classification, the non-wireline applicants must participate in costly and time-consuming competitive application procedures in order to obtain the right to offer service.

Since 1976, the FCC has left the full responsibility for traditional regulation of entry, service and rates in the PLMRS to the states. In Louisiana, telephone companies are regulated by this Commission under its constitutional authority and duty to "regulate all common carriers and public utilities..." La. Const. Art. 4, Section 21. Pursuant to the radio common carrier statute, ("RCC Statute"), La. Rev. Stat. Ann. 45:1500 et seq. (West), the LPSC regulates the RCCs, through the certification process. This Commission and the Courts have interpreted the RCC Statute to apply to the wireline telephone company, or any related entity, offering mobile services outside its wireline area.

Currently, the RCC Statute imposes a stringent entry standard where one RCC seeks to compete with, or duplicate service of, an existing certificated carrier. The Commission may only issue a certificate of public convenience and necessity (the "Certificate") upon a determination that existing service is inadequate and that the existing RCC can not, or will not, after notice and hearing,

provide adequate service. By definition, the RCC Statute confers statutory jurisdiction with the LPSC with a mandate to regulate any common carrier, whether such provider offers one-way service such as paging, or two-way service such as cellular and IMTS.

This Commission and the Courts of this State have recognized that regulation of the RCC industry is in the public interest. Entry regulation is the linchpin to enforcement of the stated policy of preventing wasteful duplication of services. Unrestricted entry to the RCC industry results in destructive competition and the ensuing reduction in capital for growth, reinvestment and improved RCC services to the public. The limited frequency resource is also utilized in an inefficient manner when entry is left uncontrolled. Furthermore, the operation by unscrupulous companies who enter markets unable to bear additional competition and then abandon their customers with unusable equipment further frustrate the orderly expansion of this technology.

III.

**CONTINUED REGULATION IS NECESSARY TO PREVENT
LAND-LINE TELEPHONE COMPANIES FROM CROSS-
SUBSIDIZING THEIR RCC SERVICES WITH
MONOPOLY LAND-LINE TELEPHONE SERVICE REVENUES**

The threat of cross-subsidy by the wireline companies from basic subscriber revenues for cellular operation has been documented in Louisiana on numerous occasions. This threat has only been kept in check through the continued vigilance of the non-wireline RCC carriers and the implementation of the regulatory

powers of this Commission. Cross-subsidization results in increased rates to wireline telephone subscribers and enables the wireline telephone company to offer RCC services at inordinately low rates or predatory prices. For example, the cellular entity of this region's Bell Operating Company, BellSouth Mobility, filed a tariff in 1987, which included predatory pricing and cross-subsidization in Section K. This provision, the Customer Change-Out Incentive Program, offered any existing cellular customer of a competitor an incentive to switch to BellSouth Mobility. Basically, an existing cellular customer of the competing entity (Radiofone) who was willing to switch to BellSouth Mobility was offered a waiver of service establishment charges and free access for four (4) months. This incentive was not offered under any other section of the tariff and was not available to South Central Bell customers or new customers. Only by bringing the tariff to the attention of the Commission was the non-wireline cellular carrier able to get relief from the obviously illegal discriminatory and predatory provision. As service is extended to rural areas (RSA's), the opportunity for further misconduct and mischief by the wireline company and/or the cellular providing entity is heightened, based on recent history. Deregulation of the cellular telephone industry would eliminate the authority of the LPSC to prevent the re-occurrence of such improper and discriminatory conduct. Clearly the general public would suffer.

IV.

STATE REGULATION OF THE RCC INDUSTRY IS
VITAL IN LIGHT OF THE FEDERAL REGULATORY SCHEME

The Federal Courts have held that the FCC may not preempt state entry regulation of intrastate communication services.³ Further, as the FCC has reduced its regulation of the RCC industry, it has continued to recognize and emphasize the authority of state commissions to regulate entry. As federal regulation decreases, state regulation becomes even more necessary to the protection and furtherance of the public interest.

V.

CONTINUED REGULATION IS NECESSARY
TO ENSURE AFFORDABLE INTERCONNECTION
AND PREVENT ILLEGAL DISCRIMINATORY PRACTICES

The RCC which desires to offer cellular telecommunications must obtain interconnection with the wireline service provider (South Central Bell) in order to provide service to its subscribers. The Bell Operating Companies, therefore, through their subsidiaries, control the bottleneck facilities for interconnection and if left unrestrained, could have discriminatory effects on competition by delaying interconnection requests, disrupting that service, or establishing disproportionate rates for interconnection. This is especially true where the wireline telephone companies are competitors with the RCCs for mobile telephone services. Radiofone's difficulties with South Central

³ Louisiana Public Service Commission v. FCC, 106 S.Ct. 1890 (1986); People of the State of California v. FCC, 798 F.2d 1515 (D.C. Cir. 1986).

Bell over interconnection have been documented on numerous occasions before this Commission. Continued State regulation is essential to ensure that vital interconnection facilities are made available at reasonable rates and as requested by the RCC.

Discriminatory pricing has been evidenced also by the misapplication of so-called "Association Rates" in which similar customers have been charged different rates by the Bell South Mobility. For example, all doctors could obtain cellular service at one price, while another "group" seeking identical service was charged another, without any need to demonstrate that the "group" members were affiliated in any way with one another.

South Central Bell also engages in discriminatory pricing of its roamer tariff by attempting to charge Radiofone more than it does its related cellular entity, BellSouth Mobility, for this service.

Another example of the discriminatory practices by the wireline cellular provider, BellSouth Mobility, is the arbitrary disconnection of roamer service to Radiofone subscribers without notice or cause. Without regulatory powers, this Commission would be unable to prevent such illegal activities and ensure continuous service to the public.

The current regulations of this Commission require that tariffs be filed ten (10) days before their effective date. The wireline carriers would like to eliminate this requirement allegedly to increase flexibility in their pricing strategy to beat the competition. However, without this protection, the nonwireline

carriers would be unable to bring illegal, discriminatory pricing schemes to the attention of the Commission and obtain relief prior to the implementation of these schemes.

VI.

**DUPLICATIVE SERVICE IS A WASTEFUL USE
OF A LIMITED RESOURCE**

Regulation by this Commission ensures the orderly development of this rapidly growing new industry. Once the RCC has received its Certificate from the Commission, it must provide adequate reasonable service to the public or face the risk of losing the Certificate, and must therefore make a major financial commitment to the public for continuation of its services. In the face of duplicative competition, however, the RCC is unable to provide wide area service in areas of marginal profit, thus leaving a segment of the population without any service and the remainder with perhaps substandard service in an effort to remain competitive. Also, without regulation, speculators could obtain access to the necessary radio frequencies and hold them hostage and prevent their use by RCCs willing to provide service.

VII.

**THIS COMMISSION MAY NOT ORDER DEREGULATION
ABSENT A CONSTITUTIONAL AMENDMENT AND
A REPEAL OR AMENDMENT OF THE STATUTE**

As stated above, the LPSC is constitutionally required to regulate public utilities and common carriers. In addition to the

constitutional mandate, the RCC Statute further delineates the responsibilities of the LPSC. This Commission, therefore, has no authority to unilaterally order deregulation of cellular telephone service absent a Constitutional Amendment and legislative repeal or amendment of the RCC Statute. Moreover, this Commission may not carve out cellular telephone service from its regulatory duties without prior legislative approval.

SUMMARY

Radiofone, Inc. respectfully submits that this Commission is without authority to unilaterally deregulate cellular telephone service absent a Constitutional Amendment and a repeal or amendment of the RCC Statute. Cellular telephone service is developing as a rival to conventional wireline telephone service. It is inconceivable that this Commission would contemplate deregulating such an essential public service and it is respectfully submitted that cellular telephone service must be viewed in the same way. In addition, regulation by this Commission is necessary in order to ensure proper service to the public and to provide regulatory oversight to provide relief needed from the wireline telephone company's illegal discriminatory practices. Without adequate safeguards, the general public will suffer from inadequate service,

higher prices and fewer choices and ultimately be denied the full benefits of the evolving cellular telecommunications technology.

Respectfully submitted,



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Regulatory Committee Report

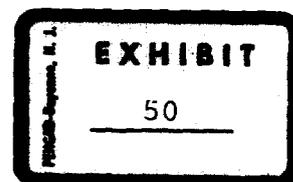
Presented By:

Kathleen B. Blanco, Co-Chairman

Irma Muse Dixon, Co-Chairman

Submitted:

June 1994



GOVERNOR'S TELECOMMUNICATIONS TASK FORCE
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TABLE OF CONTENTS

Introduction	1
Current Regulatory Framework	1
A New Way of Regulation	5
Universal Service	5
Regulation of Rates12

- - REGULATORY COMMITTEE REPORT

The telecommunications marketplace has changed considerably over the last several years which has in turn made some provisions of state laws and regulations obsolete while at other times has revealed huge gaps in the same regulatory framework. Competition has emerged in many services that were previously thought to be natural monopolies. Advances in communication technologies have seen the development of new products and services which in turn tend to enhance the quality of life and promote economic development.

The goal of the regulatory committee was to develop a regulatory framework which promotes the growth of telecommunications in Louisiana along with its infrastructure, while at the same time assuring the maintenance of the quality, accessibility and affordability of telephone service to its residents.

Current Regulatory Framework

Under Article 4, Section 21 of the 1974 Louisiana Constitution, the Louisiana Public Service Commission ("LPSC") has the power and authority to regulate intrastate telecommunications carriers and providers. The LPSC's powers and duties are further delineated in Title 45, Louisiana Revised Statutes, sections 1161-1205. The LPSC's authority is limited by Section (C), Article 4 of the Louisiana Constitution which provides that common carriers and public utilities owned, operated or regulated by the governing authority of political subdivisions of the State of Louisiana on

the effective date of the 1974 Louisiana Constitution are exempt from LPSC regulation. With the imminent entry of competition in the local exchange market, the LPSC at its April 13, 1994, Business and Executive Session, adopted a policy statement confirming its authority over all competitive and alternate access providers proposing to offer intrastate telecommunications services in Louisiana.

On the national level, the Clinton Administration is strongly promoting the building of the "Information Superhighway". The National Information Infrastructure, (NII) initiative was established in September, 1993 to develop an agenda for a public-private ownership to construct an advance NII to benefit all Americans. Comprehensive legislation has been introduced updating and modifying the Communications Act of 1934 due to the major advances in communications technologies and services along with the emergence of competition into an industry where natural monopolies once were the norm. This legislation has come in the form of the "National Communications Competition and Information Infrastructure Act of 1994", H.R. 3636, which was initially introduced in November, 1993 by Congressmen Markey and Fields, and the "Communications Act of 1994", S. 1822, which was introduced in February, 1994 by Senator Ernest Hollings (D-SC). Additionally, another bill was introduced by Congressmen Jack Brooks (D-TX) and John D. Dingell (D-MI) in November, 1993 is the "Antitrust and Communications Reform Act of 1994." This Act would remove some of the restrictions placed on the Regional Bell Operating Companies,

contained in the Modified Final Judgment which resulted as a consequence of the divestiture of AT&T. The intent of the lifting of restrictions is to allow the Regional Bell Operating Companies to provide and offer services once prohibited and on a level they were prevented from doing so by the Modified Final Judgment. Hearings have been conducted by the various committees considering each Bill resulting in amendments. The final outcome of the Bills will not be known until Summer, 1994, at the earliest. We should be reminded that the Bills have provisions that directly impact Louisiana's current telecommunications regulatory framework. The policies and recommendations contained in this report may need to be reconsidered and perhaps, modified once final action is taken by Congress and the Administration.

In 1992, the "Cable Television Consumer Protection and Competition Act of 1992", Public Law 102-385, 42 United States Code, Section 541, et. al., was adopted. Primary regulation of Cable Television rates and practices was vested with the Federal Communications Commission (FCC).

Under Section 611 of The Act, franchising authorities were granted broad powers to enforce public, educational and governmental (PEG) access provisions, including channel capacity, equipment and facilities, financial support and services. Section 612 provides for the lease of capacity to a non-affiliate for video programming purposes. Section 613 provides for certain limitations on ability of common carriers, i.e., local telephone companies, to offer video programming in their service territories unless defined

as "rural" under Section 613(b)(3). Section 621 requires that private cable operators must obtain a franchise and further provides that local government can own and operate a cable system irrespective of whether or not it has already franchised a private operator. Under Section 623, franchising authorities which obtain FCC certification may regulate basic service rates, i.e., mandatory carriage broadcast signals, public, educational and government channels, and other video programming chosen by the operator to be included within basic service. Section 632 provides a franchising authority with broad powers to adopt and enforce consumer protection and service standards, including more stringent standards than those promulgated by the FCC.

With the recent mergers of and alliances between telecommunications providers and cable television companies, the cable television industry is emerging as a potential provider of telecommunications. As such, any new proposed regulatory framework must provide for this contingency. H.R. 3636 and S. 1822 address entry of cable television into the telecommunications marketplace. To the extent that the above regulation does not regulate cable television's offering of intrastate telecommunication services, the states, must be ready to do so.

In response to the "Rural Electrification Loan Restructuring Act of 1993," Public Law No. 103-129, 107 Stat. 1356 (1993), the Rural Electrification Administration ("REA") adopted an interim rule which restructured its telephone loan program. One of the requirements of the interim rule is that individual states adopt

and have REA approval of a State Telecommunications Modernization Plan ("STMP") as a condition precedent for potential borrowers to be eligible to obtain funds from the REA or Rural Telephone Bank loan program. The minimum requirements and objectives which must be included in the STMP are specifically set forth in the interim rule. The interim rule, as it currently stands, has been strongly criticized in that the minimum requirements and objectives are extremely aggressive from a technological point of view, that they are too technologically specific and the plan would apply to all local exchange carriers, not only those borrowing from the REA. A Final Rule is expected to be adopted by early summer, 1994 with a deadline date for adoption and approval of a STMP to be March, 1995. After March, 1995, individual states will be precluded from submitting a STMP and at that time, the borrowers must then submit the plan before becoming eligible to borrow from the REA or Rural Telephone Bank.

A New Way of Regulation

Universal Service:

Access to basic telephone service by all residents of Louisiana has been a longstanding objective of the Louisiana Public Service Commission. Traditionally, the obligation to meet the goal of universal service has fallen on the monopoly local exchange carriers (LECs). Current technical standards describing what is considered universal service today are contained in Appendix A. As new types of telecommunication providers and competing access providers enter the local exchange markets, residents must be