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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

TO: The Commission

REPLY COMMENTS OF AMARILLO CELLTELCO

Amarillo CellTelCo ("CellTelCo"), by its attorney, hereby submits its reply comments on the "Notice of Proposed Rulemaking and Notice of Inquiry (the "NPRM") in the above-captioned proceeding regarding the imposition of equal access obligations on cellular carriers and other Commercial Mobile Radio Service ("CMRS") providers.[1/] CellTelCo respectfully requests the Commission to refrain from imposing equal access obligations on all non-BOC-affiliated cellular carriers; or, in the alternative, refrain from imposing equal access obligations on cellular carriers with fewer than 100,000 subscriber units. CellTelCo asserts that: (1) equal access obligations are inapplicable to carriers not party to the MFJ; (2) equal access obligations could prove financially disastrous for small and mid-sized cellular providers, and (3) the costs of implementing equal access outweigh any perceived consumer benefits.

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List A B C D E

1/ Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, RM-8012, FCC 94-145 (July 1, 1994); Order, DA 94-877 (August 11, 1994) (extending deadline for filing comments to September 12, 1994).

I. BACKGROUND

1. CellTelCo is the non-wireline cellular licensee serving the Amarillo, Texas MSA, a market of approximately 200,000 residents. CellTelCo, therefore, has a distinct interest in this proceeding. In the NPRM, the Commission tentatively concludes that it should impose equal access obligations upon cellular licensees.[2/] The Commission suggests the obligations would be in the public interest because equal access would boost competition in the interexchange and mobile services marketplace and promote regulatory parity between wireless and wireline services.[3/] However, the Commission tentatively concludes that equal access requirements that apply to landline local exchange carriers ("LECs") should not necessarily apply to all CMRS providers, and seeks input on whether the requirements should be "tailored to meet the individual circumstances of particular commercial mobile radio services."[4/]

2/ Id. at ¶ 3. Under the Modification of Final Judgment ("MFJ"), Bell Operating Companies ("BOCs") are required to offer access to the local exchange network to interexchange carriers ("IXCs") that is "equal in type, quality, and price" to that offered to AT&T and its affiliates. United States v. AT&T, 552 F. Supp. 131, 227 (D.D.C. 1982) aff'd sub nom Maryland v. U.S., 460 U.S. 1001 (1983).

3/ Id.

4/ Id.

II. EQUAL ACCESS IS INAPPLICABLE TO SMALL CELLULAR CARRIERS

2. Equal access requirements now imposed on BOCs and BOC-affiliated cellular carriers were borne out of the MFJ.[5/] The requirements were imposed on BOCs and their affiliates because (1) they control "bottleneck" facilities and, therefore, have the ability to prevent customer access to their preferred long distance carrier and IXC access to potential customers; and (2) equal access obligations help deter anti-competitive behavior by BOCs and their affiliates.

3. CellTelCo asserts the reasons equal access obligations are imposed on BOCs and BOC cellular carriers are inapplicable to it and other similarly situated cellular providers. First, non-BOC-affiliated cellular carriers do not possess bottleneck facilities. Second, competition among wireless services is flourishing and will only continue to grow as more wireless services emerge.[6/] Furthermore, equal access obligations are the product of the MFJ and its progeny--proceedings that CellTelCo was not a party to nor had a voice in. In sum, equal access obligations were created in the context of specific facts

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5/ Supra note 2. Although application of equal access requirements to BOC cellular operations was not specifically addressed in the MFJ, subsequent court rulings determined that the requirements should be applied to these cellular carriers as well. See United States v. Western Electric Co., No. 82-0192, ¶ 8 (D.D.C. Feb. 26, 1986); United States v. Western Electric Co., No. 82-0192, ¶ 5 (D.D.C. Oct. 31, 1986).

6/ It should be noted that the Commission has found that the CMRS marketplace is competitive. Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1467-1468 (1994).

and cases that are inapplicable to CellTelCo and other smaller cellular carriers.

III. EQUAL ACCESS WOULD PROVE FINANCIALLY DISASTROUS FOR SMALLER CELLULAR CARRIERS

4. Virtually every small-to-mid-sized cellular carrier that commented in this proceeding agreed: imposing equal access obligations would prove financially burdensome, if not disastrous, for their businesses.[7/] The same parties concurred that the costs associated with the implementation of equal access would result in higher prices for consumers--a fact that directly conflicts with the original intent behind the equal access concept.

5. Three of the small-to-medium-sized cellular providers commenting gave specific figures relating to the costs associated with making their systems equal access compatible. Century Cellunet, Inc. ("Century"), a cellular provider serving approximately 200,000 subscribers, estimates that implementation

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7/ See Comments of Americell PA-3 Limited Partnership at 3; Century Cellunet, Inc. at 2; First Cellular of Maryland, Inc. at 3; Florida Cellular RSA Limited Partnership at 3; Highland Cellular, Inc. at 2; Miscellco Communications, Inc. at 5; Point Communications Company at 2; Saco River Cellular Telephone Company at 3; Sagir, Inc. at 3; Triad Cellular at 6; Union Telephone Company at 3; and Western Wireless Corporation at 5.

The Commission also realizes that the high costs of implementing equal access could prove disastrous for smaller cellular providers. In the NPRM, the Commission states "the costs of implementing equal access may be so high that it could force some smaller carriers out of the market, thereby reducing competition." NPRM at ¶ 34.

of equal access obligations would cost it roughly $13 million.[8/] Florida Cellular RSA Limited Partnership calculates its initial non-recurring costs would be approximately $100,000 to modify its MTSO and provide training and administrative support in order to become equal access compatible.[9/] Miscellco Communications, Inc. ("Miscellco"), a small cellular provider in Kansas, approximates that to implement and maintain the necessary IXC software would cost between $50,000 and $100,00 per switch.[10/] Miscellco concludes it would be unable to absorb the software and other equal access-related expenses and continue to operate a viable cellular system.[11/]

6. As has been shown, the implementation of equal access obligations would result in an extreme financial strain on CellTelCo and other small and mid-sized cellular carriers. These carriers are not in a position to absorb the immense costs associated with equal access implementation. Smaller cellular carriers do not have the financial resources and customer base that large cellular carriers, BOCs and BOC-affiliated cellular providers have to implement equal access obligations.

8/ Century Comment at 2. Century calculates that to become equal access compatible would require upgrading its software in four switches ($204,000); replacing or re-homing seven switches ($12 million); modifying its service order system ($99,750); developing balloting procedures, if required ($380,000); training employees and educating customers about equal access ($120,000); and deploying extra trunks (cost unknown), for a total price of $12,803,750.00.

9/ Florida Cellular RSA Limited Partnership Comment at 2.

10/ Miscellco Comment at 5.

11/ Id.

7. CellTelCo is one of the few lottery winners to hold onto its license and avoid consolidation with larger carriers. The imposition of equal access would raise costs and make it more difficult for CellTelCo to continue to operate as a stand-alone cellular carrier.

IV. THE COSTS OF EQUAL ACCESS OUTWEIGH PERCEIVED CONSUMER BENEFITS

8. As detailed above, the costs associated with the implementation of equal access for smaller cellular carriers range from $100,000 to several million dollars for each licensee; yet, consumers of cellular services will not benefit from these costs.[12/] First, small-to-mid-sized cellular operators will not be able to absorb the equal access implementation costs. Therefore, the providers will be forced to pass on those costs to the subscribers, resulting in higher rates.

9. Second, smaller cellular providers will no longer be able to buy long distance services at bulk rates and pass on those savings to their subscribers. CellTelCo currently buys long distance services at bulk rates and offers discounted long distance services at 25 to 33 percent off the standard rates to its customers. CellTelCo would be unable to offer discounted services if equal access were imposed.

12/ Although some parties may argue that subscribers of smaller cellular carriers would benefit from mandatory equal access because they would get a choice of IXCs, cellular providers indicate that there is no consumer demand for equal access. See Comcast Corporation Comment at 27-28. Further, as Comcast notes, those few subscribers who desire a particular IXC can choose the CMRS provider that utilizes that IXC's service.

10. Finally, as the Commission notes and smaller cellular carriers fear, the costs associated with imposing equal access requirements could force some smaller carriers out of business, thus reducing competition.[13/] CellTelCo asserts that imposing equal access obligations on small and medium-sized cellular carriers would prove financially burdensome to the carriers and their subscribers without any corresponding benefits.

11. CellTelCo, therefore, asks the Commission to avoid the imposition of equal access requirements on all small and mid-sized cellular carriers. In the alternative, CellTelCo asks the Commission to consider the especially precarious financial position that small cellular carriers (i.e., carriers with fewer than 100,000 subscriber units) would be in if equal access obligations were ultimately imposed on them. CellTelCo maintains that these small cellular providers cannot withstand the financial burden associated with the imposition of equal access requirements and respectfully requests, at a minimum, the Commission to refrain from imposing the obligations on small Cellular carriers.

V. CONCLUSION

For the reasons set forth above, Amarillo CellTelCo respectfully requests the Commission to refrain from imposing equal access obligations on all small and medium-sized cellular providers, or, in the alternative, refrain from imposing equal

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13/ See NPRM at ¶ 34.

access obligations on cellular carriers with fewer than 100,000 subscriber units.

Respectfully submitted,

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