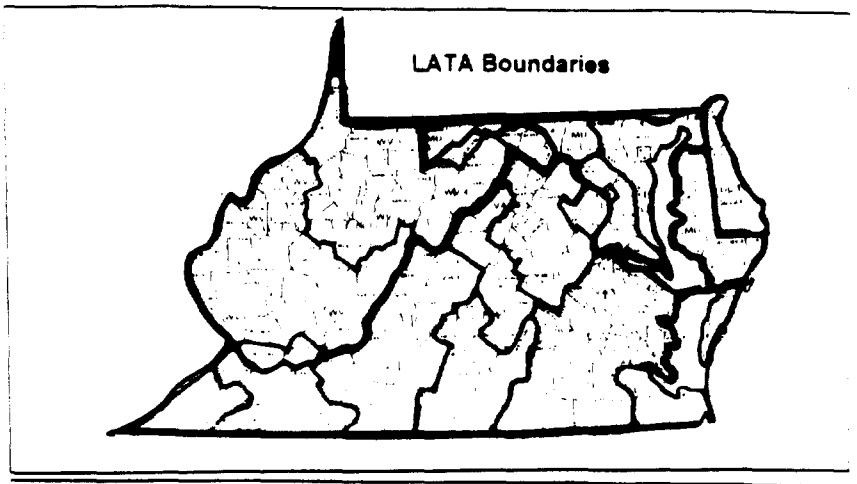
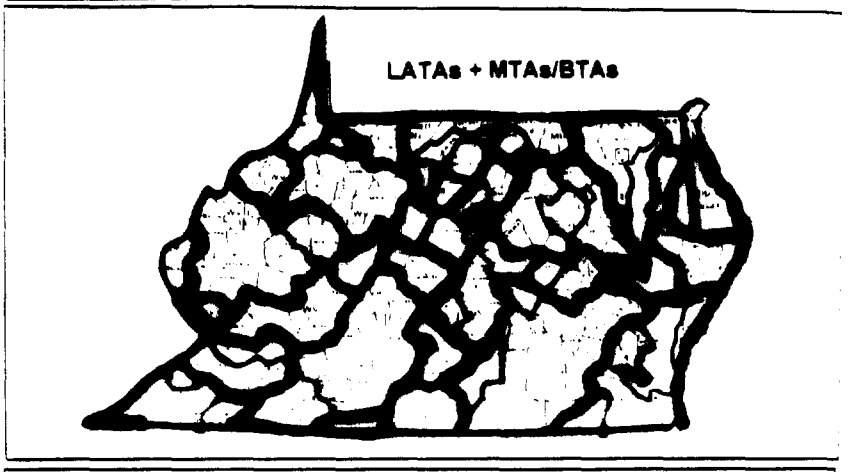
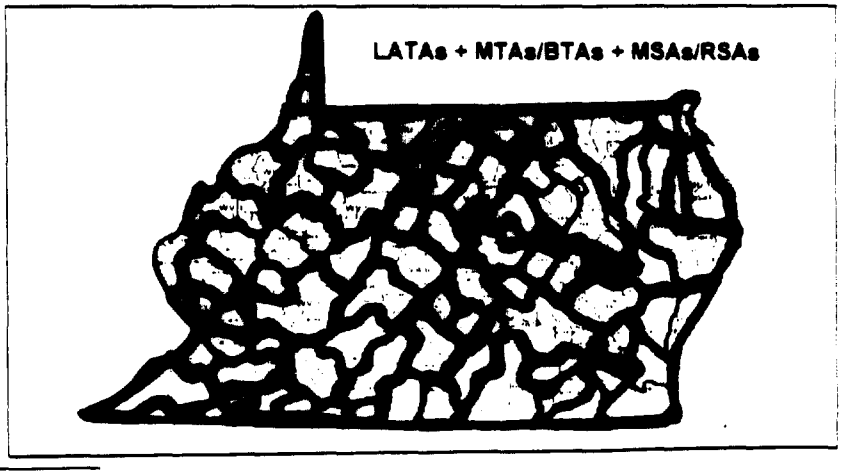
access.[36] And this makes sense, since **consumers save money without wireless "equal" access**. Not a single wireless carrier that was not legally obligated to do so has ever offered "equal" access to its customers. In a business as fiercely competitive as cellular, if offering "equal" access responded to a customer need, carriers would have done so years ago.

"Equal" Access boundaries will balkanize service areas and harm consumers.







[36] *See* Comments of AirTouch Communications, CC Docket No. 94-54, filed September 12, 1994, at 4-6.

6. *Attacking the Wireless Paradigm*: Current Universal Service Funding is Anti-Competitive

The benefits of competition must be universally available. The wireless industry supports the premise of universal service. In fact, wireless is increasingly becoming a means of providing universal service, as well as a big contributor to funding it.

A universal service fund, supported by and open to all telecommunications providers, must be a policy goal. At the same time, however, the hidden subsidies which have subsidized universal service over the years must be eliminated.

In a perverse way, the manner in which we subsidize universal service today is anti-competitive. This is because every wireless carrier pays an "access fee" to be able to interconnect with the LEC. These fees range from three to ten cents per minute -- and the LEC makes no such payment to the wireless carrier when traffic is terminated on the wireless network.

Consider an example of how unreasonable access fees hinder competition. For purposes of this example, let us assume that the access fee is three cents a minute. The typical residential customer uses 1400 minutes per month and pays around $25.00 for landline service. At a three cent access fee the wireless carrier has a starting **cost** of $42.00 to support a similar volume of calls. Simply put, you cannot compete when you are paying three cents for something your competitor is sourcing for around half a cent.

This disproportionate access fee and the failure to pay mutual compensation has been historically justified as a part of the "social contract" to provide universal service by funding high-cost basic service through charges on some services which significantly exceed the LECs' costs. In a competitive environment, such anti-competitive disadvantages cannot be sustained.

In order to have a sustainable universal service system and competition there must be a different system for paying for universal service. So long as a system of hidden subsidies for universal services remains in place, the policy goal of universal service to all Americans will be the greatest impediment to a competitive telecommunications market.

7. *Attacking the Wireless Paradigm*: Investment Rules Discourage International Growth

The ability of U.S. wireless companies to compete internationally is limited because many countries impose on U.S. businesses the same foreign investment restrictions which the U.S. government imposes on these countries' citizens.

Section 310(b) of the Communications Act currently provides that foreign entities are restricted to (1) no more than 25 percent interest in a holding company which owns or controls common carrier or broadcast radio licenses, and (2) no more than 20 percent direct ownership of a license.

Congress should adopt a common-sense national reciprocity policy in applying this section to CMRS licenses, authorizing the FCC to permit foreign investment in U.S. CMRS licenses based upon the investment restrictions imposed upon U.S. companies in the would-be investors' home country.

Such a national reciprocity policy will provide incentives for eliminating foreign investment restrictions in other nations. France, for example, waives foreign investment limits for investors whose home market offers reciprocal opportunities for French firms. Similar provisions exist in the European Union procurement legislation.

Ultimately, such a policy will promote greater investment in the U.S. and opportunities for U.S. companies abroad.

8. *Attacking the Wireless Paradigm*: Numbers are a Critical Resource Demanding Fair Administration

At the threshold of the competitive paradigm is the assignment of telephone numbers. With the rapid growth and expansion of wireless telecommunications, demand is increasing for telephone numbers to accommodate new customers and services. **Two out of every three new numbers are currently being assigned to wireless telecommunications.** Telephone numbers are a national resource as scarce as the spectrum which carries wireless signals.

Yet, this essential component of competition is administered by one of the competitors -- the local exchange companies and their affiliate Bellcore. **All parties, wired and wireless alike, agree that responsibility for administering and assigning "telephone" numbers should be assigned to a new, independent, non-governmental entity with a neutral governing board open to all carriers.** The entire industry -- wireline and wireless -- has, after years of good faith efforts, developed guidelines for central office code assignment. These consensus guidelines provide for fair and equitable "first-come, first-served" assignment of telephone numbers. All that is needed is an independent party to oversee the process.

Since 1991 the FCC has had before it a petition to remove this responsibility to an independent body composed of representatives from all affected parties.[37] **The time has come for the FCC to act.** The FCC moved quickly in developing rules for scarce spectrum; numbers are equally scarce and there can be no competition without them.

The FCC's failure to act has resulted in frequent fights between LECs and wireless carriers. Recently, for instance, the LEC in several markets has proposed to assign a wireless-only area code and to require that all wireless numbers currently in use be **returned** to the LEC.

Since it costs approximately $100 to reprogram a cellular phone, in some markets this decision would have cost the cellular carriers as much as $75 million. The cost to consumers would have been much worse: reprinting stationery, business cards and brochures which, because of this unilateral decision of the LEC, would become suddenly worthless.

Another example of the problems created by the FCC's failure to act is that the states are stepping into the void. The Connecticut Public Utilities Commission, for instance, has indicated that it may order the re-assignment of all wireless customers' numbers to wireline telephone customers, as well as an entirely new and separate numbering plan for all wireless customers. This would result in a $70 million expense for Connecticut cellular companies and subscribers.

These two examples indicate that, with about 47 million wireless telecommunication users nationwide -- including nearly 25 million cellular customers, over 20 million paging subscribers, and 1.8 million SMR users -- the FCC's failure to act for four years is a $10 billion crisis waiting to descend on consumers and CMRS carriers. The FCC should act with dispatch by assigning the responsibility for administering and assigning telephone numbers to the proposed independent, non-governmental entity, composed of representatives from all affected parties. This move will defuse the crisis.

Moving Forward Under the Wireless Paradigm

Because policymakers had the foresight to create an environment for wireless that is both competitive and less regulated than other telecommunications services, both consumers and the industry have benefited. The wireless industry has flourished under minimal regulation. Prices are falling, new and innovative services have been developed, and investment continues, resulting in both jobs and a nationwide wireless

[37] *See* National Association of Regulatory Utility Commissioners, Petition for Notice of Inquiry Addressing Administration of the North American Numbering Plan, filed September 26, 1991.

telecommunications network. **Cellular companies have invested over $16 billion in providing wireless services nationwide, and have created over 200,000 jobs over the past ten years.**

Growth, innovation, investment, jobs and falling prices are the hallmarks of the wireless paradigm. Yet, at the very height of its success, the wireless paradigm -- competition in lieu of regulation -- is being threatened by competitors' and short-sighted regulators' proposals of regulatory structures and burdens that are inconsistent with competition and its benefits.

- Competition is thwarted and consumers are forced to pay higher prices when even a few state governments continue to regulate rates and services, forcing erstwhile competitors to compete through lawyers rather than in the market.

- Consumers are denied service and jobs are not created when local governments prohibit competitors from building the facilities necessary to offer competition.

- Wireless subscribers are subjected to a new tax when local governments extort hidden taxes in return for zoning permission.

- Competition is thwarted and consumers are forced to pay higher prices when competitors seek to impose structures designed for a monopoly market on a competitive market.

- Consumers are denied service and jobs are not created when government policy discourages the investment necessary to build competitive facilities.

- Competition is thwarted and consumers are forced to pay higher prices when one set of wireless carriers has imposed on them across-service boundary restrictions simply because of their parentage.

- Competition is thwarted and customers are forced to pay more when the essential component of competition -- telephone numbers -- are controlled by a competitor.

- Competition is thwarted when hidden subsidies are imposed by the wireline carrier as substitutes for a needed universal service fund.

- Investment and competition are thwarted and international growth is precluded when investment restrictions are placed on foreign investors, and foreign governments retaliate in kind.

What is at stake are as many as one million new jobs, $50 billion in investment capital, and tens of billions of dollars of cost savings to consumers -- all over the next 10 years.

The new wireless paradigm -- harnessing competition and minimal regulation together -- broke with the traditions of the past, and created an industry capable of responding quickly to consumer demand and technical developments. This new paradigm works for the consumer, and it works well. Applying the heavy hand of regulation to this competitive industry will restrict entry, derail innovation, and constrain market forces -- all of which will only harm the consumer.