

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Federal-State Joint ) CC Docket No. 96-45  
Board on Universal Service )  
 )

**COMMENTS OF UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation ("USCC")<sup>1</sup> hereby files its Comments on certain issues discussed in the Notice of Proposed Rulemaking and Joint Board Recommended Decision in the above-captioned docket.<sup>2</sup> USCC generally agrees with the positions taken by the Joint Board regarding the definition of services supported by the Universal Service Fund ("USF"). USCC will focus these Comments on a proposal concerning which the Joint Board was evenly divided, namely whether "equal access" to inter-exchange carriers (IXCs) should be added to the list of required services supported by the USF.<sup>3</sup> For the reasons provided below, USCC strongly opposes this change in current requirements.

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<sup>1</sup> USCC provides cellular and PCS service in 44 MSA, 100 RSA, 1 MTA, and numerous BTA markets nationwide. USCC has been designated as an Eligible Telecommunications Carrier ("ETC"), qualified to receive universal service support, in the states of Washington, Iowa, and Wisconsin.

<sup>2</sup> In the Matter of Federal State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 03-13, released February 25, 2003 ("Notice"), In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 02J-1, released July 10, 2002 ("Recommended Decision").

<sup>3</sup> Recommended Decision ¶¶67-68.

I. It Would be Contrary To  
The Public Interest To Require  
ETCs To Provide "Equal Access"

USCC agrees with the arguments set forth in the Recommended Decision and in the Separate Statements attached thereto by FCC Commissioner Kathleen Abernathy and Commissioner G. Nanette Thompson of the Regulatory Commission of Alaska in opposition to the addition of an equal access requirement.<sup>4</sup> We comment separately to emphasize a few points which we believe to be of central importance.

It is demonstrated in the relevant paragraphs of the Recommended Decision and in the above-referenced separate statements that Section 332(c)(8) of the Communications Act<sup>5</sup> constitutes a congressional judgment that CMRS providers "shall not be required to provide equal access" in the absence of certain public interest findings, which the FCC has never made.

There is no reason to believe that the congressional determination would change just because a wireless carrier becomes an ETC. To impose an equal access requirement on wireless ETCs now would thus constitute an attempt to do indirectly what the FCC cannot do directly.

This position is supported by the relevant language of the 1996 congressional committee reports which described the bill sections which later became Section 332(c)(8). That section was intended to rectify "disparities" in the CMRS market,

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<sup>4</sup> Recommended Decision, ¶¶69-74; Separate Statements of Kathleen Q. Abernathy and G. Nanette Thompson.

<sup>5</sup> 47 U.S.C. Section 332(c)(8). Equal access permits a consumer to access his or her presubscribed long distance carrier by dialing "1+" the phone number. It is required to be provided by LECs.

resulting from the fact that "RBOC wireless affiliates" and "AT&T/McCaw cellular properties" were then subject to "restrictive equal access...requirements" while other wireless carriers were not. These restrictive requirements, imposed pursuant to court order, prevented affected wireless carriers from being able to:

"design and offer customers attractive calling arrangements, such as larger local calling areas and discounted long distance plans which more appropriately reflect the mobile nature of the industry."<sup>6</sup>

The House Commerce Committee concluded that:

"imposing equal access on all commercial mobile services is unwise under current and emerging market conditions and may be counter-productive in a competitive environment. Imposition of equal access requirements on wireless services will only serve to disadvantage customers and inflate the cost of service."<sup>7</sup>

The bill as finally enacted adopted the House provision on equal access and granted further protection to wireless carriers, by requiring that the FCC determine both that "customers were being denied access to the telephone toll provider of their choice" and that such "denial" was contrary to the public "interest, convenience and necessity," before it would impose an equal access requirement.<sup>8</sup>

The important point here is that Congress determined in 1996 that existing wireless equal access provisions contravened the public interest. It defies logic to conclude that Congress would agree that imposing equal access requirements on wireless carriers simply and only because such carriers had also been designated as ETCs would somehow serve the public interest.

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<sup>6</sup> 1996 U.S. Code Cong. and Admin News, Legislative History, p. 63.

<sup>7</sup> Ibid, p. 64.

<sup>8</sup> Ibid, p. 224.

The "burden of proof" on that point would certainly rest with the proponents of imposing equal access requirements on wireless carriers. But, judging by the arguments put forward by the Joint Board members in support of such a requirement,<sup>9</sup> it is a burden they have failed to meet.

The proponents first argue that to make the provision of equal access mandatory for wireless ETCs would not contravene Section 332(c)(8) of the FCC's Rules.<sup>10</sup> As discussed above, USCC disagrees with this position. But even assuming, for the sake of argument, that it were correct, the fact that a governmental action would not violate the law does not mean that it would serve the public interest.

Second, the proponents maintain that adding an equal access requirement would comply with the criteria of Section 254(c) of the Communications Act, which are to be applied when determining whether to add a new service to the list of those "supported" by the USF.<sup>11</sup>

However, as noted by Commissioner Abernathy in her separate statement, access to interexchange service is already a supported service and one universally available now to all wireline and wireless customers. All that wireless "equal

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<sup>9</sup> Recommended Decision, ¶¶75-86.

<sup>10</sup> Recommended Decision, ¶¶75-76.

<sup>11</sup> Recommended Decision, ¶¶77-81. As is stated in the Recommended Decision:

"Section 254(c) states that when choosing this list of telecommunications services, the Joint Board and Commission shall consider whether the service is (1) essential to education, public health, or public safety; (2) subscribed to by a substantial majority of residential consumers; (3) being deployed by telecommunications carriers in public telecommunications networks; and (4) consistent with the public interest, convenience and necessity. The Commission and Joint Board have concluded that each of these criteria must be considered, but not necessarily met, before a service may be included within the general definition of universal service, should it be in the public interest."

Ibid, ¶2.

access" would add is that wireless ETCs would have to reconfigure their networks to allow "long distance" calls to be carried by the IXC of the customer's rather than the carrier's choice, a dubious benefit given the fact that wireless carriers now allow customers to buy "bundles" of "any distance" minutes which allow them to make what the wireline industry considers "toll" and "local" calls for uniform prices.

This requirement would also re-introduce the complex and fruitless debate over when a wireless call would be considered subject to the "equal access" requirement, that is, when it would have to be "handed off" to an IXC. At present, wireless carriers and IXCs make such arrangements to their mutual benefit in the free market. But, as was the case prior to 1996, there would now have to be rules about when calls were considered to be eligible for "hand off" in a wireless equal access environment. We would think that the last thing the FCC would want to deal with would be a revival of this particular controversy.

Prior to 1996, for example, the "local" calling area for RBOC affiliated cellular systems for equal access purposes was defined by the Local Access and Transport Areas ("LATAs") created by the AT&T Consent Decree.<sup>12</sup> In 1994 and 1995 the FCC considered whether that boundary should be applied to all wireless carriers in an equal access environment or whether another boundary, such as the wireless "service area" (however defined), should be adopted, a debate which ended only as a consequence of passage of the 1996 Act, which effectively abolished the equal access requirement for all wireless carriers.

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<sup>12</sup> In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Note of Inquiry, 9 FCC Rcd 5408 ¶¶57-70 (1994).

To force the archaic service boundaries of wireline history into the present highly competitive structure of the wireless industry as the "price" of wireless ETC designations would be directly contrary to the public interest. It would serve the interests only of those carriers who wish to place obstacles in the path of wireless ETC designations.

Proponents of imposing an equal access requirement acknowledge the value of innovative regional and national wireless service packages, service offerings which arose as a consequence of the absence of equal access, but argue that imposing an equal access would not necessarily affect such packages. All it would do, they argue, would be change the legal "requirements" under which wireless ETCs would draw from the USF.<sup>13</sup> But this is obviously wrong. Under equal access, no wireless ETC could possibly continue to offer its existing regional and national service packages, as all of them involve what would now be considered "long distance" calls subject to "equal access." Such calls would have to be handed off to IXCs wherever the "boundary" was imposed, as opposed to handing off such calls to IXCs where wireless networks end, as they are now. Carriers would have to modify or eliminate their existing pricing structure and service offerings or cease being an ETC. The FCC should not force wireless ETCs to make such a choice.

Moreover, equal access would have a negative effect on wireless ETCs' ability to offer affordable local service including Lifeline service. Many such local plans now encompass calling areas which might well cross a local/long distance

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<sup>13</sup> Recommended Decision, ¶81.

"boundary" under equal access. Thus, wireless ETC local service costs would also be driven up to pay totally unnecessary charges to IXCs.

Proponents of wireless equal access also refer to several other arguments which have a common theme, namely that of "parity" between wireless and wireline ETCs. They cite the need for technological "neutrality" between wireless and wireline ETCs,<sup>14</sup> the "windfall" allegedly enjoyed by wireless ETCs from receiving support based on wireline costs (which include costs for providing wireline equal access),<sup>15</sup> the need for "equal obligations" for ETCs as more and more wireless carriers become ETCs,<sup>16</sup> and the demands of "competitive neutrality" in light of IXC contributions to the USF.<sup>17</sup>

However, these arguments really don't pertain to whether it would serve the public interest to require the imposition of equal access on wireless carriers. Rather, they reflect telephone company concerns about the "fairness" of the existing structure of the universal service system. However, those issues are being considered in a separate proceeding,<sup>18</sup> and the FCC should not attempt to resolve them by the expedient of imposing a "misery loves company" solution via wireless equal access in this proceeding.

In that connection, however, we would note that it does not serve the public interest or the purposes of reasoned argument to make "apples and oranges" comparisons of wireless and wireline "costs" or "obligations" as justifications for

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<sup>14</sup> Recommended Decision, ¶82,

<sup>15</sup> Recommended Decision, ¶83.

<sup>16</sup> Recommended Decision, ¶84.

<sup>17</sup> Recommended Decision, ¶85.

<sup>18</sup> See Public Notice, "'Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Relating to High Cost Universal Service Support and the ETC Designation Process," FCC 03J-1, CC Docket 96-45, released February 7, 2003.

imposing this requirement. Wireline and wireless carriers live under different legal regimes, and have radically different cost structures and regulatory histories. While it is certainly true that wireless companies have not had to bear the burdens of "equal access" they are also, for example, not the beneficiaries of guaranteed "rates of return" or the recipients of "access charges." Wireline/wireless comparisons are, to put it mildly, complicated and should be considered in a proceeding dedicated to their investigation.

## II. The Impact of Imposing Equal Access Requirements on USCC Would be Large and Deleterious

The foregoing arguments have been generic in nature. We also thought it would also be useful to estimate preliminarily what some of the impacts on USCC would be of "equal access" in three states in which it is now an ETC, namely Iowa, Wisconsin, and Washington State.

Assuming that USCC maintained its ETC status, it would have to change most of its calling plans. In all three states, USCC offers at least seven multi-state "regional" and seven "national" calling plans, as well as its base "local" rate of \$25.00 per month for 125 minutes of use. There are variations in price by state but the regional plans range from \$35.00 per month for 500 "included minutes" to \$200.00 per month for 3300 "included minutes." The national plans range from \$35.00 per month for 200 "included minutes" to \$200.00 per month for 2000 "included minutes."

USCC could no longer offer these plans for those prices under an equal access requirement. First, some of the calls it now carries on its own network would be considered "long distance" in nature, thus incurring IXC costs. Second, USCC would have to pay IXCs more than it now pays them for calls already considered long distance. These increased charges for long distance calls would result from USCC having to cease providing calls to two IXCs by means of dedicated trunks and having to connect to all customer chosen IXCs by means of more expensive "switched access," which would inflate USCC's costs.

USCC estimates that it would incur at least \$600,000 in additional long distance charges per month in Iowa, Wisconsin, and Washington on account of this change in the rules, costs which would have to be factored into its rates and service offerings.

Currently, as noted above, USCC has two large and efficient dedicated "trunk groups" by which it sends calls to its chosen long distance carriers from all its switches. It estimates that it could cost \$100,000 in one time "hardware" costs to modify these trunks in Iowa, Wisconsin, and Washington for equal access and \$5,000 per month in recurring charges for these modifications.

USCC would also have considerable but presently unquantifiable costs to set up new "translations" at its affected switches to determine the IXCs to which calls should be sent, as well as to train "point of sale" associates, customer service representatives, and other employees to implement and explain equal access to customers. USCC would also have to enhance its "CARES" billing system and other back office systems.

USCC submits that it would be irrational to force it and similarly situated carriers to incur these costs to implement a system modification which would, as shown above, serve neither the interests of its customers nor the public interest.

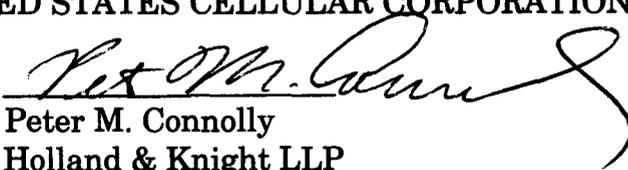
Conclusion

For the foregoing reasons the FCC should not impose any "equal access" requirement on wireless carriers which have been designated as Eligible Telecommunications Carriers.

Respectfully submitted,

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