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May 14, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

**Re: CC Docket No. 96-45
Written *Ex Parte* Presentation**

Dear Ms. Dortch:

On behalf of the Rural Cellular Association ("RCA") we write to follow up on our round of meetings on May 5 and 6, 2003, with the Commissioners and Wireline Competition Bureau staff concerning a variety of matters, including the Commission's consideration of whether or not equal access to interexchange carriers ("IXCs") should be a supported service for receipt of eligible telecommunications carrier ("ETC") status.

In our meetings, we discussed a number of issues with the Commissioners and staff. Because each person raised different questions and time was limited, we summarize below some of the more important issues discussed in our meetings that compel a finding that equal access must not be imposed as a requirement for ETC status.

Most important, Section 332(c)(8) of the Act prohibits the Commission from imposing equal access unless it does so in the course of a rulemaking proceeding of general applicability that would require *all* wireless carriers to provide equal access. The provisions of Section 254 cannot be read to take precedence over the clear preemption language of Section 332(c)(8). Congress provided for only one exception to the preemption – an exception that envisions a rulemaking applicable to all CMRS providers. Adoption of equal access as a supported service, applicable only to those carriers seeking ETC status, would be contrary to law and, as such, would not survive judicial review.

Even assuming the considerable statutory hurdle did not exist, equal access falls far short of meeting the criteria for adding a new supported service set forth in Section 254(c) of the Act. Specifically, before including a telecommunications service as a supported service, the Commission and the Joint Board must consider whether the service:

- is essential to education, public health, or public safety;
- has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- is being deployed in public telecommunications networks by telecommunications carriers; *and*
- is consistent with the public interest, convenience, and necessity.

Imposition of equal access would not be consistent with at least three of the four guidelines set forth above. The ability to choose a presubscribed IXC is not essential to education, health or public safety. Equal access is not a service that individuals “subscribe” to, but was imposed on incumbent LECs as a regulatory measure to spur long distance competition. Finally, and perhaps most important, adopting equal access as a supported service is not consistent with the public interest, convenience and necessity. Today consumers benefit from the bundled local and long distance service packages offered by CMRS providers and they would not see any incremental benefit from equal access as a supported service. Moreover, imposing an unnecessary service would discourage CMRS providers from taking on universal service obligations and investing in rural telecommunications infrastructure. Proponents of equal access could only fairly argue that one of the four guidelines has been met, because equal access is “being deployed” by many ILECs.

In some of our meetings, it became apparent that no party has identified to the Commission what consumer value would be provided through an equal access requirement. Today, consumers are substituting wireless long distance minutes for wireline, even though they give up equal access in the process. It is apparent that there remains no product differentiation among interexchange service providers and, therefore, consumers shop for only one thing – price. As a result, it is inconceivable that any consumer would rationally choose a wireless rate plan that charges retail long distance rates (somewhere between 5 and 15 cents) when today long distance is either included in a rate plan as a local call or is provided at competitive or lower rates to consumers.

We discussed the fact that the Commission would likely impose equal access by requiring wireless carriers to provide one rate plan with equal access – that is, a small local calling area and the option to purchase long distance from any carrier at retail rates that would be passed through. CMRS carriers could not rationally be required to provide a consumer with equal access *and* the same rate plans that are offered today, simply because CMRS carriers obtain favorable long distance rates by purchasing in bulk, which in turn enable the low-cost bundled minute packages available today.

Consumer choice has long been the touchstone of the FCC's drive to promote competitive markets. The addition of a “choice” of equal access would subtract from the total value of a carrier's service offerings and hinder its ability to become or remain competitive. Thus, the question must be asked: “Why would the FCC support a service that no rational consumer would want and delivers no value?”

We also discussed the recent Commission decision to authorize CMRS carriers to collect access charges from IXCs. We are not aware of any IXC that currently pays access charges to a CMRS carrier today because long distance rates being offered by IXCs to wireless carriers are attractive to wireless carriers. If equal access is mandated, we would expect affected wireless carriers to require IXCs to pay access charges as a condition of providing access to their customers. IXCs, in turn, would charge higher rates to consumers.

Marlene H. Dortch, Secretary
March 13, 2003
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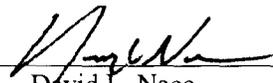
We understand some commenters believe that incumbent local exchange carriers ("ILECs") receive high-cost support for the provision of equal access, but no ILEC has entered any evidence into the record to demonstrate that their cost of providing equal access is anything more than nominal. For many rural wireless carriers who still have substantial analog networks, the cost of upgrading to equal access will be significant and not recoverable. Thus, arguments that wireless ETCs receive a "windfall" as a result of not providing equal access are simply not credible, especially when one considers that wireless carriers face unique challenges and costs for deployment of mobile E-911 services that ILECs do not have.

Commenters in favor of adding equal access have completely failed to articulate how the consumer will benefit as a result of its imposition – or how such a rule will further the purposes of the Communications Act. Indeed, the ILECs who support its imposition would not benefit at all, while those who stand to benefit the most, IXCs, have not participated in this proceeding and by their silence have conveyed that they do not wish to be in the business of selling their services to wireless consumers one contract at a time. Most tellingly, while ILECs claim consumers would benefit from such a rule, commenters representing pro-consumer interests did not raise the issue in their comments.

In closing, we urge the Commission to focus on the consumer. RCA is at a loss to understand how consumers would benefit from the imposition of equal access; in fact, it appears certain that consumers would be harmed. Rural wireless carriers need to devote all available dollars to capital expenditures, system improvements, and compliance with government mandates related to public safety. Every dollar that is siphoned off for equal access is a dollar that is not spent on such improvements. Equal access is a loser for consumers, the economy, and wireless carriers. It is a winner for no one, not even the ILECs.

Respectfully submitted,

Rural Cellular Association

By: 
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Its Attorneys

cc: Honorable Michael K. Powell
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