April 9, 1981

STATEMENT OF
COMMISSIONER JOSEPH R. FOGARTY
IN WHICH COMMISSIONER JAMES H. QUELLO JOINS
Concurring in Part

In Re: Report and Order on Rules for Cellular Communications Systems--CC Docket No. 79-318

I write separately here to emphasize that the public interest will be well-served by this Report and Order and by the revolutionary cellular mobile radio technology and service which our action unleashes. That there is a critical need for cellular service now--not tomorrow, and certainly not years from now--is abundantly clear. Demand for mobile radio telephone service has far exceeded available supply, particularly in the more heavily populated urban areas of the country. The Illinois Bell developmental market tests have indicated further that the demand for mobile service will be substantially greater than previously anticipated.

Relevant provisions of the Communications Act support and, indeed, in my judgment, mandate prompt Commission action in recognition of the immediate and pressing need of the public for mobile telephone service. Section 1 of the Act, which defines the fundamental purposes for which this agency was established, charges the Commission with making "available, so far as possible, to all the people of the United States a rapid, efficient Nationwide, ...wire and radio communications service with adequate facilities at reasonable charges..." As the Supreme Court has recognized, the ultimate purpose of the Act is "to secure the maximum benefits of radio to all the people of the United States." 1/ Additionally, Section 303(g) of the Act directs the Commission to pursue "the larger and more effective use of radio in the public interest."

1/ National Broadcasting Co. v. U.S., 319 U.S. 190, 217 (1943).

Our action providing for a separate wireline carrier cellular allocation in all markets for a five-year period is designed specifically to meet these statutory and service imperatives. As the Commission found in its Second Report and Order in Docket No. 18262, [2/] critical benefits of technical expertise, access to capital, and nation-wide service compatability and availability will attend the earliest possible construction and provision of cellular service by wireline carriers. These are benefits which the public can enjoy immediately, benefits which no sound and responsible policy analysis can ignore.

While we are attaching paramount importance to the critical need for the expeditious implementation of cellular mobile telephone service, we are not ignoring competitive considerations in reaching this decision. The split-frequency approach which we have adopted allows for two competing cellular systems in every market. The interconnection policy which we have prescribed will require telephone companies to furnish the appropriate and necessary interconnection to cellular systems upon reasonable demand, and upon terms no less favorable than those offered to the cellular systems of their affiliated entities or independent telephone companies. We are promoting a significant second tier of cellular service competition at the retail level by precluding any prohibition on the resale and shared use of cellular services. We are conditioning AT&T's participation in cellular systems and services on its formation of a separate subsidiary which must maintain its own books of account, separate officers, separate operating personnel, and separate computing and switching facilities. Telephone companies may provide cellular terminal equipment but only on an unbundled and detariffed basis, and AT&T may offer such deregulated terminal equipment only through a subsidiary, separate from the subsidiary which will offer cellular service.

2/ 46 FCC 2d 752, 760 (1974).

We have been careful to consider the value of competition in adopting a regulatory structure for the provision of cellular service, but we have also been mindful that promotion of competition is not the whole of the public interest. 3/ Our statutory responsibilities require us to weigh and balance competing objectives of quality, quantity, and timeliness of essential communications service offerings. I believe we have been faithful to those responsibilities in this proceeding, and I believe we have provided a framework for the implementation of cellular service which is firmly based on the overall public interest.

While I enthusiastically join in the bulk of this Report and Order, I am troubled by the Commission's decision to apply the separate subsidiary requirement to all wireline carriers participating in the provision of cellular service. Although the Report and Order alludes to a waiver standard for "small" telephone companies, I am concerned that this approach will only clog up the cellular authorization process with paper and litigation. It would be far better to meet any legitimate concerns about safeguarding facilities-based cellular system competition by definitively selecting a standard for the imposition of the separate subsidiary requirement based on the size of the telephone company (e.g., number of main stations or revenues). I hope that the Commission's decision on this point does not impede the rapid deployment and offering of cellular technology and service which are so clearly in the public interest.

3/ FCC v. RCA Communications, Inc., 346 U.S. 86, 93 (1953); Hawaiian Telephone Co. v. FCC, 498 F.2d 771 (D.C. Cir. 1974).