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PUBLIC UTILITIES COMMISSION OF OHIO

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Joint Application )  
of CELLULAR COMMUNICATIONS, INC. )  
and PACTEL CORPORATION for Approval, )  
If Any Is Required, for Purchase )  
and Sale of Capital Stock and for )  
the Formation of a Joint Venture, )  
NEW PAR, to Operate Their Cellular )  
Companies in Ohio. )

Case No. 91-467-RC-UNC

SUPPLEMENTAL INFORMATION

On March 8, 1991 CELLULAR COMMUNICATIONS, INC. ("CCI") and PACTEL CORPORATION ("PacTel") filed a Joint Application with the Public Utilities Commission of Ohio on with respect to two transactions, the acquisition by PacTel of an equity interest in CCI and the joint venture partnership between CCI and PacTel whereby their respective cellular companies (eight owned by CCI and one owned by PacTel<sup>1</sup>) would oversee the management and operations of the CCI and PacTel companies.

On March 28, 1991 in the discussions by the Commissioners on a related matter<sup>2</sup>, it appeared that there may be a

<sup>1</sup> PacTel filed an application, Case No. 91-449-RC-ATC on March 8, 1991 to transfer the assets and certificate of PacTel Cellular of Lima, Inc. to Toledo Cellular Telephone Company. An Attorney Examiner's Entry issued on March 28, 1991 directed publication to be made and proofs filed by April 25, 1991. Assuming that no interested party requests a public hearing, the matter will be ripe for Commission decision after April 25, 1991.

<sup>2</sup> Case No. 89-1861-RC-ATC, Finding and Order of March 28, 1991 which approved the transfer of assets and certificates from two CCI companies to Northern Ohio Cellular Telephone Company

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misunderstanding about the nature of the certificated and Federal Communications Commission ("FCC") licensed service areas and the extent of the market power any Ohio-certificated cellular company can exert. It appeared that there may be Commission concern about approving the common ownership of a cellular certificate because of a belief that consolidation of certificates in one holder may not be in the public interest because that consolidation constitutes a consolidation of market power. The purpose of this filing is to demonstrate that the Joint Application will not result in consolidation of market power.

The first matter to note is that common ownership of cellular certificates has been the rule and not the exception in Ohio.<sup>3</sup> The FCC, in the first instance, granted numbers of individual cellular licenses to the same applicant.<sup>4</sup> The Commission has approved the common ownership of Ohio certificates in the certification cases of all these companies. In addition,

<sup>3</sup> Based upon the Memorandum Opinion and Order on Reconsideration, CC Docket No. 79-99, 89 FCC 2d 59, one could argue persuasively that the Commission is pre-empted from placing restrictions on entry (at Paragraph 84, page 96) and thus does not have authority to deny an applicant which has received FCC approval from receiving the appropriate state approval to hold the corresponding state certificate. To date, the Commission has never disapproved an application on the basis of common ownership. Nonetheless, the following companies have common ownership in more than one market in Ohio; the Commission has granted certificates of all of them: Cincinnati SMSA Limited Partnership---Cincinnati, Columbus, Dayton, Springfield, Hamilton; GTE Mobilnet of Ohio limited Partnership---Cleveland, Akron, Canton, Lorain and Elyria; and the CCI partnerships---Cleveland, Akron, Canton, Mansfield, Lorain/Elyria, Columbus, Dayton, Cincinnati, Hamilton and Springfield.

<sup>4</sup> See footnote 3 above.

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the Commission has previously approved the transfer of licenses held in common to a single entity.<sup>5</sup> None of these proceedings had the effect of giving greater market power to either a certificate holder or the common owner than either would have had had they owned only one certificate.

The reason for this is that the relevant market in the cellular industry is the individual MSA or RSA, not the entire state. A particular Ohio-certificate holder's authority extends only to the borders of the MSA or RSA that it has been awarded. The fact that an Ohio-certificate holder is affiliated with, or owned in common with, other certificated holders (or the FCC licensees) in other markets in Ohio or throughout the United States cannot and does not affect the number of entities that compete in each market since under the FCC scheme only two service providers are licensed in each market.

The market is the MSA or RSA. The only relevant players in each market are the two Ohio certificate holders or FCC licensees. The only consolidation of certificates that could affect market power would be the ownership of the two certificates in a single market by the same or related companies.

<sup>5</sup> GTE Mobilnet, Case No. 88-429-RC-AAC, Finding and Order of March 21, 1989 - Cleveland, Akron, Canton, Lorain and Elyria; Cincinnati SMSA Limited Partnership, Case No. 86-2097-RC-AAC, Finding and Order of June 30, 1986 - Dayton, Hamilton, Springfield; Toledo MSA Limited Partnership, Case No 87-1825-RC-AMT, Finding and Order of January 20, 1988 - Toledo and Lima; and most recently, when the question of market power was raised, Northern Ohio Cellular Telephone Company, Case No. 89-1861-RC-ATC, Finding and Order of March 28, 1991

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As long as the two certificates and licenses in each MSA or RSA market are not held by the same or related entities, the market today is the same as the market as defined and established by the FCC at the inception of the industry.

In summary, the joint venture arrangement which is proposed by the Joint Application filed in this proceeding will not contribute to market power concentration. The individual companies that hold the certificates for each of the separate markets will continue to hold their respective FCC licenses and Ohio certificates. None of the FCC licensees or Ohio certificate-holders propose to serve in areas beyond their currently authorized service territories and thus insofar as market power issues are concerned, there is no change whether or not the Commission approves the joint venture arrangement.

Respectfully submitted on behalf of  
CELLULAR COMMUNICATIONS, INC.

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