

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

In the Matter of)	
)	
Motion of Southwestern Bell)	CWD-95-5
Mobile Systems, Inc. For a)	
Declaratory Ruling That Section 22.903)	
and Other Sections of the)	
Commission's Rules Permit the)	
Cellular Affiliate of a Bell Operating)	
Company to Provide Competitive)	
Landline Local Exchange Service)	
Outside the Region in Which the)	
Bell Operating Company is the)	
Local Exchange Carrier)	

MEMORANDUM OPINION AND ORDER

Adopted: October 23, 1995

Released: October 25, 1995

By the Commission:

I. INTRODUCTION

1. This Order addresses the Motion for Declaratory Ruling ("Motion"), filed on June 21, 1995, by Southwestern Bell Mobile Systems Incorporated ("SBMS"), seeking clarification of Section 22.903 of the Commission's rules, 47 C.F.R. § 22.903, regarding limitations on the provision of out-of-region landline exchange services.¹ In the Motion, SBMS, a cellular affiliate of Southwestern Bell Telephone Company ("SWBT"), requests that the Commission clarify that neither Section 22.903 nor any other section of the Commission's rules imposes separate subsidiary or other structural safeguards on the provision of out-of-region landline local exchange service by the cellular affiliate of a

¹ Section 22.903 of the Commission's rules was amended effective Jan. 1, 1995. See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket No. 92-115, 9 FCC Rcd 6513 (1994) (*Part 22 Rewrite*).

Regional Bell Operating Company ("RBOC").² SBMS contends that the rules permit the cellular affiliate of an RBOC, acting on its own behalf or through a closely-integrated corporate affiliate, to provide landline local exchange service, both indirectly (through resale) and directly through the ownership or lease of landline local exchange facilities, provided that the proposed service is outside the region in which the RBOC affiliated with the cellular carrier is the Local Exchange Carrier ("LEC").

2. In a Public Notice issued June 29, 1995, the Wireless Telecommunications Bureau sought comment on SBMS's Motion. The Bureau also asked commenters to address whether the requested relief should be granted by other means if the requested declaratory ruling could not be granted. We received three timely-filed comments, two late-filed comments, and one reply comment in this proceeding.³

II. BACKGROUND

3. The SBMS Motion seeks an interpretation of Section 22.903 of the Commission's rules, which governs the conditions under which BOCs may provide cellular service. Section 22.903 provides, in pertinent part, that:

Ameritech Corporation, Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, U.S. West, Inc., their successors in interest and affiliated entities (BOCs) may engage in the provision of cellular service only in accordance with the conditions in this section, unless otherwise authorized by the FCC. BOCs may, subject to other provisions of law, have a controlling or lesser interest in or be under common control with separate corporations that provide cellular service only under the following conditions:

(a) Access to landline facilities. BOCs must not sell, lease or otherwise make available to the separate corporation any transmission facilities that are used in any

² The term Bell Operating Company ("BOC") is used in the text of Section 22.903 to refer to the seven regional holding companies which own and control the 22 Bell Operating Companies. For purposes of this Order, we use the term Regional Bell Operating Company ("RBOC") to refer to these seven regional holding companies.

³ By Public Notice, the Wireless Telecommunications Bureau ordered comments to be filed by July 17, 1995. See Public Notice, DA 95-1454, "Wireless Telecommunications Bureau Seeks Comment on Southwestern Bell Mobile System's Request for Declaratory Ruling on Provision of 'Out-of-Region' Competitive Landline Local Exchange Service by a Cellular Affiliate of a BOC," rel. June 29, 1995. The Illinois Commerce Commission ("ICC") requested an extension until July 20, 1995 to file comments, which the Bureau granted. See Order, CWD-95-5, rel. July 13, 1995. Nextel Communications, Inc. ("Nextel") and Ameritech Corporation ("Ameritech") filed comments on July 17 and ICC filed comments on July 20. Bell Atlantic Corporation ("Bell Atlantic") and Time Warner Telecommunications ("TWT") also filed comments on July 20. Because the extension granted to ICC did not apply to Bell Atlantic or TWT, we treat their comments as late-filed, but will consider their arguments nonetheless.

way for the provision of its landline telephone services, except on a compensatory, arm's length basis. *Separate corporations must not own any facilities for the provision of landline telephone service.* Access to landline exchange and transmission facilities for the provision of cellular service must be obtained by separate corporations on the same terms and conditions as those facilities are made available to other entities.

(b) Independence. Separate corporations must operate independently in the provision of cellular service. Each separate corporation must: (1) maintain its own books of account; (2) have separate officers; (3) employ separate operating, marketing, installation and maintenance personnel; and, (4) utilize separate computer and transmission facilities in the provision of cellular services.

47 CFR § 22.903(a) and (b) (emphasis added).

4. The original version of Section 22.903 was adopted as Section 22.901 in 1981, when the Commission amended Part 22 of the rules to provide for the authorization of two cellular licensees in each market -- one wireline carrier and one non-wireline carrier.⁴ In order to deter wireline carriers from using their market power to engage in anticompetitive practices in the provision of cellular service, the Commission required all wireline carriers to establish separate subsidiaries to provide cellular service.⁵ Section 22.901(b) also was added to the rules and stated, in pertinent part, that wireline cellular licensees "may not own facilities for the provision of landline telephone service."⁶ These restrictions were placed on all wireline carriers to prevent them from "using predatory pricing tactics or misallocating the shared costs of cellular and conventional wireline service"⁷ The Commission reasoned that "this [restriction] should make the detection of anticompetitive conduct somewhat easier for regulatory authorities."⁸

⁴ Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, *Report and Order*, CC Docket No. 79-318, 86 FCC 2d 469 (1981) (*1981 Order*). Originally, the Commission had adopted a one-system-per-market policy for cellular service, with the license in each market to be held by the local exchange carrier. Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz, *Second Report and Order*, Docket No. 18262, 46 FCC 2d 752 (1974); *recon. granted in part*, 51 FCC 2d 945, *clarified* 55 FCC 2d 771 (1975), *aff'd sub nom.* NARUC v. FCC, 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976). On reconsideration, the restriction that prevented non-wireline carriers from providing cellular service was lifted. 51 FCC 2d at 945.

⁵ *1981 Order* at ¶¶ 48-52.

⁶ 47 CFR § 22.901(b) (1981).

⁷ *1981 Order*, 86 FCC 2d 469 at ¶ 48.

⁸ *Id.* at ¶¶ 48-52.

5. In 1982, the Commission revised Section 22.901 to apply separate subsidiary requirements for cellular only to AT&T and its affiliates.⁹ The Commission determined that in the case of wireline carriers unaffiliated with AT&T, the costs of structural separation outweighed the benefits stemming from the separate subsidiary requirement. The Commission concluded that informal complaint procedures and strict interconnection requirements would adequately protect against improper activity by these carriers in the provision of cellular service.¹⁰ In the case of AT&T, however, the Commission determined that AT&T's size and historically dominant position in the telecommunications industry gave it the unique ability to engage in anticompetitive activities with respect to cellular that would be difficult to detect absent structural separation.¹¹ The Commission noted that continuing to impose separate subsidiary requirements on AT&T would protect against possible cross-subsidization or interconnection abuses linked to AT&T's control of bottleneck LEC facilities.¹²

6. In 1983, the Commission further amended Section 22.901 in response to the breakup of AT&T under the divestiture agreement entered into by AT&T and the Department of Justice.¹³ Under the divestiture agreement, the 22 BOCs owned by AT&T were divested and consolidated into seven regional holding companies.¹⁴ Accordingly, the Commission amended Section 22.901 to delete the reference to AT&T and instead applied the separate subsidiary requirements to each holding company and its affiliates. Thus, the *BOC Separation Order* amended Section 22.901(b) to read as follows:

Neither Ameritech Information Technologies Corp., Bell Atlantic Corp., BellSouth Corp., Nynex Corp., Pacific Telesis Group, Southwestern Bell Corp., or US West, Inc., their successors in interest, nor any affiliated entity, may engage in the provision

⁹ Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, *Memorandum Opinion and Order on Reconsideration*, CC Docket No. 79-318, 89 FCC 2d 58 (1982) (1982 Order).

¹⁰ 1982 Order, 89 FCC 2d 58 at ¶ 45-46.

¹¹ 1982 Order, 89 FCC 2d 58 at ¶ 46. The costs of structural separation for AT&T were identified as the duplicative staffs and diseconomies resulting from separate transmission facilities.

¹² *Id.* at ¶ 43-45.

¹³ Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, *Report and Order*, CC Docket No. 83-115, 95 FCC 2d 1117, ¶¶ 3-4 (1983), *aff'd sub nom.*, *Illinois Bell Telephone Co. v. FCC* 740 F.2d 465 (7th Cir. 1984) (*BOC Separation Order*).

¹⁴ *U.S. v. American Telephone & Telegraph Company and U.S. v. Western Electric Company*, Modification of Final Judgement, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.*, *Maryland v. United States*, 460 U.S. 1001 (1983) (*MFJ*).

of cellular service except as provided for in paragraphs (c) and (d). . . .

The separate subsidiary requirements and other conditions imposed under Section 22.901 otherwise remained unchanged, including the provision stating that entities listed in 22.901(b) "may not own any facilities for the provision of landline service."

7. The final revision of the separate subsidiary requirement occurred in the 1994 *Part 22 Rewrite Order* as part of our comprehensive reorganization of Part 22 of our rules. In that Order, Section 22.903 was amended to incorporate the provisions of former Sections 22.901(b) and (c).¹⁵ No substantive change to the rule was proposed or adopted, however. Thus, Section 22.903 imposes the same separate subsidiary requirements as the predecessor rule, and continues to provide that cellular carriers affiliated with RBOCs "must not own any facilities for the provision of landline telephone service."

III. CONTENTIONS OF PARTIES

8. In its Motion, SBMS states that as the cellular affiliate of SWBT, it currently provides cellular service in several markets outside of SWBT's LEC service area, including Chicago, Boston, Washington/Baltimore, and several markets in upstate New York.¹⁶ SBMS now proposes to provide what it describes as "competitive landline local exchange" ("CLLE") service in some or all of these markets as well.¹⁷ According to SBMS, this will enable SBMS to offer "one-stop shopping" to the public through integrated offerings of CLLE and wireless services. For example, CLLE users potentially would be able to use a device that operates as a landline-based cordless telephone within a building and as a cellular telephone when taken outside.

9. SBMS proposes to provide CLLE through a corporate entity that shares facilities, systems, and personnel with SBMS's cellular operation, and that is managed by the same officers and directors as SBMS. SBMS contends that such an arrangement is permissible under Section 22.903, *i.e.*, that SBMS may offer CLLE service on an integrated basis with SBMS' cellular service without creating a structurally separate entity.¹⁸ SBMS asserts that the original purpose of Section 22.903 was to protect against anticompetitive activity by RBOCs in the provision of cellular service within their LEC service areas. At the time the rule was first adopted, SBMS contends, the Commission did not contemplate that cellular licensees would provide service outside the service areas of their RBOC affiliates.

¹⁵ *Part 22 Rewrite* at Appendix A-40.

¹⁶ SBMS Motion at i-ii, note 1.

¹⁷ SBMS Motion at ii. SBMS initially proposes to provide integrated cellular and CLLE services in Rochester, New York. SBMS also has applied with the Illinois Commerce Commission for permission to provide CLLE service in the Chicago area.

¹⁸ SBMS Motion at 4; *see also*, SBMS Motion at 13, note 11.

Therefore, SBMS argues, the rule should be interpreted to allow SBMS to own landline facilities and provide local exchange service on an integrated basis with its cellular service outside the LEC service area of the SWBT.

10. In further support of its Motion, SBMS argues that allowing the integrated provision of CLLE will serve the public interest by promoting competition in the provision of landline local exchange service. CLLE service, SBMS notes, will provide a competitive alternative to existing LECs in the markets where it is offered.¹⁹ SBMS also argues that there is no threat of competitive harm from allowing SBMS to provide CLLE without being required to create a separate subsidiary. SBMS emphasizes that all of its cellular operations will continue to be structurally separated from those of SWBT, as required by Section 22.903,²⁰ and that it will provide CLLE service only in markets where the existing LEC is someone other than SWBT.

11. Most of the comments in response to the Motion are supportive of SBMS's objective of providing local exchange competition, but commenters differ on whether SBMS's request for declaratory ruling is an appropriate vehicle to accomplish this objective.²¹ Ameritech supports SBMS's Motion, stating that grant of the motion will facilitate the further development of full and fair competition across the breadth of the telecommunications marketplace.²² Ameritech suggests three modifications to the relief requested by SBMS: that (1) the Commission extend the requested relief to all RBOC cellular affiliates;²³ (2) "out-of-region" service should be defined on the basis of the RBOC's state-specified local exchange certification areas;²⁴ and (3) relief should be extended to all RBOC affiliates, because the structural separation rules serve to handicap RBOC enterprises in the marketplace.²⁵

12. Bell Atlantic argues that an interpretive ruling is not the appropriate forum to

¹⁹ SBMS notes that it is not seeking to acquire the existing LEC in any market, and does not request a ruling that would permit it to do so. See SBMS Motion at ii-iii, note 3.

²⁰ SBMS also argues that the structural separation requirements of Section 22.903 for in-region cellular service are questionable, and should be eliminated. SBMS does not seek a determination of this issue in its request for declaratory ruling, however. See SBMS Motion at 26.

²¹ TWT Comments at 4, Bell Atlantic Comments at 2, ICC Comments at 3-4.

²² Ameritech Comments at 1-2.

²³ *Id.* at 8.

²⁴ *Id.* at 5-6.

²⁵ Ameritech Comments at 8-9.

address SBMS's proposal.²⁶ Instead, Bell Atlantic urges the Commission to initiate a rulemaking that would reexamine the separate subsidiary requirements for RBOCs providing cellular service, whether in-region or out-of-region.²⁷ Bell Atlantic notes that these rules were developed before the AT&T divestiture and are long overdue for a comprehensive review. Time Warner Telecommunications ("TWT") states that it is supportive of SBMS's motion, but requests that the Commission condition its action on requiring SBMS to unbundle the features and functions of its cellular network (*e.g.* unbundling air time and interconnecting its switches with switch-based resellers) to make them available to SBMS's landline and wireless competitors, including TWT.²⁸

13. The Illinois Commerce Commission (ICC) also argues that SBMS's motion is too narrow and that the Commission instead should initiate a general review of its cellular rules by issuing a Notice of Inquiry ("NOI").²⁹ The National Association of Regulatory Utility Commissioners ("NARUC") supports ICC's position, and notes that any proposed changes to any aspect of the federal and state multi-jurisdictional frameworks that distinguish between cellular and landline services must be carefully examined.³⁰ The ICC believes that an NOI is needed to address a variety of issues related to the promotion of effective competition in wireline services.³¹ For example, while the ICC acknowledges that "there may be inherent efficiencies to be gained by allowing physical facilities to be used to provide both landline and cellular telecommunications," it is concerned that states' abilities to regulate intrastate telecommunications services may be restricted if SBMS is allowed to provide out-of-region CLLE.³² The ICC also argues that SBMS's Motion requires a determination of the extent to which a company providing both cellular and landline services would be subject to the same rules and regulations applicable to other carriers providing landline services.³³ For example, the ICC contends, the rules under which landline/cellular companies operate may be

²⁶ Bell Atlantic Comments at 1-2.

²⁷ *Id.* at 2-3.

²⁸ TWT Comments at 4-5.

²⁹ ICC Comments at 2.

³⁰ NARUC Comments at 9. On October 11, 1995, NARUC submitted a "Request for Authorization to File Out-of-Time, Alternate Request for "Ex Parte" Treatment and Comments of the National Association of Regulatory Utility Commissioners." We hereby accept these late-filed comments and consider them in this Order.

³¹ ICC Comments at 3-4.

³² ICC Comments at 6-7. *See also*, NARUC Comments at 9. "[I]t is critical that States' abilities to regulate intrastate telecommunications services are not inadvertently restricted or preempted." *Id.*

³³ ICC Comments at 9.

inconsistent with the rules applied to landline companies providing PCS.³⁴ Finally, the ICC objects to any effort to roll back existing RBOC/cellular structural separation requirements affecting in-region service without a comprehensive rulemaking proceeding.³⁵

14. SBMS's Motion is opposed by Nextel on procedural and substantive grounds. Nextel first contends that Section 22.903 is clear on its face and, therefore, there is no controversy or uncertainty that requires resolution by declaratory ruling.³⁶ Assuming a question of interpretation exists, Nextel contends that SBMS's request is premature, because of the uncertain state of Commission's policies for development of wireless competition and the possibility of legislation that would allow RBOC entry into interLATA markets.³⁷ Nextel also criticizes SBMS for not addressing how its integration proposal would allocate joint and common costs to separate regulated services from nonregulated services, or how allowing SBMS to provide integrated CLLE would affect RBOC joint ventures comprised of PCS and both in-region and out-of-region cellular operations.³⁸ In addition, Nextel argues that SBMS does not address how it will separate its in-region and out-of-region cellular operations.³⁹ Nextel notes that SBMS has not proposed any rules that would substitute for structural separation.⁴⁰

15. In its reply comments, SBMS asserts that none of the commenters dispute its core contention that the rationale for structural separation does not apply when an RBOC cellular affiliate is operating out-of-region of the affiliated RBOC.⁴¹ SBMS also argues that resolution of its request by declaratory ruling is appropriate, because it presents a narrow legal issue regarding the proper interpretation of Section 22.903. To the extent that commenters urge the Commission to initiate a broader inquiry or rulemaking, SBMS argues that their comments are beyond the scope of the proceeding and are not relevant to its resolution, although SBMS also agrees such a broader proceeding would be desirable.⁴²

³⁴ ICC Comments at 6, 9.

³⁵ ICC Comments at 14.

³⁶ Nextel Comments at 1.

³⁷ *Id.* at 14-15.

³⁸ *Id.* at 11-12.

³⁹ *Id.* at 12.

⁴⁰ *Id.* at 9-10.

⁴¹ SBMS Reply Comments at 2.

⁴² SBMS Reply Comments at 3-4.

IV. DISCUSSION

16. As a threshold matter, we find merit in SBMS's contention that when the language in Section 22.903 was first adopted, the Commission did not contemplate RBOCs providing out-of-region cellular service. Nevertheless, we conclude that the relief requested by SBMS is not amenable to a grant by declaratory ruling. On its face, Section 22.903 makes no distinction between in-region and out-of-region cellular service provided by an RBOC affiliate. Thus, a literal reading of the rule indicates that an RBOC-affiliated cellular licensee must maintain structural separation from the RBOC, regardless of where it provides service. Similarly, the prohibition in Section 22.903(a) on cellular affiliates owning landline equipment appears to apply whether the cellular licensee is providing service in-region or out-of-region. The Commission has not previously considered the distinction between in-region and out-of-region service.

17. In its reply comments, SBMS requests that if the Commission is unable to grant a declaratory ruling, it should issue SBMS a waiver of Section 22.903 to the extent necessary to allow it to provide integrated CLLE service.⁴³ Although we decline to interpret Section 22.903 by declaratory ruling as requested by SBMS, on our own motion, we will treat SBMS's petition as a request for waiver.⁴⁴ The Commission may exercise its discretion to waive a rule where there is "good cause" to do so,⁴⁵ because the particular facts would make strict compliance with the rule inconsistent with the public interest.⁴⁶ Waiver thus is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will better serve the public interest than adherence to the general rule.⁴⁷ Further, the Commission's grant of a waiver must be based on articulated, reasonable standards that are predictable, workable, and not susceptible to discriminatory application.⁴⁸ We believe that the differential treatment resulting from a waiver would not undermine competition or otherwise violate the Communications Act. For the reasons stated below, we find that SBMS has made the required showing.

18. As a general matter, we find that rigid application of Section 22.903 to SBMS's CLLE proposal would not serve the public interest objectives of the rule. As noted above, the restrictions in Section 22.903 were placed on the RBOCs to prevent them from "using predatory pricing tactics or misallocating the shared costs of cellular and conventional

⁴³ *Id.* at 8, note 6.

⁴⁴ See Sections 1.3 and 22.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 22.19.

⁴⁵ *Id.*

⁴⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁴⁷ *Id.* at 1157; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴⁸ *Northeast Cellular*, 897 F.2d 1166.

wireline service"⁴⁹ In particular, the Commission expressed concern that without structural separation, RBOCs could favor their own cellular affiliates through improper cross-subsidization or discriminatory interconnection practices.⁵⁰ Accordingly, Section 22.903 requires structural separation between SBMS's cellular activities and SWBT's landline local exchange activities. Because SBMS is structurally separate from SWBT, however, we see no need to impose *additional* structural separation requirements on SBMS to the extent it seeks to provide landline service in conjunction with its out-of-region cellular service. First, the existing safeguards insulating SBMS from SWBT already prevent SBMS from using its affiliation with SWBT to cross-subsidize either cellular or CLLE. Second, there is little risk of SBMS being able to obtain preferential local exchange access in areas not served by SWBT. Thus, requiring additional safeguards to separate SBMS's cellular operations from its CLLE operations would serve no purpose.

19. We further conclude that requiring SBMS to create a structurally separate entity to provide CLLE would impose a significant and unnecessary regulatory burden on a potentially valuable service. To provide CLLE on a competitive and cost-effective basis, SBMS proposes to integrate landline facilities with its existing cellular network and switches.⁵¹ SBMS also plans to combine cellular and CLLE operations, such as credit confirmation, billing and collection, customer care, and financial control.⁵² Finally, SBMS intends to offer customers "one-stop shopping" and unified billing for combinations of wireline and wireless service.⁵³ We agree with SBMS that this proposed integration of wireless and landline services offers substantial benefits to consumers by avoiding duplicative costs, increasing efficiency, and enhancing SBMS's ability to provide innovative service. If we were to impose structural separation requirements, SBMS would be precluded from using its existing cellular facilities, switches, systems and personnel to provide CLLE service, and these benefits largely would be lost.

20. We also find that granting a waiver to SBMS to provide integrated CLLE will promote significant Commission objectives by encouraging local loop competition. The development of wireless services is one of several potential sources of competition that we have identified to bring market forces to bear on the existing LECs.⁵⁴ We have noted that

⁴⁹ 1981 Order, 86 FCC 2d 469 at ¶ 48.

⁵⁰ 1982 Order, 89 FCC 2d 58 at ¶ 43-45.

⁵¹ SBMS Motion at 13-14.

⁵² *Id.* at 14.

⁵³ SBMS Motion at 14.

⁵⁴ In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, 9 FCC Rcd 1687 (1994) at ¶ 2 (allocation of spectrum for new wireless services, along with Open Network Architecture Tariffs, expanded interconnection, 800 data base technology, and video dialtone, "are all examples

"[e]fficient provision of wireless service may also create alternatives for those not served by traditional wireline providers and should create competition for existing wireline and wireless services."⁵⁵ Allowing SBMS to provide CLLE will help to introduce such competition in the markets where SBMS operates. Moreover, because SBMS intends to integrate wireline services with its existing cellular infrastructure in these markets, it has the potential to provide competitive choices to the public rapidly.

21. In granting a waiver to SBMS, we do not discount the comments of those who urge us to undertake a broader inquiry into the structural safeguards applicable to RBOCs, the relation between our regulation of cellular and our regulation of PCS, and other similar regulatory issues. We do not agree, however, that granting relief to SBMS is premature until all such issues have been resolved. The waiver granted by this Order is limited in scope in that it waives the existing structural safeguards applicable to RBOCs in the case of out-of-region activities by a cellular licensee that is already insulated from its RBOC affiliate. The waiver also does not address issues relating to in-region activities by RBOC-affiliated cellular licensees or questions of cellular/PCS comparability. TWT contends that competitive landline exchange providers should be required to unbundle their services. Rather than address TWT's claims in the narrow setting of this proceeding involving a limited waiver of our structural separation rules, we intend to address TWT's claims in the larger context of a rulemaking. In the interim, we believe it is appropriate to allow SBMS to continue to offer service on a bundled basis in light of the fact that SBMS provides primarily cellular service on an out-of-region basis.⁵⁶ We agree with commenters as to the importance of these issues, but they are beyond the scope of this proceeding and therefore can and should be dealt with separately. We emphasize that granting the limited relief requested by SBMS at this time should not be construed as a prejudgment of any of these issues.

22. We also disagree with ICC and NARUC that relief should not be granted to SBMS because of uncertainty regarding the extent of state regulation of combined cellular/landline service. Our decision does not affect states' authority to regulate landline service within their jurisdictions. Thus, it does not relieve SBMS of its obligation to receive authority from the ICC, subject to the same criteria as any other applicant, for the provision of local exchange services.⁵⁷ Our decision removes a federal barrier to SBMS's provision of

of the increasing capability of the telephone network, and all contribute to making that network open to market forces").

⁵⁵ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994) at ¶ 7.

⁵⁶ See Bundling of Cellular Customer Premises Equipment and Cellular Service, *Report and Order*, 7 FCC Rcd 4028 (1992). The Commission concluded that it is in the public interest "to allow cellular CPE and cellular service to be offered on a bundled basis, provided that the cellular service is also offered separately on a non-discriminatory basis." *Id.* at 4029.

⁵⁷ ICC Comments at 11.

out-of-region wireline service, but does not preempt state authority over intrastate services. Regarding ICC's concern that we retain structural separations for in-region service, we agree that this issue should not be addressed in this proceeding, but do not believe it precludes granting the narrow relief requested by SBMS.

23. Finally, we note that this ruling in no way relieves SBMS of any restrictions that may be imposed by the Modification of Final Judgment on its ability to provide out-of-region landline service. Under the MFJ, the District Court has allowed the RBOCs to provide cellular and other wireless services across LATA boundaries.⁵⁸ If SBMS's proposed provision of landline service also were to extend across LATA boundaries, however, it would require separate analysis under the MFJ's inter-LATA service restrictions. Because our concern is with the application of the Commission's rules, not enforcement of the MFJ, we see no need to address this issue here.⁵⁹ Thus, SBMS remains responsible for seeking any relief that may be necessary from the Department of Justice and the District Court before implementing its CLLE proposal.

24. Based on the above, we conclude that Section 22.903 should be waived to the extent necessary to allow SBMS to provide CLLE in areas not served by SWBT. As suggested by Ameritech, we will define SWBT's service area based on the local exchange certification areas specified by the relevant state authorities. Because we are acting on SBMS's motion by waiver, this Order does not apply to any other RBOC-affiliated cellular entity that may seek similar relief. We are prepared, however, to entertain similar requests by such entities who propose to offer out-of-region landline service under the same conditions as SBMS, and we will evaluate such requests under the standards articulated in this Order.⁶⁰ We delegate to the Wireless Telecommunications Bureau the authority to act on any requests that present substantially similar situations.⁶¹

V. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303, and Section 1.2 of the Commission's rules, 47 C.F.R. §1.2, the Motion for Declaratory Ruling

⁵⁸ See, e.g., *U.S. v. Western Electric Co.*, Slip Op. (D.D.C. January 28, 1987); *U.S. v. Western Electric Co.*, Slip Op. (D.D.C. September 6, 1988). Most recently, the District Court granted a motion by the RBOCs to modify Section II(D) of the MFJ to allow them to provide wireless service across LATA boundaries. See, *U.S. v. Western Electric Co.*, Slip Op. (D.D.C. April 28, 1995).

⁵⁹ See, e.g., Application of New York SMSA Ltd. Partnership, 58 Rad. Reg. 2d (P&F) 525, 530 (1985); Application of Bell Atlantic Mobile Systems of Philadelphia, Inc., 61 Rad. Reg. 2d (P&F) 141, 143 (1986).

⁶⁰ See *WAIT Radio* at 1157.

⁶¹ The Wireless Telecommunications Bureau may act on delegated authority pursuant to Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

filed by Southwestern Bell Mobile Systems, Incorporated IS DENIED.

26. IT IS FURTHER ORDERED that, pursuant to the authority of Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303, and Sections 1.3 and 22.119 of the Commission's Rules, 47 C.F.R. §§ 1.3 and 22.19, a waiver of Section 22.903, 47 C.F.R. § 22.903, is GRANTED to Southwestern Bell Mobile Systems, Incorporated.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary