REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

# The Appropriate Mode of Regulation of Radio Common Carriers

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

# House Document No. 19

COMMONWEALTH OF VIRGINIA
RICHMOND
1985

## MEMBERS OF COMMITTEE

Gladys B. Keating, Chairperson
Frank W. Nolen, Vice-Chairperson
Vincent F. Callahan, Jr.
Lewis W. Parker, Jr.
Elliot S. Schewel
Stuart D. Heffernan
Harry L. Brock, Jr.
John Wilson

---

## STAFF

### Legal and Research - Division of Legislative Services

C. William Cramme', III - Senior Attorney
Terry Mapp - Research Associate
Cleola G. Wilkerson - Secretary

### Administrative and Clerical

Office of Clerk, House of Delegates

**Report of the Joint Subcommittee Studying**

**the Appropriate Mode of Regulation**

**of Radio Common Carriers**

**January, 1985**

To: The Honorable Charles S. Robb, Governor

**and**

The General Assembly of Virginia

## INTRODUCTION

Land mobile radio has been an obscure part of the telecommunications industry and of the regulatory activities of the Federal Communications Commission for many years. Public visibility of the service has been limited to a specific group of users with self-evident needs for mobile radio communications, including police and fire departments, the military, and taxicab companies.

All of this, however, is changing, largely due to the development of cellular mobile systems. The advent of cellular technologies has increased public awareness and use of land mobile radio. The increase in public awareness of these services has raised the question of whether full regulation of radio common carriers, including the providers of radio paging and cellular radio telecommunications services is necessary. In Virginia radio common carriers have been fully regulated since 1970 and cellular providers have been regulated since 1983.

In order to determine whether continued regulation of radio common carriers, including radio pagers and cellular providers is appropriate, a joint subcommittee was established pursuant to House Joint Resolution No. 62 of the 1984 Session of the General Assembly.

## HOUSE JOINT RESOLUTION NO. 62

Requesting the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor to study the appropriate mode of regulation of radio common carriers, including providers of radio paging and cellular radio telecommunications services.

WHEREAS, the telecommunications industry is presently undergoing fundamental changes in the areas of market structure, technology and regulation; and

WHEREAS, the federal courts and the Federal Communications Commission (FCC) have played a major role in the process of change, but have left many questions of state authority to regulate and the appropriate manner of state regulation unanswered; and

WHEREAS, the need for regulation and the appropriateness of present regulation of the radio common carrier (RCC) industry which provides radio paging and conventional mobile radio telecommunications services to the public has been questioned, and several alternative forms of

regulation have been suggested; and

WHEREAS, most states presently do regulate RCC's in such areas as certification, rates, quality and availability of service, interconnection with telephone companies facilities ; and

WHEREAS, cellular radio telecommunications, a new segment of the RCC industry, is beginning to emerge and will offer high quality mobile radio telecommunications services over wide areas with a much larger capacity for service than conventional mobile systems; and

WHEREAS, cellular radio telecommunications is in its infancy, but has the potential for wide usage by many people and consequent rapid growth; and

WHEREAS, pursuant to the Communications Act of 1934, the FCC has preempted state regulation of certain aspects of cellular radio telecommunications service, most notably technical standards and market structure, but has left intact state authority to regulate charges, classifications, practices, services, facilities and regulations for service by licensed carriers; and

WHEREAS, it is desirable, as a matter of policy, to foster the growth and development of this potentially important new industry while assuring that members of the public which use its services are afforded good service at reasonable rates; and

WHEREAS, a healthy RCC industry is necessary in order to ensure that those members of the public which depend upon RCC services for emergency communication will continue to be able to rely upon such services; and

WHEREAS, RCC's have been fully regulated as public service companies since 1970, but the question of the need for continued regulation of RCC's in this fashion has not been comprehensively studied or reviewed, and the effect of alternatives to full regulation of RCC's has not been examined; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor are hereby requested to establish a joint subcommittee to conduct a study of the appropriate manner of regulation of radio common carriers, including providers of domestic public cellular radio telecommunications services. The study shall address all aspects of the regulation of radio common carriers, including, but not limited to, the questions of whether rates of radio common carriers, including cellular carriers, should be regulated, and if so, the most appropriate form of such regulation; how best to preserve high quality service within the industry and make such service readily available to the public at large; and interconnection with the land line public switched telephone network.

The joint subcommittee shall be composed of eight members, three of whom shall be appointed by the Chairman of the House Committee on Corporations, Insurance and Banking from the membership thereof, two of whom shall be appointed by the Senate Committee on Privileges and Elections from the membership of the Senate Committee on Commerce and Labor, and three citizen members, two of whom shall be involved in the radio common carrier industry and have familiarity and experience with cellular radio telecommunications, radio paging, and conventional mobile telecommunications, who shall be appointed by the Speaker of the House of Delegates, and one of whom shall be experienced in telecommunications, appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall complete its work by and submit its finding and any recommendations it deems appropriate to the 1985 Session of the General Assembly.

All direct and indirect costs of this study are estimated to be $15,700.

Delegate Gladys B. Keating of Franconia, chief patron of the resolution, served as Chairperson of the joint subcommittee. Other members of the House of Delegates appointed to serve were: Vincent F. Callahan, Jr. of McLean and Lewis W. Parker, Jr. of South Hill.

Senator Frank W. Nolen of New Hope served as Vice-Chairperson of the joint subcommittee. One other member of the Senate appointed to serve was Elliot S. Schewel of Lynchburg.

Harry L. Brock, Jr., President of Advanced Radio Communications Company in Alexandria; Stuart D. Heffernan, Vice President of Network Contel Mobilcom in Atlanta, Georgia; and John Wilson with WFLO Radio Station in Farmville served as citizen members of the joint subcommittee.

C. William Cramme', III, Senior Attorney, and Terry Mapp, Research Associate, of the Division of Legislative Services served as legal and research staff. Anne Howard with the House Clerk's Office provided administrative and clerical duties for the subcommittee.

## WORK OF THE SUBCOMMITTEE

In an effort to hear as much testimony as possible regarding the appropriate mode of regulation of radio common carriers, radio pagers, and cellular providers, the joint subcommittee held four meetings during 1984. The meetings were held on September 5, October 1, October 30, and December 3.

The subcommittee heard a large amount of oral testimony during their meetings and received position papers and other written materials from a number of interested parties including Metrocall Telecommunications, Cellular One, American Paging, Inc., Hello Page, MCI Airsignal, Technology Paging, Inc., Afton Communications Co., American Teleservice and Radiophone of Virginia, Bell Atlantic Mobile Systems, Contel Cellular, Inc., and the State Corporation Commission.

Prior to the joint subcommittee's first meeting, the chief patron of the bill, Delegate Keating sent each member a copy of a study outline she had prepared, a copy of which is attached to this report as Appendix I.

During the subcommittee's first meeting, which was held on September 5, the study group elected its chairman and vice-chairman, adopted a timetable for the study, and heard from various interested parties. The joint subcommittee learned that thirty-nine states regulate radio common carriers with respect to rates and thirty-six regulate with respect to services .

The State Corporation Commission presented an update on what they had done with respect to House Bill No. 189 which had been passed by the 1984 General Assembly and which allowed for competition among radio common carriers beginning March 1, 1985. A copy of House Bill No. 189 is attached to this report as Appendix II. It was explained that the Commission had proposed rules which were out for comment that would facilitate the filing of applications for Certificates of Convenience and Necessity by those desiring to provide radio common carrier service in Virginia. A copy of the final rules which was presented to the joint subcommittee during its October 1 meeting is attached to this report as Appendix III.

The joint subcommittee heard comments from various radio common carriers, including radio pagers regarding the State Corporation Commission's proposed rules. Most indicated that they supported the rules and some indicated that they were in favor of total deregulation of radio common carriers in Virginia while maintaining some State Corporation Commission oversight.

Proponents of total deregulation testified that they want a level playing field as currently some of their competitors who provide similar services are not regulated and thus have a distinct advantage. They stated that with their industry growth ranging from twenty-five to twenty-eight percent annually, there is ample room for those who want to compete and that the public would benefit from a competitive atmosphere in the marketplace as better service would be ensured.

The opponent of deregulation argued that House Bill No. 189 which allowed open entry into the radio common carrier business should be given time to work before their rates are

deregulated.

Since there was much discussion over whether the term "another" in House Bill No. 189 limited the permissible number of radio common carriers in the same service area to two the joint subcommittee decided to ask the Attorney General for an opinion on this.

The joint subcommittee determined that there were several questions that needed to be addressed during the study:

(1) What degree of regulation is needed for radio common carriers;

(2) How much competition is desirable;

(3) How will cream-skimming be dealt with;

(4) What is the best way to regulate cellular service when there are only two cellular providers; and

(5) Whether federal regulations for radio common carriers are sufficient or are their holes that need to be filled?

Prior to the second meeting, Bell Atlantic Mobile Systems supplied the subcommittee members with a report on cellular mobile radio, parts of which are attached to this report as Appendix IV.

During the second meeting which was held on October 1, 1984, the joint subcommittee learned that the Federal Communications Commission requires tariff filings by radio common carriers only when the service is interstate in nature and where neither state regulates the service. The State Corporation Commission provided the joint subcommittee members with information regarding the radio common carriers presently certified in Virginia, recent applicants, and a comparison between FCC and SCC application requirements. A copy of this information is included in this report as Appendix V. They explained that all but a small number of areas, mostly along the West Virginia border, have radio common carrier service and that two areas, Northern Virginia and Norfolk, have two providers as they were certificated prior to 1970.

The Commission also presented an overview of the cellular industry, its anticipated growth, federal preemption of state jurisdiction, how cellular providers are regulated in Virginia (full Chapter 10 rate regulation), and the Commission's monitoring efforts. They explained that they have been monitoring what has been taking place and had had no problems brought to their attention. They explained further that they do not have all the information they will need about resellers to whom the two franchises will sell their services and who are not regulated by the FCC and that, in other states, commissions are allowing the cellular providers to operate for a year prior to requiring them to submit reports. The Commission testified that there were many regulatory alternatives available between full Chapter 10 rate regulation and total deregulation that might fit for everyone and would allow for competition under the close scrutiny of the Commission and suggested that cellular be separated out of the radio common carrier chapter as it is a distinct service. The Commission also suggested that a two-year monitoring period would give them sufficient time to determine how cellular providers should be regulated and that, during such two-year period the max/min alternative which would allow the carriers to adjust their rates between a maximum and minimum which had been approved by the Commission without having to have such adjustments approved, should be implemented.

The joint subcommittee heard from both sides as to whether cellular services should be regulated. The proponents of total deregulation argued that the rationale which ordinarily supports active regulation of public utilities is not applicable to cellular as cellular is not a necessity, changing suppliers is easy and inexpensive, more than one service provider will exist

in each geographic area, and the economics of scale which are characteristic of monopolies do not exist. They testified that cellular is a competitive business as its providers will compete against each other as well as against similar services, some of which are not regulated. They stated that the Commonwealth and its citizens could best be served by deregulation. The opponent of total deregulation, who supported maintaining the status quo until the market had sufficient time to develop, argued that it is not clear that all markets will be able to sustain two cellular carriers or if the industry will grow as predicted. He stated that because the FCC's franchise market structure has limited entry, no true competition will exist.

During the meeting there was also some discussion over the various services provided by cellular companies and the possibilities one day of cellular competiting with landline telephone services and of universal cellular service.

During the October 30 meeting the joint subcommittee was updated on how surrounding states regulate radio common carriers and cellular providers. It also received copies of the Attorney General's opinion on the term "another" in House Bill No. 189. Attorney General Baliles indicated that "another" could mean more than "one other". A copy of his letter is attached to this report as Appendix VI. The study group decided that they would change "another ... carrier" to "other carriers" in order to make the General Assembly's intent more clear.

The Chairperson pointed out that, in their 1984 report to the Commission, the telecommunications consultants to the Commission stated that total deregulation of cellular services should be rejected since:

" - The future growth of these services, their potential for competition with local exchange services, and the future course of federal cellular regulation cannot be projected with confidence.

- Such proposals would preclude the SCC from effective investigation of service and other complaints against cellular providers by Virginia customers."

They suggested that the SCC avoid entanglement in the economic regulation of cellular services, yet should maintain oversight over such services and that provisions beyond the existing law should be established to ensure that network interconnectibility is fostered.

The remainder of the meeting was a work session for the joint subcommittee during which they discussed the various alternatives available including maintaining the status quo, total deregulation, or relaxed regulation in some areas. The study group decided that they would separate cellular providers out of the radio common carrier chapter and that they supported the position where full competition would prevail yet the State Corporation Commission would have some oversight to ensure that the state's interest and public are protected.

During the final meeting of the joint subcommittee which was held on December 3 the study group reviewed the proposals of legislation they had received from industry representatives, discussed at length what recommendations to make to the 1985 General Assembly, and heard, once again, from industry representatives regarding the positions they supported. All but two of those who had submitted proposals were in favor of deregulation with some State Corporation Commision oversight. A comparison between the present statutes and the proposed drafts are attached to this report as Appendix VII.

## RECOMMENDATIONS

The joint subcommittee offers the following recommendation to the General Assembly:

(1) VIRGINIA CODE § 56-508.5 SHOULD BE AMENDED TO MAKE IT CLEAR THAT MORE THAN TWO RADIO COMMON CARRIERS ARE PERMITTED TO SERVE THE SAME AREA.

Although an Attorney General's opinion was that § 56-508.6 as currently written permits the certification of more than two radio common carriers in the same service area, the joint subcommittee felt that it is best to clarify the General Assembly's intent.

Enclosed as Appendix VIII of this report is a copy of the legislation recommended by the joint subcommittee to effect this change.

(2) CELLULAR PROVIDERS SHOULD BE TAKEN OUT OF THE RADIO COMMON CARRIER CHAPTER.

The joint subcommittee decided that since cellular is a distinct service from radio common carriers and thus should be regulated differently it should be taken out of the radio common carrier chapter and put into a new chapter. It was determined that the provisions of the cellular chapter should be very similar to those of the radio common carrier chapter.

(3) VIRGINIA CODE § 56-508.5 SHOULD BE AMENDED TO GIVE THE STATE CORPORATION COMMISSION THE DISCRETION TO SET RATES FOR RADIO COMMON CARRIERS ON A COMPETITIVE BASIS, YET TO REIMPOSE REGULATIONS IF NEEDED TO PROTECT THE PUBLIC INTEREST.

Since House Bill No. 189 which was passed by the 1984 General Assembly provided for competition among radio common carriers in the same service area the joint subcommittee felt that where competition exists, the market-place would be the most appropriate mechanism for establishing rates. They also felt that the State Corporation Commission can best determine when competition exists and should have oversight to ensure that the public is protected. In order to make it truly competitive the joint subcommittee determined that radio services provided by wireline telephone companies should also be deregulated.

Enclosed as Appendix IX of this report is the joint subcommittee's recommendations which will effect part of 2 and all of 3.

(4) THE STATE CORPORATION COMMISSION SHOULD BE ALLOWED TO APPROVE A MAXIMUM RATE STRUCTURE FOR CELLULAR PROVIDERS ONCE IT DETERMINES COMPETITION EXISTS. THE COMMISSION SHOULD ALSO BE ALLOWED TO INVESTIGATE THE RATES TO DETERMINE IF THEY ARE JUST AND REASONABLE.

After much discussion the joint subcommittee determined that the rate regulation of cellular carriers should be relaxed and that a max/min rate structure is the most appropriate mode of regulation of cellular providers once the State Corporation Commission determines that competition exists. A max/min rate structure will enable cellular providers to freely adjust their rates between the maximum and minimum filed with the Commission without having to go to the Commission each time. The Commission should have the authority to investigate the rates being charged and if it determines that the rates are unjust or unreasonable, it may impose rates which are just and reasonable.

The joint subcommittee felt that total deregulation of cellular rates at this time would be inappropriate as no one is sure that two providers, and thus competition, will exist in each service area or if the market will develop as anticipated.

There was some discussion over whether a sunset provision triggering deregulation of rates should be included yet the joint subcommittee could not reach any conclusions regarding this.

Enclosed as Appendix X of this report is the joint subcommittee's recommendations which will effect changes 2 and 4.

The joint subcommittee considered removing radio common carriers and cellular carriers from classification as public utilities in order to remove them from full Chapter 10 rate regulation while maintaining some SCC oversight over rates yet decided against this after receiving an Attorney General's opinion which stated that this "may release RCCs and cellular carriers from other regulatory provisions in addition to the rate base/rate of return requirements of Ch. 10" and that although they would remain public service corporations under § 56.1, that section "may not give the Commission effective control over the rates ... unless accompanied by language stating a new standard by which to measure acceptable rates." A copy of the Attorney General's letter is attached to this report as Appendix XI of this report.

The joint subcommittee feels its suggested legislation will protect the public interest, maintain stability in the marketplace and will permit a smooth transition from full regulation to a competitive atmosphere for both radio common carriers and cellular providers.

## CONCLUSION

The subcommittee expresses its appreciation to all parties who participated in its study. The study group's recommendations have been offered only after carefully and thoroughly studying the data and information it received. The subcommittee believes that its recommendations are in best interests of the Commonwealth, and it encourages the General Assembly to adopt these recommendations.

Respectfully submitted,

.....

Gladys B. Keating, Chairperson

.....

Frank W. Nolen, Vice-Chairperson

.....

Vincent F. Callahan, Jr.

.....

Lewis W. Parker, Jr.

.....

Elliot S. Schewel

.....

Stuart D. Heffernan

.....

Harry L. Brock, Jr.

.....

John Wilson

# HJR 62 STUDY OUTLINE

I. RCC's
- A. Industry Overview
  - 1. Who are the firms providing RCC or RCC-like services
    - a. Virginia
    - b. Nationally
  - 2. What services are provided now? Foreseeable?
  - 3. Demand for service
    - a. Present
    - b. Future
  - 4. Condition of industry in Virginia - ability to meet demand
  - 5. Regulation in other states
    - a. Effect on Virginia carriers
    - b. Trend
  - 6. Regulation in Virginia
    - a. Laws
    - b. SCC regulations
- B. Preservation of Good Service
  - 1. Assessment of Present Service
  - 2. Likely Future Services
    - a. Demand or Need
    - b. Cost
    - c. Obstacles, if any, to provision
  - 3. Effect of Competition on Services
  - 4. Effect of SCC oversight - benefit to public; Carriers
    - a. Complaint-handling
    - b. Interconnection with telephone companies
  - 5. Recommendations
- C. Rate Regulation
  - 1. Historical Overview of Present System
  - 2. Goals of Rate Regulation - What is the policy?
  - 3. Effect of Introduction of Competition on System
    - a. No change in rate regulation statutes
    - b. How this affects carriers and the public
      - i. areas with competition
      - ii. areas without competition
  - 4. Alternatives for rate regulation
    - a. Present System
    - b. Open Competition
    - c. Price Posting
    - d. Hybrid System - Relaxed Regulation in competitive Areas
      - i. Define Competitive Area
      - ii. Mode of Relaxed Regulation
      - iii. Effect on non-competitive areas
      - iv. Effect on wide-area service
      - v. How telephone companies would be affected
    - e. Advantages and Disadvantages to Public
    - f. Advantages and Disadvantages to Carriers
  - 5. Recommendations

II. Cellular
    A. Industry Overview
        1. Services provided
        2. Market Structure - Carriers and Applicants
        3. Markets and projected demand
        4. Cost of Service and pricing
        5. Ability of cellular carriers to provide other services
            a. Dispatch
            b. Paging
            c. Data transmission
            d. Other
        6. Long Range Potential for Cellular
    B. Regulatory Overview
        1. Federal Preemption and Scope of Permissible State regulation
        2. Scope of Regulation in Other States
        3. Scope of Regulation in Virginia
    C. Regulatory Alternatives - Effect on Public and Carriers
        1. Preserve Status-Quo
        2. Complete Deregulation
        3. Preserve jurisdiction over service, but not rates
        4. Max/Min Tariffs
        5. Price Posting
        6. Recommendations

III. Committee Recommendations
    A. Recodification of Chapter 16.1 of Title 56, as appropriate
    B. Other

**HOUSE BILL NO. 189**

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking on February 7, 1984)

(Patron Prior to Substitute–Parker)

House Amendments in [ ] - February 9, 1984

*A BILL to amend and reenact § 56-508.6 of the Code of Virginia, relating to the issuance of a certificate for operation in the established service area of another radio common carrier.*

Be it enacted by the General Assembly of Virginia:

1. That § 56-508.6 of the Code of Virginia is amended and reenacted as follows:

§ 56-508.6. Issuance of certificate for operation in established service area of another carrier.– *A.* The Commission ~~shall not~~ *may* grant a certificate for a proposed radio common carrier operation or extension thereof into ~~the~~ *an* established service area which will be in competition with or duplication of ~~any other~~ *another* certificated radio common carrier ~~unless~~ *if* it shall ~~first determine that the existing service is inadequate to meet the reasonable needs of the public and that the corporation operating the same is unable to or refuses or neglects after hearing on reasonable notice to provide reasonably adequate service~~ *find the proposed application justified by public* [ ~~*convenience and necessity*~~ *interest* ] *, and under such terms, limitations and restrictions as may be prescribed by the Commission .*

*In determining the public* [ ~~*convenience and necessity*~~ *interest* ] *, the applicant shall demonstrate, and the Commission shall determine, before issuing a certificate, that the applicant has the financial, managerial and operational experience, abilities and capabilities to provide adequate service to the public within the requested certificated areas. The applicant shall satisfy marketing, public need, and such other public interest criteria as determined by the Commission to carry out the provisions of this section.*

*B. The Commission may promulgate rules and regulations to carry out the provisions of this section. If such rules and regulations are promulgated, they shall include consideration of the adverse effect on service within the Commonwealth by other certificated carriers, and consideration of any unnecessary duplication of facilities and services and shall apply such rules and regulations in consideration of applications for certificates.*

*C. Any applicant certificated under this section shall not be allowed to begin service until March 1, 1985.*

APPENDIX III

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 27, 1984

COMMONWEALTH OF VIRGINIA ex rel.

STATE CORPORATION COMMISSION CASE NO. PUC840029

Ex Parte: In the matter of adopting rules governing the certification of radio common carriers

FINAL ORDER

By order dated August 10, 1984, the Commission invited written comments from the public concerning the granting of certificates for radio common carriers to operate within the established areas of other certificated radio common carriers pursuant to the recently amended §56-508.6 of the Code of Virginia. Written comments were received from interested persons by August 29, 1984 and the Commission's Staff filed its reply comments on September 5, 1984. A public hearing was held September 12, 1984 and extensive oral argument was heard concerning the proposed rules, the comments of interested parties, and reply comments of the Commission's Staff.

Based upon the comments submitted and the oral argument presented at the September 12 hearing, the Commission is of the opinion that the proposed rules as published pursuant to the August 10, 1984 order should be modified in certain respects. The modifications will be discussed in numerical sequence.

The proposed Rules 1, 2 and 3 were not opposed but Rule 4 drew significant opposition from Advance Radio Communications Company ("ARCC") and Metrocall Telecommunications Inc. ("Metrocall"). They recommended that audited financial statements be provided and that applicants provide evidence of a binding commitment of capital for financing all assets not shown in financial statements. The Commission believes

that the existing language of Rule 4 requires adequate financial reporting because its sets minimum standards with which applicants must comply. If the financial capability of any company is ever questioned, the Commission or its Staff may require additional reporting. The standards now required by Rule 4 do not present a significant impediment to open entry but will assure consumers that companies providing paging service are adequately financed.

Metrocall and ARCC also propose that a new subparagraph (d) be added to Rule 4 which would require each applicant to submit a study of the relevant market sought in order to demonstrate the amount and nature of the demand which the applicant expects for each of its products and services. This proposal was an adjunct to the manner in which ARCC and Metrocall proposed to rewrite Rule 11 to require applicants to make a prima facie showing that its service would not have any adverse effect on existing service or result in unnecessary duplication of facilities and services. As will be discussed below, the Commission has chosen to adopt a compromise concerning Rule 11. In light of this, we would consider the addition of the proposed (d) to Rule 4 to be an unnecessary burden to applicants and contrary to the open entry concept of House Bill 189.

Metrocall and ARCC proposed that Rule 5 should have a provision that notice be given to existing radio common carriers whenever a carrier seeks to expand its service territory into contiguous area by the addition of a tower. We believe that a simple form of notice can be provided without impeding the ability of a carrier to improve its service by the addition of a tower site in a contiguous area. Thus, we have modified Rule 5 to require that notice be furnished to the Commission and to certificated carriers.

Rule 7 was challenged by Metrocall and ARCC as being too burdensome for carriers that might need to exist in a market. We disagree and adopt the rule as drafted.

Several carriers objected to Rule 8's requirement that books be kept according to the Uniform System of Accounts. We have modified Rule 8 to meet their objections. As now written, it requires that books be maintained in accordance with generally accepted accounting principles. However, any carrier submitting an application for a rate increase must comply with Chapter 10 of Title 56 of the Code of Virginia. This means that the application must use an historical test year with one year's worth of accounting data submitted pursuant to the Uniform System of Accounts.

We agree with ARCC and Metrocall that Rule 10 should be modified so that surety bonds on security deposits should not be required of all carriers in all instances. We also agree with them and Radio Phone Communications, Inc. that deposits should not be required on leased customer equipiment that is no longer regulated. Accordingly, Rule 10 has been redrafted to provide that the Commission may require surety bonds of carriers imposing customer deposits for service.

Proposed Rule 11 would have placed the burden of proof upon anyone opposed to an application to demonstrate that the granting of a certificate would have an adverse effect on service or to show that the proposed service would result in unnecessary duplication of facilities and services. Metrocall and ARCC proposed that the burden be upon an applicant to make a prima facie showing that the applicant's service would not have any such effects and that once the showing had been made, the burden would then fall upon the opponents to come forward with rebuttal evidence showing the adverse effects or the unnecessary duplication of

facilities and services. During oral argument a compromise was proposed. We consider the compromise to be proper because it does not alter the ultimate burden of proof that lies with the applicant and does not require the applicant to produce evidence that is primarily in the hands of those who are opposed to certification. Thus, we have redrafted Rule 11 to provide that any existing carrier or applicant who is opposed to certification shall present evidence of the adverse effects and of any unnecessary duplication of facilities and services.

The Rules, as so amended, are as follows:

RULES GOVERNING THE CERTIFICATION
OF RADIO COMMON CARRIERS

PURPOSE

The purpose of these rules is to facilitate the filing of applications for Certificates by those desiring to provide radio common carrier service in Virginia pursuant to §56-508.6 of the Code of Virginia as amended by House Bill No. 189, effective July 1, 1984.

Rule 1 - An original and fifteen (15) copies of Applications for Certificates shall be filed with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, and shall contain all the information and exhibits required herein.

Rule 2 - Notice of the application shall be given to each existing radio common carrier operating within the area sought and shall be provided to governmental officials as required by the Commission in its initial order setting the case for hearing. Each applicant shall publish notice in newspapers having general circulation throughout the service area applied for in a form to be prescribed by

the Commission. Applicants shall submit information which identifies the Applicant including (a) its name, address and telephone, (b) its corporate ownership, (c) the name, address, and telephone of its corporate parent or parents, if any, (d) a list of its officers and directors or, if Applicant is not a corporation, a list of its principals and their directors if said principals are corporations, and (e) the names, addresses, and telephone numbers of its legal counsel.

Rule 3 - Each incorporated applicant for a certificate shall demonstrate that it is authorized to do business in the Commonwealth as a public service company.

Rule 4 - Applicants shall be required to show their financial, managerial, and technical ability to render radio common carrier service to any person within any of the service areas requested. (a) As a minimum requirement, a showing of financial ability shall be made by attaching Applicant's most recent stockholder's annual report and its most recent SEC Form 10-K or, if the Company is not publicly traded, its most recent financial statements. (b) To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing radio common carrier service and shall list the geographic areas in which it has been and is currently providing radio common carrier service. Newly created companies shall list the experience of each principal officer in order to show its ability to provide service. (c) Technical abilities shall be indicated by a description of proposed and existing facilities within the Commonwealth. Applicants shall file

with the Commission construction permits and reliable service area maps as required by the Federal Communications Commission. Applications shall explain each of the services proposed to be offered by Applicant in each of the service areas sought and shall explain the marketing Applicant plans to use to make these services known to the public.

Rule 5 - No specific service area shall be granted with the certificate. Instead, carriers will be authorized to provide service, as indicated on their reliable service area maps as filed with the FCC. The certificate may be amended to add service territory contiguous to the existing territory upon furnishing notice to the Commission and to certificated carriers. Such notice shall be provided at the time application is made to the FCC for a construction permit, shall state the area sought, and shall state the FCC file number assigned to the application. Upon receiving authority from the FCC, the carrier seeking additional contiguous territory shall file with the Commission copies of FCC construction permits and reliable service area maps for the new facilities and territory.

Companies must provide each existing or prospective customer a copy of its reliable service area maps with an explanation that reliable service can only be anticipated within the area defined by the signal contour. The reliable service area of a base station is that portion of the field strength contour within which the reliability of communication service is 90%, i.e. within the area circumscribed by such contour, 9 out

of every 10 calls initiated by the base station can be satisfactorily received by the mobile unit, as taken from §22.2 of Part 22 of the Rules and Regulations of the Federal Communications Commission. Carriers are permitted to inform customers that adequate service may be had beyond the signal contour line depending upon atmospheric and other conditions.

Rule 6 - Currently certificated radio common carriers may apply to the Commission to amend their existing certificated service area maps (based on metes and bounds) to be replaced by the new reliable service area maps.

Rule 7 - No radio common carrier shall abandon or discontinue service, or any part thereof, established under provisions of §56-508.6 of the Code of Virginia except with the approval of the Commission, and upon such terms and conditions as the Commission may prescribe.

Rule 8 - Each radio common carrier annually shall file a current financial report with the Commission, shall maintain Virginia books, and shall maintain such books in accordance with generally accepted accounting principles.

Rule 9 - No radio common carrier shall unreasonably discriminate among subscribers requesting service. Any finding of such discrimination shall be grounds for suspension or revocation of the certificate granted by the Commission. Excessive subscriber complaints against any radio common carrier, which the Commission has found to be meritorious, may also be grounds for suspension or revocation of the carrier's certificate.

In all proceedings pursuant to this Rule 9, the Commission shall give notice to the carrier of the allegations against it and provide the carrier with an opportunity to be heard concerning those allegations prior to the suspension or revocation of the carrier's certificate of public convenience and necessity.

Rule 10 - Any radio common carrier requiring customer deposits for service may be required to file with the Commission a surety bond or other guarantee of responsibility in an amount sufficient to assure refunds of all outstanding customer deposits. Those carriers requiring customer deposits shall also pay interest on those deposits as required by the Commission's order in Case No. 19589 and shall also adhere to late payment and returned check charges addressed in that order or in subsequent modifications of it.

Rule 11 - Any certificated radio common carrier or applicant opposed to the certification of a competing radio common carrier shall present evidence of any adverse effect on service within the Commonwealth upon the competing or other certificated carriers and shall also present evidence that the proposed service will result in unnecessary duplication of facilities and services.

Rule 12 - Each application for a certificate to provide radio common carrier service shall include the carrier's proposed initial tariffs, rules, regulations, terms and conditions. If the Commission finds those tariffs reasonable, they shall be approved with the granting of the certificate. Any subsequent request to increase rates shall be submitted pursuant to Chapter 10 of Title 56 of the Code of Virginia.

The Commission is further of the opinion that these rules should be effective as of the date of this order. Accordingly,

IT IS ORDERED:

(1) That the proposed Rules set forth above are hereby adopted, effective as of the date of this order; and

(2) That there being nothing further to come before the Commission, this case shall be removed from the docket and the papers placed in the file for ended causes.

ATTESTED COPIES hereof shall be sent by the Clerk of the Commission to the parties shown on the service list attached hereto as Attachment A; to the Radio Common Carriers of the State of Virginia as shown on the service list attached hereto as Attachment B; to the Division of Consumer Counsel, Office of the Attorney General; 101 North 8th Street, 5th Floor, Richmond, Virginia 23219; and to the Commission's Divisions of Communications, Accounting and Finance and Economic Research and Development.

FOR THE MEMBERS OF THE JOINT SUBCOMMITTEE

STUDYING REGULATION OF RADIO COMMON CARRIERS

# A REPORT

# ON

# CELLULAR MOBILE RADIO

W. William Cramme, III, Esquire

September 1984

## WHAT IS CELLULAR TECHNOLOGY?

Cellular is a new technology developed by Bell Laboratories to meet the huge demand for efficient, high quality mobile communications. The technology allows mobile telephone communications equal in quality to telephone calls placed in the home or office.

Through highly efficient use and reuse of the radio spectrum, cellular permits thousands of simultaneous conversations to take place in a given geographic area, where before only hundreds could be handled.

Today in New York City, for example, only a dozen or so of the limited number of 1,200 conventional mobile telephone customers in the city can make simultaneous calls. And, less than half of all of those conventional mobile calls go through on the first try.

Using cellular technology, a city or geographical area is divided into grid units called "cells." Each cell is served by a low-powered radio transmitter, a receiver and a control system that links the mobile telephone unit to a central computer and the existing telephone network.

As a vehicle moves from cell to cell, sophisticated electronic equipment transfers, or "hands off," the call to another cell site, permitting highly efficient use and reuse of the same radio spectrum. Since the hand-off takes only a fraction of a second, the conversation is not interrupted.

As the demand for cellular services increases, the capacity of the system can be expanded through "cell splitting," a key feature of cellular technology which adds new cell sites to existing ones and greatly increases the number of radio channels available to mobile telephone users.

## WHEN WILL CELLULAR SERVICE BE AVAILABLE?

Customers in most of the 30 largest markets in the nation will be able to subscribe to cellular service by the end of 1984.

The phase-in of cellular service is based on the method adopted by the Federal Communications Commission to make the new technology available to the largest number of consumers as quickly as possible. The FCC decided to consider applications and award licenses, beginning with the largest, most densely populated markets.

In June 1982, the FCC received applications for licenses for the top 30 markets, including New York, Chicago, Los Angeles, Philadelphia, Baltimore, Washington, D.C. and Pittsburgh.

So far the FCC has awarded construction permits for all wireline applications in these markets. Once a construction permit has been granted, it takes 12 to 18 months to build a cellular system.

In November 1982, the FCC received applications for markets 31-60, including Richmond, Virginia, Norfolk, Virginia, Scranton, Pennsylvania, and Allentown, Pennsylvania. In March 1983, applications for markets 61-90 were filed. Those markets include the cities of Wilmington,

Delaware, Harrisburg, Pennsylvania, and New Brunswick, New Jersey. Applications for markets 91 through 120 were filed on July 16, 1984.

## WHEN WILL CELLULAR BE AVAILABLE IN VIRGINIA?

### Northern Virginia - Available Now

Cellular telephone service is presently available in only one area in Virginia -- Northern Virginia. This service area also includes the Washington Metropolitan and Baltimore Metropolitan areas. There are two companies competing for cellular customers in this area:

1. Bell Atlantic Mobile Systems (Wireline Company)

   A partnership of Bell Atlantic Mobile of Washington and Mobilcom, a subsidiary of Continental Telephone Company.

2. Cellular One (Non-Wireline Company)

   A consortium made up of the following:

   American TeleServices
   The Washington Post Co.
   Graphic Scanning Corp.
   Metrocall
   Metromedia, Inc.
   Metropolitan Radio Telephone Service

Cellular One began to offer its service in December 1983, and Bell Atlantic in April 1984.

## WHY IS CELLULAR COMMUNICATIONS DIFFERENT FROM EXISTING TELEPHONE SERVICE?

The practical impact of cellular mobile service will be a dramatic increase in the number of users served and an astounding improvement in quality and reliability. Tens of thousands of mobile customers in a metropolitan area can have service of land-line telephone quality, instead of the few hundred served today by conventional mobile telephones.

Cellular technology dramatically multiplies the availability of radio frequencies and permits reuse of the same channels, without interference, just a short distance away.

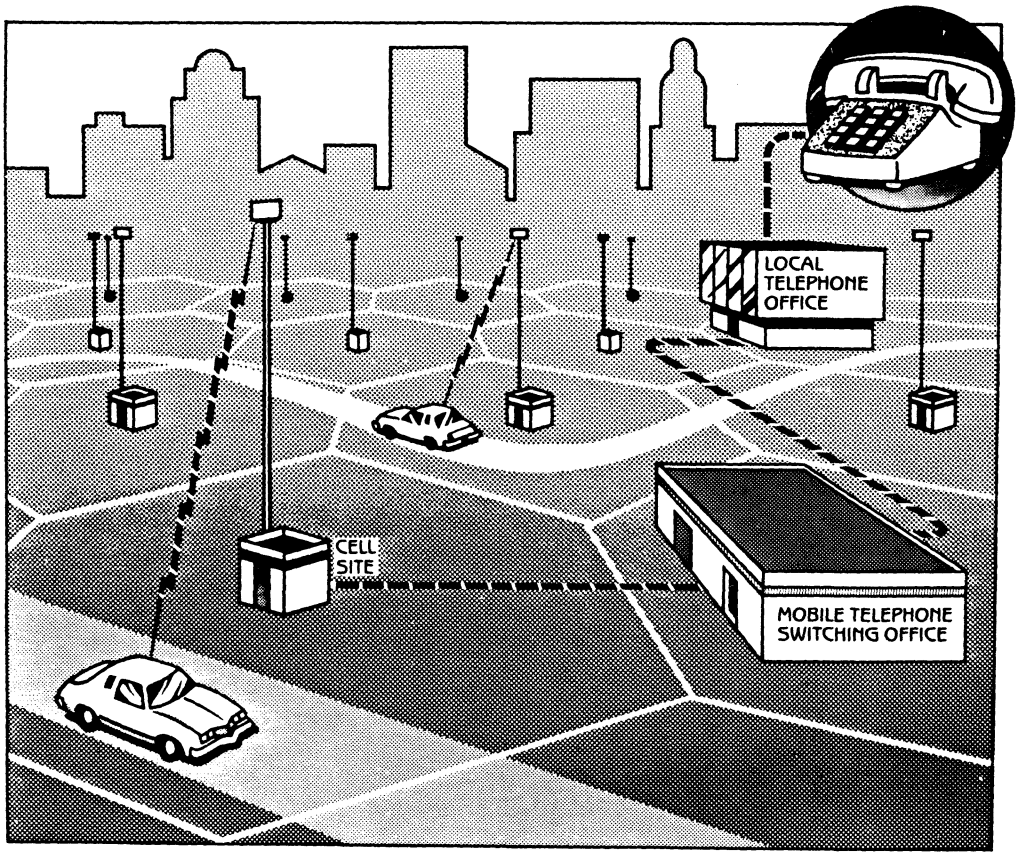
A key feature of the technology is cell-splitting. As capacity is reached in a cellular system, cells can be subdivided, and the number of available channels expanded geometrically. Each time a cell is split, in fact, the number of channels quadruples.

Along with increased availability, cellular service offers significantly higher technical quality to the user than conventional mobile telephones. Cellular communications is virtually inference- and static-free, with a voice quality comparable to telephone calls made from the home or office.

## WHY DID THE FEDERAL COMMUNICATIONS COMMISSION (FCC) STRUCTURE A COMPETITIVE MARKETPLACE FOR CELLULAR COMMUNICATIONS?

The FCC determined that the cellular industry should evolve in a competitive marketplace to facilitate the speediest possible development of this new industry, to meet the pent-up demand for mobile communications and to insure the highest quality and widest choice of services to customers.

To spur development of this new business, the FCC allocated 40 megahertz on the radio spectrum to cellular mobile communications. The federal agency determined that there was sufficient market demand to license two cellular providers for each SMSA (Standard Metropolitan Statistical Area), the census unit upon which each cellular service areas are based. One of the licenses was assigned to a wireline telephone company affiliate and the other license was assigned to a non-wireline radio company. Each of the licensees was assigned 20 megahertz of the cellular radio spectrum, with the FCC holding the additional 20 megahertz in reserve for future development.




## HOW THE CELLULAR SYSTEM WORKS

Cellular technology is based on a grid of hexagons, or cells, that cover specific geographic areas. Each cell contains a low-powered radio transmitter and control equipment located in a building called a cell site.

The cell site is connected by wireline facilities to a Mobile Telephone Switching Office (MTSO), which is connected to the regular landline network through the telephone central office. With its electronic switching capability, the MTSO monitors the mobile units and automatically switches or "hands-off" conversations in progress as the mobile unit moves from one cell to another.

Each cell has a set of radio frequencies, allowing reuse of every channel for many different simultaneous conversations in the given service area.

As demand for the service grows, dividing cells into smaller cells can meet customer needs even in the most densely populated areas.

## RCC Information

- Radio Common Carriers Presently Certified
- RCC Certificates of Public Convenience and Necessity
- Applicants As of 9/28/84, Areas Applied For and Present Certificates (Areas) Affected
- FCC Application vis-a-vis SCC Application For RCC Service

RADIO COMMON CARRIERS PRESENTLY CERTIFIED

Advanced Radio Communications

Afton Communications Corporation

Great Eastern Communications Company

Metrocall Telecommunications, Inc.

Middle Peninsula Communications Corporation

Paging, Inc.

Radio Phone Communications, Inc.

Radio Call

Radio Telephone

Southwest Virginia Professional Services Association, Inc.

## RCC CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

| RCC NUMBER | COMPANY | BASE STATION LOCATION | DATE ISSUED |
|---|---|---|---|
| 10 | Radio Phone Comm. Inc. | Arlington | 9-01-70 |
| 11 | Radio Phone Comm. Inc. | Norfolk | 9-01-70 |
| 12 | Advanced Radio Comm. | Alexandria | 10-20-70 |
| 13 | Advanced Radio Comm. | Alexandria | 10-20-70 |
| 14 | Advanced Radio Comm. | Falls Church | 10-20-70 |
| 23 | Advanced Radio Comm. | Butts Corner | 5-01-73 |
| 25 | Great Eastern Comm. | Waterford | 9-03-74 |
| 28 | Advanced Radio Comm. | Manassas | 2-24-75 |
| 29 | Advanced Radio Comm. | Arlington | 2-24-75 |
| 21b | Radio Call Co. | Bristol | 2-26-79 |
| 34 | Middle Peninsula | Dutton | 2-23-79 |
| 19b | Paging, Inc. | Blacksburg | 10-31-79 |
| 31b | Southwest Va. Professional | Richlands | 11-07-79 |
| 35 | Radio Telephone, Inc. | East River Mountain | 11-20-79 |
| 36 | Afton Corporation | High Knob Mountain | 12-11-79 |
| 40 | Metrocall Telecommunications | Charlottesville | 1-31-83 |
| 41 | Metrocall Telecommunications | Hampton | 1-31-83 |
| 42 | Metrocall Telecommunications | Harrisonburg | 1-31-83 |
| 43 | Metrocall Telecommunications | Lynchburg | 1-31-83 |
| 44 | Metrocall Telecommunications | Matoaca | 1-31-83 |
| 45 | Metrocall Telecommunications | Norfolk | 1-31-83 |
| 46 | Metrocall Telecommunications | Portsmouth | 1-31-83 |
| 47 | Metrocall Telecommunications | Richmond | 1-31-83 |
| 48 | Metrocall Telecommunications | Staunton | 1-31-83 |
| 49 | Metrocall Telecommunications | Fredericksburg | 1-31-83 |
| 50 | Metrocall Telecommunications | Winchester | 1-31-83 |
| 53 | Metrocall Telecommunications | Rushmere & Hampton | 1-31-83 |
| 54 | Metrocall Telecommunications | Culpeper | 1-31-83 |
| 55 | Metrocall Telecommunications | Charlottesville | 1-31-83 |
| 56 | Metrocall Telecommunications | South Hill | 1-31-83 |
| 57 | Metrocall Telecommunications | Onancock | 1-31-83 |
| 58 | Metrocall Telecommunications | St. Stephens Church | 1-31-83 |
| 59 | Metrocall Telecommunications | Lexington | 1-31-83 |
| 60 | Metrocall Telecommunications | Lynchburg | 1-31-83 |
| 61 | Metrocall Telecommunications | Luray | 1-31-83 |
| 20a | Paging, Inc. | Martinsville | 4-05-83 |
| 51a | Metrocall Telecommunications | Roanoke | 4-05-83 |
| 52 | Metrocall Telecommunications | Danville | 1-31-83 |

| APPLICANTS NAME | SERVICE AREA APPLIED FOR | PRESENT CERTIFICATES(AREA) AFFECTED |
|---|---|---|
| 1. American Paging, Inc. | Norfolk/Suffolk Area | 11,41,45,46 and 56 |
| 2. Hello Pager Company | Ashland, Chester, Colonial Heights, Hopewell, Mechanicsville, Petersburg and Sandstone, and in parts of contiguous counties. | 44,47,55,56, 58 and 60 |
| 3. Mobilecomm of Virginia | Tyson's Corner, City of Alexandria and in parts of contiguous counties | 10,12,13,14 23,25,28 and 29 |

| VIRGINIA STATE CORPORATION COMMISSION'S REQUIREMENTS FOR CERTIFICATION OF RADIO COMMON CARRIERS | FEDERAL COMMUNICATIONS COMMISSION'S REQUIREMENTS FOR LICENSING OF RADIO COMMON CARRIERS |
|---|---|
| 1. Applicant files 15 copies of application (no prescribed form). | 1. Applicant files 2 copies of Form 401 to get construction permit. |
| 2. Application must include applicant's name, address, telephone number, corporate ownership, name, address, and telephone number of corporate parent or parents, if any, list of its officers and directors, and purpose of the application. If applicant is not a corporation, applicant must file a list of principals, and the names, addresses, and telephone numbers of legal counsel. | 2. Form 401 requires applicant's name, address, list of directors or principals, statement of the purpose of the application, type of antenna used, power output of the station, technical details about antenna, and frequency applied for. |
| 3. Applicant must demonstrate financial ability by filing stockholder's annual report and SEC Form 10-K or, applicant's most recent financial statements. | 3. Applicant must complete a Form 403, detailing applicant's financial condition. It is analogous to balance sheet and income statement. |
| 4. Applicant must file a Dbu contour map, showing 90% reliability of area proposed to be served and defining service area which applicant seeks to serve. | 4. Applicant must file a Dbu contour map, showing 90% reliability of area proposed to be served and defining service area which applicant seeks to serve. |
| 5. Existing certificated carriers must show adverse effect on service and unnecessary duplication of facilities and service. | 5. Applicant must perform interference study to show no adverse technical problems from their operations. Interference analysis must be prepared no more than 60 days prior to the filing of the application. |

| VIRGINIA STATE CORPORATION COMMISSION'S REQUIREMENTS FOR CERTIFICATION OF RADIO COMMON CARRIERS - Cont. | FEDERAL COMMUNICATIONS COMMISSION'S REQUIREMENTS FOR LICENSING OF RADIO COMMON CARRIERS - Cont. |
|---|---|
| 6. Applicant must provide a brief history of provision of RCC service and must list the geographic areas in which it has been and is currently providing radio common carrier service. Applicants with no operating experience must list the experience of each principal in order to show ability to provide service. | 6. Applicants must identify their current or pending applications for facilities located within 40 miles of a proposed station. |
| 7. No comparable requirement. | 7. Applicants must make available topographic maps of site requested. |
| 8. Applicant must file FCC construction permits and reliable service maps. No time limit specified for completion of application. Application will not be acted upon until completed. | 8. Applicant's construction must be completed within 12 months after the grant of construction permit authorization, otherwise construction permit will lapse. Extensions of construction permits will be granted only for causes beyond the permittee's control. No extension will be granted for delays caused by lack of financing, lack of site availability, transfer of an authorization, or failure to timely order equipment. |
| 9. No comparable requirement. | 9. Applicant must notify FCC at least 1 day prior to expiration of construction permit that it is ready to provide service. In its notification, applicant must identify its location and frequency. Agency will issue permanent authorization. |
| 10. No comparable sunset requirement. | 10. FCC licenses expire every 5 years. RCCs must reapply to renew their licenses. |

| VIRGINIA STATE CORPORATION COMMISSION'S REQUIREMENTS FOR CERTIFICATION OF RADIO COMMON CARRIERS - Cont. | FEDERAL COMMUNICATIONS COMMISSION'S REQUIREMENTS FOR LICENSING OF RADIO COMMON CARRIERS - Cont. |
|---|---|
| 11. A certificate may be amended to serve territory contiguous to existing territory upon furnishing notice to the Commission and certificated carriers. Applicant must state the area sought for addition and identify the FCC file number assigned to application. Applicant must file copies of FCC construction permits and reliable service area maps. | 11. Applicants must repeat entire process and obtain a new construction permit if a location change of a tower would enlarge its reliable service area more than 1 mile along 8 radials extended from the original site (unless the extension is into any area already authorized to the same licensee on the same frequency.) |
| 12. Companies must provide existing or prospective customers with a copy of its reliable service area maps and must explain that reliable service can only be anticipated within the area defined by the signal contour. | 12. There is no FCC requirement that RCCs must explain that reliable service can only be anticipated within the area defined by 90% reliability signal contour. |
| 13. Certificated carriers must formally apply to the Commission to abandon or discontinue service subject to such terms and conditions as the Commission may prescribe. | 13. Simple procedure to abandon service: Carrier must write FCC to request cancellation of frequency authorizations. |
| 14. SCC requires RCCs to file old FCC Form L as annual report. | 14. FCC generally requires no filing of annual report. |
| 15. SCC requires tariff changes and rules and regulations of service as part of certificate application. | 15. Applicant need not file tariffs as part of construction and licensing process. |
| 16. RCCs requiring customer deposits must file a surety bond or guarantee of responsibility to assure refunds of customer deposits. | 16. No comparable requirement. |

Gerald L. Baliles
Attorney General

William G. Broaddus
Chief Deputy Attorney General

# COMMONWEALTH of VIRGINIA

## Office of the Attorney General

Donald C. J. Gehring
Deputy Attorney General
Criminal Law Enforcement Division

Maston T. Jacks
Deputy Attorney General
Human & Natural Resources Division

Elizabeth B. Lacy
Deputy Attorney General
Judicial Affairs Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

Karl E. Bren
Director of Administration

October 5, 1984

The Honorable Gladys B. Keating
Member, House of Delegates
5909 Parkridge Lane
Franconia, Virginia 22310

My dear Delegate Keating:

You have asked whether § 56-508.6 of the Code of Virginia, as amended by Ch. 297, Acts of Assembly of 1984, permits more than two radio common carriers to serve the same area.

Subsection (A) of § 56-508.6 provides in pertinent part:

> "The Commission may grant a certificate for a proposed radio common carrier operation or extension thereof into an established service area which will be in competition with or duplication of another certificated radio common carrier if it shall find the proposed application justified by public interest, and under such terms, limitations and restrictions as may be prescribed by the Commission."

The use of the word "another" in subsection (A) is not always interpreted to connote only the singular. Section 1-13.15 provides, in part, that "[a] word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing...." Thus, the words "another...carrier" in § 56-508.6 might also be read "other...carriers."

The Missouri courts have dealt with the precise question you raise. In State ex rel. Crown Coach Co. v. Public Service Commission, 238 Mo. App 287, 179 S.W.2d 123, 127 (1944), the question was whether three bus lines could be certified to serve the same area under a statute addressing the issuance of a certificate for service in the territory of another carrier. The court held that the use of the word "another" did not limit the commission to a grant of only two certificates in each service area.

The Supreme Court of Virginia has recently reached the same result, although it did not expressly discuss the question you raise. In RCC, Inc. v Roanoke & Botetourt, 223 Va. 342, 288 S.E.2d 478 (1982), the Court interpreted language in § 56-265.4:3 which is almost identical to the language of § 56-508.6. It held that the General Assembly intended by such language to change the regulatory structure to allow limited competition. As a result,

it considered and rejected an argument that "...the public interest is not served if a third carrier is allowed 'to drain off business from the two certificated carriers.'" 223 Va. at 348.

It is, accordingly, my opinion that § 56-508.6 permits the certification of more than two radio common carriers in the same service area, provided that compliance with all of the other requirements of the statute is maintained.

With kindest regards, I am

Sincerely,

Gerald L. Baliles
Attorney General

2:11/150-169

# APPENDIX VII

## RADIO COMMON CARRIERS.

| | FOUR NEW PUBLIC SERVICE CORPORATIONS (RCCs) represented by Ed Flippen | MCI AIRSIGNAL OF VIRGINIA, INC. represented by Eric Page | BELL ATLANTIC MOBILE SYSTEMS represented by Steven Watts | AMERICAN PAGING, INC. represented by Marvin Lieberman |
|---|---|---|---|---|
| | RCCs only | RCCs only | Creates new chapter (16.2) for cellular and carves out references to cellular in rcc chapter (16.1) | Proposal A - one-way paging<br>Proposal B - one-way paging and two-way mobile non-cellular service |
| § 56-508.1. Definitions. — Whenever used in this chapter the following terms, words and phrases shall have the following meanings, unless the contrary plainly appears:<br>*"Commission"* shall mean the State Corporation Commission.<br>*"Commissioners"* shall mean the commissioners of the State Corporation Commission.<br>*"Public service corporation"* shall mean a corporation or any other person or organization heretofore or hereafter constituting a public service corporation under Title 56.<br>*"Mobile radio telephone utility system"* shall mean any facility within the Commonwealth of Virginia which provides mobile radio telephone service, including one-way mobile radio telephone service, on a for-hire basis to the public, whether or not such mobile radio telephone service is provided on frequencies allocated to the Domestic Public Land Mobile Radio Services of the Federal Communications Commission and whether or not such mobile radio telephone service is interconnected with a public landline telephone exchange network.<br>*"Radio common carrier"* shall mean every public service corporation or any other person or organization owning, operating, controlling or managing a mobile radio telephone utility system except a public landline message telephone service or a public message telegraph service. The terms "telephone or telegraph utilities," "telephone or telegraph company," or a "person operating telegraph or telephone lines" when used in this chapter, shall not be construed as including radio common carriers. (1970, c. 276; 1975, c. 519; 1984, c. 406.) | No change in present statute | No change | Uses some definitions of existing section; adds definitions of cellular mobile radio communications system and carriers | No change |
| § 56-508.2. Application of chapter. — The provisions of this chapter relate only to "radio common carriers" as defined herein and are distinguishable from mobile radio telephone service offered by landline telephone or telegraph utilities regulated by the Commission. (1970, c. 276.) | No change | No change | Relates only to carriers. After Expiration of 1 year after two carriers have been certified by SCC to provide service in same service area chapter no longer applicable; SCC may reinstate jurisdiction if deems needed during one year period | No change |
| § 56-508.3. Certificate of public convenience and necessity required; rules and regulations. — No radio common carrier shall begin, or continue, the construction or operation of any radio common carrier system, or any extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that the public convenience and necessity requires such construction, operation or acquisition; provided this chapter shall not require, nor shall it be so construed as to require, any such carrier to secure a certificate for an extension within any authorized service area within which such person has heretofore lawfully commenced operations, or for any extension within or to territory already served by such carrier, necessary in the ordinary course of business, or for substitute facilities within or to any authorized service area of territory already served by such carrier, or for the acquisition and operation of any plant or system heretofore constructed under authority of a certificate of convenience and necessity hereafter issued. The commissioners are hereby authorized to prescribe appropriate and reasonable rules and regulations governing the issuance of such certificates. (1970, c. 276.) | No change | repealed | Similar to existing section yet does not give the Commissioners the authority to prescribe regulations for issuance of certificates | No change |
| § 56-508.4. Issuance of certificates to certain carriers licensed by Federal Communications Commission. — A. Any person or organization not presently franchised or certificated by the Commission as a radio common carrier but engaged in the operation of any radio common carrier system licensed by the Federal Communications Commission on June 26, 1970, shall upon qualification as a public service corporation, receive a certificate of convenience and necessity from the Commission authorizing such corporation to continue the operation of such radio common carrier in the territory professed to be served by such person or organization on June 26, 1970, if, within ninety days after June 26, 1970, such corporation shall file with the Commission an application for such certificate, including copies of any license or licenses issued by the Federal Communications Commission to such person or organization, showing the area professed to be served by such person or organization.<br>B. Any public service corporation which is authorized by the Federal Communications Commission to provide domestic cellular radio telecommunication service shall receive a certificate of convenience and necessity from the Commission to operate a domestic cellular radio telecommunication service in that territory authorized by the Federal Communications Commission. (1970, c. | No change | Deleted subsection A | Same as existing section without subsection A | No change |

| | FOUR NEW PUBLIC SERVICE CORPORATIONS (RCCs) represented by Ed Flippen | MCI AIRSIGNAL OF VIRGINIA, INC. represented by Eric Page | BELL ATLANTIC MOBILE SYSTEMS represented by Steven Watts | AMERICAN PAGING, INC. represented by Marvin Lieberman |
|---|---|---|---|---|
| | RCCs only | RCCs only | Creates new chapter (16.2) for cellular and carves out references to cellular in rcc chapter (16.1) | Proposal A - one-way paging<br>Proposal B - one-way paging and two-way mobile non-cellular service |
| **§ 56-508.5. Jurisdiction of State Corporation Commission; agreements for telecommunication services.** — Any radio common carrier operating under a certificate of convenience and necessity issued by the Commission shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as other public service corporations under the laws of this Commonwealth.<br>Notwithstanding any other provision of law, and subject to existing regulatory powers of the Commission as to rates and services and to the provisions of the first paragraph of this section, any radio common carrier may enter into a joint venture, partnership, or similar agreement with any other individual, corporation, partnership or other business entity for the purpose of providing to the public cellular radio telecommunication service, as a radio common carrier, through cellular communications systems under permits issued by the Federal Communications Commission. Any such entity (whether in corporate or other form) may form and operate, as a radio common carrier, pursuant to the terms of such an agreement. (1970, c. 276; 1983, c. 526; 1984, c. 406.) | New language that gives the SCC the discretion to set rates for RCCs on competitive basis; SCC may reinstate regulation if needed | New language added that deregulates RCCs yet gives the SCC jurisdiction to reinstate regulation if needed | Carriers required to file schedules of rates and charges and terms and conditions of service; SCC has no jurisdiction over rates charged but shall hear grievances against carriers | No change |
| **§ 56-508.6. Issuance of certificate for operation in established service area of another carrier.** — A. The Commission may grant a certificate for a proposed radio common carrier operation or extension thereof into an established service area which will be in competition with or duplication of another certificated radio common carrier if it shall find the proposed application justified by public interest, and under such terms, limitations and restrictions as may be prescribed by the Commission.<br>In determining the public interest, the applicant shall demonstrate, and the Commission shall determine, before issuing a certificate, that the applicant has the financial, managerial and operational experience, abilities and capabilities to provide adequate service to the public within the requested certificated areas. The applicant shall satisfy marketing, public need, and such other public interest criteria as determined by the Commission to carry out the provisions of this section.<br>B. The Commission may promulgate rules and regulations to carry out the provisions of this section. If such rules and regulations are promulgated, they shall include consideration of the adverse effect on service within the Commonwealth by other certificated carriers, and consideration of any unnecessary duplication of facilities and services and shall apply such rules and regulations in consideration of applications for certificates.<br>C. Any applicant certificated under this section shall not be allowed to begin service until March 1, 1985. (1970, c. 276; 1984, c. 297.) | No change | repealed | | No change |
| **§ 56-508.7. Interconnection of radio communication facilities and telephone facilities.** — Whenever the Commission shall find that public convenience and necessity require the interconnection of the radio communication facilities of a certificated radio common carrier with the telephone facilities of a landline telephone utility serving all or part of the certificated territory of the radio common carrier, and that such radio common carrier and landline telephone utility have failed to agree upon such interconnection or the terms and conditions or compensation for the same, the Commission may order that such interconnection be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for such interconnection. (1970, c. 276.) | No change | No change | Has similar language | No change |
| | | | Cellular carriers not considered public utilities | Proposal A - deregulates one-way paging, yet permits regulation t be reinstated after one year, if needed<br>Proposal B - same as proposal A yet includes two-way mobile non-cellular radio telephone service<br><br>Added in the event the Commissio reimposed regulation |

* Metrocall (RCC) and Cellular One (cellular) support status quo

# APPENDIX VIII

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact § 56-508.6 of the Code of Virginia, relating to radio common carriers.

Be it enacted by the General Assembly of Virginia:

1. That § 56-508.6 of the Code of Virginia is amended and reenacted as follows:

§ 56-508.6. Issuance of certificate for operation in established service area of other carriers.—A. The Commission may grant a certificate for a proposed radio common carrier operation or extension thereof into an established service area which will be in competition with or duplication of ~~another~~ *other* certificated radio common ~~carrier~~ *carriers* if it shall find the proposed application justified by public interest, and under such terms, limitations and restrictions as may be prescribed by the Commission.

In determining the public interest, the applicant shall demonstrate, and the Commission shall determine, before issuing a certificate, that the applicant has the financial, managerial and operational experience, abilities and capabilities to provide adequate service to the public within the requested certificated areas. The applicant shall satisfy marketing, public need, and such other public interest criteria as determined by the Commission to carry out the provisions of this section.

B. The Commission may promulgate rules and regulations to carry out the provisions of this section. If such rules and regulations are promulgated, they shall include consideration of the adverse effect on service within the Commonwealth by other certificated carriers, and consideration of any unnecessary duplication of facilities and services and shall apply such rules and regulations in consideration of applications for certificates.

C. Any applicant certificated under this section shall not be allowed to begin service until March 1, 1985.

# APPENDIX IX

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact §§ 56-508.1, 56-508.4, 56-508.5, and 56-508.6 of the Code of Virginia, relating to telecommunications services provided by radio common carriers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-508.1, 56-508.4, 56-508.5 and 56-508.6 of the Code of Virginia are amended and reenacted as follows:

§ 56-508.1. Definitions.—Whenever used in this chapter the following terms, words and phrases shall have the following meanings, unless the contrary plainly appears:

"Commission" shall mean the State Corporation Commission.

"Commissioners" shall mean the commissioners of the State Corporation Commission.

"Public service ~~corporation~~ *company*" shall mean a corporation or any other person or organization heretofore or hereafter ~~constituting~~ *operating* a public service ~~corporation~~ *company business* under Title 56.

"Mobile radio telephone utility system" shall mean any facility *other than a cellular mobile radio communications system as defined in § 56-508.8* within the Commonwealth ~~of Virginia~~ which provides mobile radio telephone service, including one-way mobile radio telephone service, on a for-hire basis to the public, whether or not such mobile radio telephone service is provided on frequencies allocated to the Domestic Public Land Mobile Radio Services of the Federal Communications Commission and whether or not such mobile radio telephone service is interconnected with a public landline telephone exchange network.

"Radio common carrier" shall mean every public service corporation or any other person or organization , *other than a cellular mobile radio communications carrier as defined in § 56-508.8,* owning, operating, controlling or managing a mobile radio telephone utility system , *including radio paging services provided by telephone companies,* except a public landline message telephone service , *other than radio paging services,* or a public message telegraph service. The terms "telephone or telegraph utilities," "telephone or telegraph company," or a "person operating telegraph or telephone lines" when used in this chapter , *except when used in this definition* , shall not be construed as including radio common carriers.

§ 56-508.4. Issuance of certificates to certain carriers licensed by Federal Communications Commission.— ~~A.~~ Any person or organization not presently franchised or certificated by the Commission as a radio common carrier but engaged in the operation of any radio common carrier system licensed by the Federal Communications Commission on June 26, 1970, shall , upon qualification as a public service corporation, receive a certificate of convenience and necessity from the Commission authorizing such corporation to continue the operation of such radio common carrier in the territory professed to be served by such person or organization on June 26, 1970, if, within ninety days after June 26, 1970, such corporation shall file with the Commission an application for such certificate, including copies of any license or licenses issued by the Federal Communications Commission to such person or organization, showing the area professed to be served by such person or organization.

~~B. Any public service corporation which is authorized by the Federal Communications Commission to provide domestic cellular radio telecommunication service shall receive a certificate of convenience and necessity from the Commission to operate a domestic cellular radio telecommunication service in that territory authorized by the Federal Communications Commission.~~

§ 56-508.5. Jurisdiction of State Corporation Commission; agreements for telecommunication services.— *A.* Any radio common carrier operating under a certificate of convenience and necessity issued by the Commission shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as other public service corporations under the laws of this Commonwealth.

*B. If it determines that radio common carrier service will be provided on a competitive basis, the Commission may approve rates, charges, and regulations as it may deem appropriate for any public service corporation furnishing competitive service, provided such rates, charges and regulations are nondiscriminatory and in the public interest. In making such determination, the Commission may consider (i) the number of companies providing the service; (ii) the geographic availability of the service from other companies; (iii) the quality of service available from other companies; and (iv) any other factors the Commission considers relevant to the public interest. The Commission is authorized to promulgate any rules necessary to implement this provision. However, any such rules so promulgated shall be uniformly applicable to all public service companies that are subject to the provisions of this section.*

*C.* Notwithstanding any other provision of law, and subject to existing regulatory powers of the Commission as to rates and services and to the provisions of ~~the first paragraph~~ *subsections A and B* of this section, any radio common carrier may enter into a joint venture, partnership, or similar agreement with any other individual, corporation, partnership or other business entity for the purpose of providing to the public cellular *mobile* radio ~~telecommunication~~ *communications* service, as a radio common carrier, through cellular *mobile radio* communications systems under permits issued by the Federal Communications Commission. Any such entity (whether in corporate or other form) may form and operate, as a radio common carrier, pursuant to the terms of such an agreement.

§ 56-508.6. Issuance of certificate for operation in established service area of other carriers.– A. The Commission may grant a certificate for a proposed radio common carrier operation or extension thereof into an established service area which will be in competition with or duplication of ~~another~~ *other* certificated radio common ~~carrier~~ *carriers* if it shall find the proposed application justified by public interest, and under such terms, limitations and restrictions as may be prescribed by the Commission.

In determining the public interest, the applicant shall demonstrate, and the Commission shall determine, before issuing a certificate, that the applicant has the financial, managerial and operational experience, abilities and capabilities to provide adequate service to the public within the requested certificated areas. The applicant shall satisfy marketing, public need, and such other public interest criteria as determined by the Commission to carry out the provisions of this section.

B. The Commission may promulgate rules and regulations to carry out the provisions of this section. If such rules and regulations are promulgated, they shall include consideration of the adverse effect on service within the Commonwealth by other certificated carriers, and consideration of any unnecessary duplication of facilities and services and shall apply such rules and regulations in consideration of applications for certificates.

C. Any applicant certificated under this section shall not be allowed to begin service until March 1, 1985.

# APPENDIX X

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend the Code of Virginia by adding in Title 56 a chapter numbered 16.2, consisting of sections numbered 56-508.8 through 56-508.13, relating to the regulation of celluar mobile radio communications carriers.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 16.2, consisting of sections numbered 56-508.8 through 56-508.13 as follows:

*CHAPTER 16.2.*

*CELLULAR MOBILE RADIO COMMUNICATIONS CARRIERS.*

*§ 56-508.8. Definitions.—Whenever used in this chapter the following terms, words and phrases shall have the following meanings, unless the contrary plainly appears:*

*"Commission" shall mean the State Corporation Commission.*

*"Commissioners" shall mean the Commissioners of the State Corporation Commission.*

*"Public service company" shall mean a corporation or any other person or organization heretofore or hereafter operating a public service company business under Title 56.*

*"Cellular mobile radio communications carrier" shall mean every person or organization owning, operating, controlling or managing a cellular mobile radio communications system except a public landline message telephone service or a public message telegraph service.*

*"Cellular mobile radio communications system" shall mean any facility or facilities within the Commonwealth authorized by the Federal Communications Commission to provide cellular mobile radio communications service on a for-hire basis to the public.*

*§ 56-508.9. Application of chapter.—The provisions of this chapter relate only to "cellular mobile radio communications carriers" as defined herein and shall not apply to mobile radio telephone service offered by radio common carriers or landline telephone or telegraph utilities regulated by the Commission or to the mere purchase of cellular mobile radio communications service for resale to the public.*

*§ 56.508.10. Certificate of public convenience and necessity required.—No cellular mobile radio carrier shall operate any cellular mobile radio communications system, or any extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that the public convenience and necessity requires such operation or acquisition.*

*§ 56-508.11. Issuance of certificates to certain carriers licensed by Federal Communications Commission.—Any public service company which is authorized by the Federal Communications Commission to provide cellular mobile radio communications service shall receive a certificate of convenience and necessity from the Commission to operate a cellular mobile radio communications system and provide service in that territory authorized by the Federal Communications Commission.*

*§ 56-508.12. Jurisdiction of State Corporation Commission; agreements for telecommunication services.—A. Any cellular mobile radio communications carrier operating under a certificate of convenience and necessity issued by the Commission shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as any public utility under the laws of this Commonwealth.*

*B. Where two cellular mobile radio communications carriers are in operation within the same or substantially similar area, the Commission may, if it determines that full and effective*

*competition exists and will continue to exist between such carriers, approve a system of rate regulation which will allow each carrier to increase or decrease its rates without Commission approval. The Commission may, upon complaint or its own initiative, investigate the rates being charged by a cellular carrier, and after a hearing, substitute therefor rates which are just and reasonable.*

*C. Every cellular mobile radio communications carrier shall be required to file with the Commission and keep open to public inspection schedules, and any amendments thereto, showing rates and charges and terms and conditions of service which shall be applicable to all subscribers for such service. The Commission shall have jurisdiction to hear and adjust grievances and disputes between such carriers and their subscribers.*

*D. Notwithstanding any other provision of law, and subject to existing regulatory powers of the Commission as to rates and services and to the provisions of subsections A, B and C of this section, any cellular mobile radio communications carrier may enter into a joint venture, partnership, or similar agreement with any other individual, corporation, partnership or other business entity for the purpose of providing to the public cellular mobile radio communications service through cellular mobile radio communications systems. Any such entity (whether in corporate or other form) may form and operate, as a cellular mobile radio communications carrier, pursuant to the terms of such an agreement.*

*§ 56-508.13. Interconnection of radio communication facilities and telephone facilities.— Whenever the Commission shall find that public convenience and necessity require the interconnection of the cellular mobile radio communications system of a certificated cellular mobile radio communications carrier with the telephone facilities of a landline telephone utility serving all or part of the certificated territory of the cellular mobile radio communications carrier, and that such cellular mobile radio communications carrier and landline telephone utility have failed to agree upon such interconnection or the terms and conditions or compensation for the same, the Commission may order that such interconnection be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for such interconnection.*

Gerald L. Baliles
Attorney General

William G. Broaddus
Chief Deputy Attorney General

# COMMONWEALTH of VIRGINIA

## Office of the Attorney General

December 26, 1984

Donald C. J. Gehring
Deputy Attorney General
Criminal Law Enforcement Division

Maston T. Jacks
Deputy Attorney General
Human & Natural Resources Division

Elizabeth B. Lacy
Deputy Attorney General
Judicial Affairs Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

Karl E. Bren
Director of Administration

The Honorable Gladys B. Keating
Member, House of Delegates
5909 Parkridge Lane
Franconia, Virginia 22310

My dear Delegate Keating:

You have asked three questions concerning the regulation of radio common carriers (RCCs) and cellular mobile radio communications carriers ("cellular carriers"). You ask whether (1) all public service corporations are public utilities; (2) RCCs and cellular carriers are public service corporations; and (3) the State Corporation Commission would still have jurisdiction over their rates if RCCs and cellular carriers are removed from the rate regulation of Ch. 10 of Title 56 of the Code of Virginia. I will answer each question separately.

First, all public service corporations are not public utilities for purposes of the Code. See Iron Company v. Pipeline Company, 206 Va. 711, 146 S.E.2d 169 (1966). The basic definition of a public service company is contained in § 56-1, and the term "public utility" is defined in § 56-232, among other sections. Although the definitions overlap substantially, they are not identical.

Second, under current law, RCCs and cellular carriers are both public service corporations and public utilities. Section 56-508.1 defines these entities to include public service corporations and other persons "owning, operating, controlling or managing a mobile radio telephone utility system except a public landline message telephone service or a public message telegraph service." The RCCs and cellular carriers own, manage or control plants and equipment for the conveyance of telephone messages. Thus, they are also squarely within the definition of "public utility" contained in § 56-232. Finally, they are within the definition of "public service corporation" in § 56-1, which includes telephone companies. Section 56-508.4 requires RCCs and cellular carriers to be, or to become, public service corporations before they may be certificated to do business.

I next address your third question. As a result of the provisions of §§ 56-232, 56-508.1 and 56-508.4, RCCs and cellular carriers are regulated as public utilities under Ch. 10 of Title

56. Your letter indicates that a proposed exemption from the provisions of Ch. 10 would be accomplished by new statutory language excluding RCCs and cellular carriers from the definition of "public utility," as that term is used anywhere in the Code. The intent of such an exemption would be to release RCCs and cellular carriers from the rate base/rate of return ratemaking methodology of Ch. 10 of Title 56, but to retain some ratemaking jurisdiction in the State Corporation Commission.

It should be noted that the definition exemption mechanism of the type suggested in your letter may release RCCs and cellular carriers from other regulatory provisions in addition to the rate base/rate of return requirements of Ch. 10. For example, Chs. 3 and 4 of Title 56, regulating respectively the issuance of public utility securities and transactions between a utility and its affiliates, apply only to utilities subject to rate regulation under Ch. 10. Any exemption from Ch. 10, therefore, is also an exemption from Chs. 3 and 4.

I assume that the proposed exemption would be written so that RCCs and cellular carriers would not be public utilities, but would remain public service corporations under § 56-1. On the surface, such a result would seem to retain ratemaking jurisdiction with the Commission under § 56-35, which reads:

> "The Commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all public service companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies."

For reasons hereinafter stated, I am of the opinion that this section may not give the Commission effective control over the rates of RCCs and cellular carriers unless the proposed exemptive provisions are accompanied by language stating a new standard by which to measure acceptable rates. See, e.g., § 56-481.1.

Arguably, § 56-35, standing alone, might be broadly interpreted to require "reasonable" rates. That standard is functionally the same as the "just and reasonable" formulation now contained in Ch. 10, and would be adequate to empower the Commission to regulate, without more. Cf. DuVal and Ridgill v. VEPCO, 216 Va. 226, 217 S.E.2d 844 (1975), involving rate regulation under § 56-245. The most recent history of § 56-35, however, is contrary to this interpretation. It formerly contained express language requiring just and reasonable rates, but that language was removed. See Ch. 377, Acts of Assembly of 1973. The proper

interpretation of the statutes in these circumstances is that the General Assembly intended to eliminate the just and reasonable standard. A contrary conclusion would have to be based on a presumption that the omission was inadvertent. Such a conclusion would not be sustained by the courts. Godlewski v. Gray, 221 Va. 1092, 277 S.E.2d 213 (1981). Thus, § 56-35 now provides no rate-making standard. Without a standard, the Court would likely say the statute is "...too vague, indefinite and uncertain to furnish any yardstick or standard by which the rates...may be measured or determined." Mundy Motor Lines v. Du Pont, 199 Va. 933, 938, 103 S.E.2d 245, 248 (1958).[1]

In view of the 1973 changes to § 56-35 and the absence of other statutory standards by which to regulate rates, the Court could likely conclude that even if the General Assembly intended these organizations to be subject to rate regulation under § 56-35, its failure to provide adequate standards renders regulation unenforceable. For these reasons, it is my opinion that the proposed exemption of RCCs and cellular carriers from Ch. 10 of Title 56 must be accompanied by statutory provisions specifically governing the regulation of their rates if the General Assembly wishes to assure a continuation of rate regulation by the State Corporation Commission.

With kindest regards, I remain

Sincerely,

Gerald L. Baliles
Attorney General

2:11/54-270

---

[1]Recently, the Supreme Court of Virginia has said that the Commission has a duty to regulate rates under Art. IX, § 2 of the Constitution of Virginia (1971) and § 56-35 of the Code. See VEPCO v. Corp. Comm., 219 Va. 894, 252 S.E.2d 333 (1979); CVEC v. State Corporation Commission, 221 Va. 807, 273 S.E.2d 805 (1981). In each of those cases, however, the utilities were also subject to Ch. 10 of Title 56. There was, therefore, no question concerning the applicable standard.