

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Applications of	)	
	)	
Southwestern Bell Mobile Systems, Inc.	)	File No. 10000-CL-P-003-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 003A, Chicago MSA	)	
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	)	
Bay Area Cellular Telephone Company	)	File No. 10002-CL-P-007-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 007A, San Francisco MSA	)	
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	)	
Florida Cellular Service, Inc.	)	File No. 10004-CL-P-012-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 012B, Miami MSA	)	
	)	
	)	
Minneapolis SMSA Limited Partnership	)	File No. 10005-CL-P-015-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 015B, Minneapolis-St.Paul MSA	)	
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GTE Mobilnet of Oregon Limited Partnership	)	File No. 10008-CL-P-030-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 030B, Portland, OR/WA MSA	)	
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Columbus Cellular Telephone Company	)	File No. 10009-CL-P-031-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 031A, Columbus MSA	)	
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Alabama Cellular Service, Inc.	)	File No. 10011-CL-P-041-B-93
	)	
For a Construction Permit for Unserved Area in	)	

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Cellular Market 041B, Birmingham MSA	)	
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	)	
Virginia Cellular Limited Partnership	)	File No. 10012-CL-P-043-B-93
	)	
For a Construction Permit for Unserved Area in	)	
Cellular Market 043B, Norfolk-Virginia Beach-	)	
Portsmouth MSA	)	
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	)	
Contel Cellular of Nashville, Inc.	)	File No. 10013-CL-P-046-A-93
	)	
For a Construction Permit for Unserved Area in	)	
Cellular Market 046A, Nashville-Davidson MSA	)	
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	)	
Triad Metronet, Inc.	)	File No. 10014-CL-P-047-A-93
	)	
For a Construction Permit for Unserved Area in	)	
Cellular Market 047A, Greensboro-Winston	)	
Salem-High Point MSA	)	
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	)	
Chicago SMSA Limited Partnership	)	File No. 10016-CL-P-054-B-93
	)	
For a Construction Permit for Unserved Area in	)	
Cellular Market 054B, Gary-Hammond-East	)	
Chicago MSA	)	
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Virginia Cellular Limited Partnership	)	File No. 10017-CL-P-059-B-93
	)	
For a Construction Permit for Unserved Area in	)	
Cellular Market 059B, Richmond MSA	)	
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ALLTEL Mobile Communications of the	)	File No. 10018-CL-P-061-B-93
Carolinas, Inc.	)	
	)	
For a Construction Permit for Unserved Area in	)	
Cellular Market 061B, Charlotte MSA	)	
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Carolina Metronet, Inc.	)	File No. 10019-CL-P-071-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 071A, Raleigh-Durham MSA	)	
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Century Cellunet of Lansing Limited Partnership	)	File No. 10022-CL-P-078-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 078B, East Lansing MSA	)	
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El Paso Cellular Telephone Company	)	File No. 10023-CL-P-081-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 081A, El Paso MSA	)	
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Contel Cellular of the South, Inc.	)	File No. 10024-CL-P-083-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 083B, Mobile MSA	)	
	)	
South Carolina Metronet, Inc.	)	File No. 10026-CL-P-090-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 090A, Charleston-North Charleston MSA	)	
	)	
McCaw Communications of Nevada, Inc.	)	File No. 10027-CL-P-093-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 093A, Las Vegas, NV MSA	)	
	)	
Flint Cellular Telephone Company	)	File No. 10028-CL-P-094-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 094A, Saginaw-Bay City-Midland MSA	)	
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Binghamton MSA Limited Partnership	)	File No. 10032-CL-P-122-B-93
For a Construction Permit for Unserved Area in Cellular Market 122B, Binghamton MSA	)	
Santa Barbara Cellular Systems, Ltd.	)	File No. 10033-CL-P-124-A-93
For a Construction Permit for Unserved Area in Cellular Market 124A, Santa Barbara-Santa Maria-Lompoc MSA	)	
GTE Mobilnet of California Limited Partnership	)	File No. 10034-CL-P-126-B-93
For a Construction Permit for Unserved Area in Cellular Market 126B, Salinas-Seaside-Monterey MSA	)	
Rockford MSA Limited Partnership	)	File No. 10036-CL-P-131-B-93
For a Construction Permit for Unserved Area in Cellular Market 131B, Rockford, IL MSA	)	
Visalia Cellular Telephone Company	)	File No. 10037-CL-P-150-A-93
For a Construction Permit for Unserved Area in Cellular Market 150A, Visalia-Tulare-Porterville MSA	)	
Roanoke MSA Limited Partnership	)	File No. 10038-CL-P-157-B-93
For a Construction Permit for Unserved Area in Cellular Market 157B, Roanoke MSA	)	
GTE Mobilnet of California Limited Partnership	)	File No. 10041-CL-P-175-B-93

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For a Construction Permit for Unserved Area in Cellular Market 175B, Santa Cruz MSA	)	
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SBMS Cellular Telecommunications Springfield, Inc.	)	File No. 10042-CL-P-176-A-93
	)	
	)	
For a Construction Permit for Unserved Area in Cellular Market 176A, Springfield MSA	)	
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MobileTel, Inc.	)	File No. 10043-CL-P-184-B-93
	)	
	)	
For a Construction Permit for Unserved Area in Cellular Market 184B, Houma-Thibodaux MSA	)	
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Champaign CellTelCo	)	File No. 10046-CL-P-196-A-93
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	)	
For a Construction Permit for Unserved Area in Cellular Market 196A, Champaign-Urbana-Rantoul MSA	)	
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Cumberland Cellular Telephone Company	)	File No. 10047-CL-P-209-A-93
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For a Construction Permit for Unserved Area in Cellular Market 209A, Clarksville-Hopkinsville MSA	)	
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Wilmington Cellular Communications, Inc.	)	File No. 10048-CL-P-218-A-93
	)	
	)	
For a Construction Permit for Unserved Area in Cellular Market 218A, Wilmington NC MSA	)	
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Abilene SMSA Limited Partnership	)	File No. 10050-CL-P-220-B-93
	)	
	)	
For a Construction Permit for Unserved Area in Cellular Market 220B, Abilene MSA	)	
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Tuscaloosa Cellular Partnership	)	File No. 10051-CL-P-222-A-93
For a Construction Permit for Unserved Area in Cellular Market 222A, Tuscaloosa MSA	)	
	)	
Florence Cellular Telephone Company, Inc.	)	File No. 10053-CL-P-226-A-93
For a Construction Permit for Unserved Area in Cellular Market 226A, Florence MSA	)	
	)	
Mississippi Cellular Telephone Company	)	File No. 10055-CL-P-252-B-93
For a Construction Permit for Unserved Area in Cellular Market 252B, Pascagoula MSA	)	
	)	
Midland/Odessa SMSA Limited Partnership	)	File No. 10056-CL-P-255-B-93
For a Construction Permit for Unserved Area in Cellular Market 255B, Odessa MSA	)	
	)	
Florence Metronet, Inc.	)	File No. 10057-CL-P-264-A-93
For a Construction Permit for Unserved Area in Cellular Market 264A, Florence MSA	)	
	)	
Albany Telephone Company	)	File No. 10058-CL-P-266-A-93
For a Construction Permit for Unserved Area in Cellular Market 266A, Glens Falls MSA	)	
	)	
Chicago SMSA Limited Partnership	)	File No. 10059-CL-P-273-B-93
For a Construction Permit for Unserved Area in Cellular Market 273B, Kankakee MSA	)	
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Evansville MSA Limited Partnership	)	File No. 10061-CL-P-293-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 293B, Owensboro MSA	)	
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Midland/Odessa SMSA Limited Partnership	)	File No. 10063-CL-P-295-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 295B, Midland MSA	)	
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Alton Cellular, Inc.	)	File No. 10064-CL-P-305-B-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 305B, Alton-Granite City MSA	)	
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Dayton Cellular Telephone Company	)	File No. 10010-CL-P-040-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 040A, Dayton MSA	)	
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Gary Cellular Telephone Company	)	File No. 10015-CL-P-054-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 054A, Gary-Hammond-East Chicago MSA	)	
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ACC/McCaw Cellular of Fresno	)	File No. 10020-CL-P-074-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 074A, Fresno MSA	)	
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Lansing Cellular Telephone Company	)	File No. 10021-CL-P-078-A-93
	)	
For a Construction Permit for Unserved Area in Cellular Market 078A, Lansing MSA	)	
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Chattanooga Cellular Telephone Company	)	File No. 10025-CL-P-088-A-93

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For a Construction Permit for Unserved Area in Cellular Market 088A, Chattanooga MSA	)	
Contel Cellular of Kentucky, Inc.	)	File No. 10030-CL-P-116-A-93
For a Construction Permit for Unserved Area in Cellular Market 116A, Lexington-Fayette MSA	)	
Huntsville MSA Limited Partnership	)	File No. 10031-CL-P-120-B-93
For a Construction Permit for Unserved Area in Cellular Market 120B, Huntsville MSA	)	
Contel Cellular of the South, Inc.	)	File No. 10035-CL-P-127-B-93
For a Construction Permit for Unserved Area in Cellular Market 127B, Pensacola MSA	)	
McAllen-Edinburg-Mission SMSA Limited Partnership	)	File No. 10040-CL-P-162-B-93
For a Construction Permit for Unserved Area in Cellular Market 162B, Brownsville-Harlingen MSA	)	
GTE Mobilnet of Terre Haute Limited Partnership	)	File No. 10044-CL-P-185-B-93
For a Construction Permit for Unserved Area in Cellular Market 185B, Terre Haute MSA	)	
Amarillo SMSA Limited Partnership	)	File No. 10045-CL-P-188-B-93
For a Construction Permit for Unserved Area in Cellular Market 188B, Amarillo MSA	)	





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## I. INTRODUCTION

1. In this Order, we address four Petitions for Reconsideration (Petitions) involving the above-captioned proceedings filed on March 3,<sup>1</sup> March 14,<sup>2</sup> April 5,<sup>3</sup> and April 18, 1994,<sup>4</sup> by the Committee for Effective Cellular Rules ("CECR"), requesting that any grants of the captioned applications be expressly conditioned on the final disposition of CECR's Petition for Review in the United States Court of Appeals for the District of Columbia Circuit with respect to the Commission's unserved area cellular rules.<sup>5</sup> For the reasons discussed below, we dismiss CECR's Petitions for Reconsideration as moot.<sup>6</sup>

## II. DISCUSSION

2. In 1992, the Commission adopted the *Cellular Unserved Second Report and Order*, which modified its licensing rules in the Domestic Public Cellular Radiotelephone Service to require a new method for determining the Cellular Geographic Service Areas (CGSAs) of cellular systems, to allow expansion of the CGSA during the five year build-out period, and to clarify filing requirements for cellular unserved areas.<sup>7</sup> CECR filed a Petition for Reconsideration of the *Cellular Unserved Second Report and Order*, requesting that the Commission rescind its modification of all cellular licenses and suspend the use of the new mathematical formula as the means of determining CGSAs until the renewal of existing licenses or the issuance of new licenses. CECR claimed that the Commission exceeded its statutory authority by improperly modifying the licenses of existing cellular systems. In 1993, the Commission denied CECR's

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<sup>1</sup> The Petition filed on March 3, 1994 opposed the license grants of the licensees listed under the heading "Petition I" in Appendix A.

<sup>2</sup> The Petition filed on March 14, 1994 opposed the license grants of the licensees listed under the heading "Petition II" in Appendix A.

<sup>3</sup> The Petition filed on April 5, 1994 opposed the license grant of Contel Cellular which is listed under the heading "Petition III" in Appendix A.

<sup>4</sup> The Petition filed on April 18, 1994 opposed the license grants of the licensees listed under the heading "Petition IV" in Appendix A.

<sup>5</sup> *Committee For Effective Cellular Rules v. FCC*, 53 F.3d 1309 (D.C. Cir. 1995).

<sup>6</sup> CECR also filed a Petition for Reconsideration on April 11, 1994 against the Contel Cellular license grant for Market 98B, Davenport-Rock Island, Moline MSA. On April 19, 1994, CECR filed a Motion to Dismiss its Petition because it duplicated the petition which was filed on April 5, 1994. We grant this motion.

<sup>7</sup> *Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify other Cellular Rules, Second Report and Order*, CC Docket No. 90-6, 7 FCC Rcd 2449 (1992) (*Cellular Unserved Second Report and Order*).

Petition for Reconsideration.<sup>8</sup> On March 22, 1993, CECR filed a Petition for Review with the United States Court of Appeals for the District of Columbia Circuit requesting that the court vacate the *Cellular Unserved Second Report and Order* and the *Memorandum Opinion and Order on Reconsideration*. CECR also requested that the Commission and the Court of Appeals stay the grant of any application for new cell sites in Unserved Areas. Both the Commission and the Court of Appeals denied CECR's stay requests.<sup>9</sup>

3. On four separate occasions in 1994, the Commission granted construction permits to a total of sixty unserved area cellular applicants.<sup>10</sup> CECR filed a Petition for Reconsideration (Petition) of each of these grants. Each Petition requested that the Commission explicitly condition the grant of the construction permits upon the final disposition of CECR's Petition for Review with the court.<sup>11</sup> Additionally, each Petition incorporated CECR's previously filed motions for stay by reference.<sup>12</sup>

4. On May 9, 1995, the Court of Appeals dismissed CECR's petition for review and affirmed the *Cellular Unserved Order*, holding that the Commission did not act arbitrarily and capriciously when it amended its cellular regulations through a notice-and-comment rule making.<sup>13</sup> The court concluded that the Commission acted within its statutory authority when it implemented a service-wide change through its rule making authority to the technical requirements for cellular licenses and significantly reduced the unserved areas.<sup>14</sup> Because the Court of Appeals denied the request for judicial relief upon which CECR's Petitions were based, all of CECR's petitions for reconsideration are rendered moot. Accordingly, we dismiss the petitions in their entirety.

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<sup>8</sup> *Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify other Cellular Rules, Memorandum Opinion and Order on Reconsideration*, Docket No. 90-6, 8 FCC Rcd 1363, ¶¶ 2-3 (1992) (*Memorandum Opinion and Order on Reconsideration*).

<sup>9</sup> *Order*, CC Docket No. 90-6, 8 FCC Rcd 5087, ¶ 4 (1993); *Order, Committee for Effective Cellular Rules v. FCC.*, No. 93-1220 (D.C.Cir. September 29, 1993).

<sup>10</sup> Public Notice, Report No. CL-94-32, Feb. 1, 1994; Public Notice, Report No. CL-94-38, Feb. 11, 1994; Public Notice, Report No. CL-94-45, Mar. 11, 1994; Public Notice, Report No. CL-94-48, Mar. 18, 1994.

<sup>11</sup> Petition I at 12; Petition II at 5; Petition III at 4-5; Petition IV at 4-5.

<sup>12</sup> Petition I at 10; Petition II at 3; Petition III at 3; Petition IV at 3.

<sup>13</sup> *Committee for Effective Cellular Rules v. FCC*, 53 F.3d at 1312.

<sup>14</sup> *Id.*

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### III. ORDERING CLAUSES

5. IT IS ORDERED that pursuant to Sections 4(i), 303(r), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309 and 405, and Section 22.128 of the Commission's rules, 47 C.F.R. § 22.128, and the authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the Petitions for Reconsideration filed by the Committee for Effective Cellular Rules on March 3, 1994, March 14, 1994, April 5, 1994, April 11, 1994 and April 18, 1994 respectively ARE DISMISSED as moot.

6. IT IS FURTHER ORDERED that pursuant to Sections 4(i), 303(r), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309 and 405, and Section 22.119 of the Commission's rules, 47 C.F.R. § 22.119, that waivers of Section 22.105(d) of the Commission's rules, 47 C.F.R. § 22.105(d) filed on March 21, 1994 and April 1, 1994 respectively ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Michele C. Farquhar  
Chief, Wireless Telecommunications Bureau

## APPENDIX A

## PETITION I

Southwestern Bell Mobile Systems, Inc.	Collectively - SBMS
SBMS Cellular Telecomm. Springfield, Inc.	Collectively - SBMS
Champaign CellTelCo	Collectively - SBMS
Abilene SMSA L.P.	Collectively - SBMS
Midland/Odessa SMSA L.P. (2 Markets)	Collectively - SBMS
Mississippi Cellular Telephone Co.	Mississippi Cellular
McCaw Communications of Nevada, Inc.	Collectively - McCaw
Santa Barbara Cellular Systems, Ltd.	Collectively - McCaw
Visalia Cellular Telephone Co.	Collectively - McCaw
GTE Mobilnet of Oregon L.P.	Collectively - GTEM/CCI
Virginia Cellular L.P. (2 Markets)	Collectively - GTEM/CCI
Contel Cellular of Nashville, Inc.	Collectively - GTEM/CCI
Triad Metronet, Inc.	Collectively - GTEM/CCI
Carolina Metronet, Inc.	Collectively - GTEM/CCI
Contel Cellular of the South, Inc.	Collectively - GTEM/CCI
South Carolina Metronet, Inc.	Collectively - GTEM/CCI
Binghamton MSA L.P.	Collectively - GTEM/CCI
GTE Mobilnet of California L.P. (2 Markets)	Collectively - GTEM/CCI
Rockford MSA L.P.	Collectively - GTEM/CCI
Roanoke MSA L.P.	Collectively - GTEM/CCI
Florence Metronet, Inc.	Collectively - GTEM/CCI
Tuscaloosa Cellular Partnership	Collectively - GTEM/CCI
Florence Cellular Telephone Co., Inc.	Collectively - GTEM/CCI
Evansville MSA L.P.	Collectively - GTEM/CCI
Alabama Cellular Service, Inc.	Alabama Cellular
Albany Telephone Co.	Albany Telephone
ALLTEL Mobile Comm. of the Carolinas, Inc.	ALLTEL
Alton Cellular, Inc.	Alton Cellular
Bay Area Cellular Telephone Co.	Bay Area
Century Cellunet of Lansing L.P.	Century Cellunet
Chicago SMSA L.P. (2 Markets)	Chicago SMSA
Columbus Cellular Telephone Co.	Columbus Cellular
Cumberland Cellular Telephone Co.	Cumberland Cellular
El Paso Cellular Telephone Co.	El Paso
Flint Cellular Telephone Co.	Flint Cellular
Florida Cellular Service, Inc.	Florida Cellular
Minneapolis SMSA L.P.	Minneapolis SMSA
MobileTel, Inc.	MobileTel
Wilmington Cellular Communications, Inc.	Wilmington Cellular

**PETITION II**

ACC/McCaw Cellular of Fresno	Jointly - ACC/McCaw
Medford Cellular Telephone Co., Inc.	Jointly - ACC/McCaw
Gary Cellular Telephone Co.	Collectively - Gary Cellular
McAllen-Edinburg-Mission SMSA L.P.	Collectively - Gary Cellular
Amarillo SMSA L.P.	Collectively - Gary Cellular
Chattanooga Cellular Telephone Co.	Collectively - GTEM/CCI
Contel Cellular of Kentucky, Inc.	Collectively - GTEM/CCI
Contel Cellular of the South, Inc.	Collectively - GTEM/CCI
GTE Mobilnet of Terre Haute L.P.	Collectively - GTEM/CCI
Contel Cellular of the Southwest, Inc.	Collectively - GTEM/CCI
Dayton Cellular Telephone Co.	Dayton Cellular
Huntsville MSA L.P.	Huntsville
Lansing Cellular Telephone Co.	Lansing Cellular

**PETITION III**

Contel Cellular of Davenport, Inc.	Contel Cellular
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**PETITION IV**

Brown County MSA Cellular L.P.	Brown County
Redding Cellular Partnership (2 Markets)	Redding Cellular

**APPENDIX B**

**OPPOSITION TO PETITIONS**

ACC/McCaw  
Alabama Cellular  
Albany Telephone  
ALLTEL  
Bay Area  
Brown County  
Century Cellunet  
Contel Cellular  
El Paso  
Florida Cellular  
Gary Cellular  
GTEM/CCI  
Huntsville  
McCaw  
Mississippi Cellular  
MobileTel  
Redding Cellular  
SBMS