

Decision 87 11 026

NOV 13 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MC CAW COMMUNICATIONS OF THE)
 SOUTHEAST, INC. for authorization)
 to acquire control of)
 OXNARD CELLULAR TELEPHONE COMPANY)
 (U-3010-C) through the Acquisition)
 of all the outstanding stock of)
 FIRST CELLULAR GROUP, INC.)

ORIGINAL

Application 87-09-016
(Filed September 15, 1987)

OPINION

McCaw Communications of the Southeast, (applicant) has filed an application for authority to acquire control of Oxnard Cellular Telephone Company (U-3010-C) (OCTC). Applicant has also filed a separate application with the Federal Communications Commission (FCC) for authority to transfer control of First Cellular Group, Inc., to applicant.

Proposed control is to be gained through the purchase of all of the outstanding stock of First Cellular Group, Inc. which wholly owns First Cellular of Oxnard, Inc. (First Cellular - Oxnard) the controlling partner of OCTC. Applicant maintains its principal offices at 5808 Lake Washington Boulevard, N.E.; Kirkland, Washington 98033-7397.

Copies of the application were served on entities with which applicant's proposed service is likely to compete, as listed in Exhibit E to the application. Notice of this application appeared in the Commission's Daily Calendar of September 15, 1987. No timely protests to the application were received; therefore, a public hearing is not necessary.

Background of Applicant

Applicant is one of many subsidiaries of McCaw Cellular Communications, Inc. which is 86% owned by McCaw RCC Communications, Inc. and 14% publicly traded. McCaw RCC

Communications, Inc. is a wholly owned subsidiary of McCaw Communications Companies holding company, which is a corporation whose voting stock is owned 55% by MFC, Inc. and 45% by Affiliated Publications, Inc. (API) as shown in Appendix A to this order. The units of MFC, Inc. are held by Craig, John, Keith, and Bruce McCaw, all of whom are brothers and United States citizens. API is a publicly traded corporation that owns and operates various communications and media properties.

A July 20, 1987 prospectus, involving the issuance of stock by McCaw Cellular Communications, Inc., supplied by counsel for applicant, states that Affiliated Publications, Inc., which through a subsidiary publishes the Boston Globe, is 55% owned by the McCaw family. Therefore, applicant will be under the control of the McCaw family.

Current ownership and pending acquisitions of cellular operations by McCaw Cellular Communications, Inc., are displayed in a map included on Page 2 of the July 20, 1987, prospectus, and in Appendix B to this order.

Applicant, and all other McCaw Communications Companies are Washington corporations. McCaw has neither indicated in the application whether it is a corporation qualified to do business in California nor attached to the application a copy of a certificate showing it is a corporation in good standing qualified to do business in California. Therefore, we will condition the authorization for the transfer requested herein upon receipt of a filing by applicant stating its qualifications to do business in California.

Applicant, states that it is an experienced operator of common carrier radio systems. The McCaw Communications Companies are engaged in radio paging, mobile telephone and cellular radio telecommunications services. McCaw Cellular Communications, Inc. and its affiliates and subsidiaries currently provide facilities based cellular radio telecommunications service in 19 Metropolitan

Statistical Areas (MSA's) in 14 states, according to applicant. In addition, applicant claims that McCaw Cellular Communications is a reseller of cellular radio service in 18 additional MSA's. It also states that affiliates of applicant are holders of interests in Frequency Block "A" carriers that are offering cellular services or awaiting CPUC approval for such offering of service in the San Francisco, Sacramento and Stockton MSA's, among others.

Applicant claims that its experience will enable it to continue to provide cellular radio service in the areas served by OCTC in an efficient manner. In response to a request for additional information, applicant's counsel stated that while applicant will replace the management overseeing the operation of OCTC, the local management of OCTC is functioning on a decentralized basis and will continue to control the provision of cellular radio service in the Oxnard - Simi Valley - Ventura metropolitan area. Applicant also points out that it is capable of providing the overall leadership and support necessary for local management of OCTC.

Description of OCTC

OCTC, the current utility, is a general partnership, formed under California laws, which provides facilities based domestic public cellular radiotelephone service as authorized by Decision (D.) 87-06-012, dated June 15, 1987. OCTC holds the FCC "A" frequency permit for cellular radiotelephone facilities based service to the Oxnard-Simi Valley-Ventura MSA. It has already constructed certain of its facilities and has wholesale and retail services available, based on tariff schedules filed with this Commission. The partnership involves 19 units of ownership as follows:

<u>Name of Partner</u>	<u>Units of Ownership Held</u>
1. First Cellular - Oxnard	11.3
2. McCaw Communications of the Southeast, Inc. (Applicant)	4.7
3. Western American Joint Venture ¹	1.0
4. WestTel - Fresno Company ²	1.0
5. WestTel - Ventura Company ²	1.0
Total	19.0 Units

Therefore, First Cellular - Oxnard, as represented in the application, is a wholly-owned subsidiary of First Cellular Group of Oxnard, Inc., and First Cellular Group, Inc., as shown in Appendix C to this order.

Description of Proposed Acquisition

Applicant proposes to purchase all of the outstanding stock, as well as all warrants or rights to purchase additional First Cellular Group, Inc., common stock, from the individuals currently owning same. Upon consumation of the proposed transaction, applicant would hold all of the capital stock, Class A and Class B of First Cellular Group, Inc., and thus gain full control of OCTC. Mr. Wayne N. Schelle who currently owns 80,000 shares (49.2%) of First Cellular Group, Inc., Class A Common Stock is the only shareholder to sign this application. However, as stated in the application Mr. Schelle has obtained the necessary Power of Attorney from the remaining shareholders to sign the application on their behalf. In addition, the transfer of

1 Controlled by First Cellular - Oxnard.
2 Wholly-owned by First Cellular - Oxnard.

Mr. Schelle's 49.2% interest to applicant together with applicant's present ownership interest in OCTC is sufficient to transfer indirect control of OCTC to applicant.

The approximate purchase price for all of the stock to be acquired from the stockholders of First Cellular Group, Inc. plus an amount necessary for first year operating costs for OCTC and the other cellular telephone companies controlled by First Cellular Group, Inc. is \$40.6 million. By a letter response to a request from the assigned Administrative Law Judge (ALJ) the attorney for applicant stated that the approximate allocated purchase price for OCTC, which is the subject of this application, is \$6.6 million. An additional \$1 million is included in the \$40.6 million as set forth above for the first year of operation of OCTC by the applicant. Therefore, \$7.6 million represents the current amount committed by applicant for the purchase and first year of operation of OCTC, if the pending applications before the Federal Communications Commission and this Commission are approved.

OCTC had no reportable income as of June 30, 1987, according to the application, since it received its certificate of public convenience and necessity (CPCN) to operate by D.87-06-012 dated June 15, 1987. OCTC's assets on June 30, 1987, as set forth in the application, were as follows:

Assets Rounded to Nearest DollarCurrent Assets

Cash	\$ 500
Phone and Accessory Inventory	\$ 6,634
Other Current Assets	<u>\$ 59,680</u>
Total Current Assets	\$ 66,814

Other Assets

Fixed Assets-Network	\$254,791
Fixed Assets-Office	<u>\$ 53,135</u>
Total Fixed Assets	\$307,926
Organizational and Startup Costs	\$273,982
Other Assets	\$ 2,759
TOTAL ASSETS	<u>\$651,481</u>

Based on the description of the assets, set forth above, applicant is paying approximately 10 times the total asset value of OCTC by the proposed purchase. A further examination of the assets of OCTC reveals that a substantial portion of the asset value is made up of organizational and startup costs, as can be expected of any newly established business operation. Therefore, it follows, that the purchase price of OCTC is not based on the current worth of the present operation and it is instead based on some assumed growth potential for the cellular telephone industry. Applicant appended a revised³ pro forma income statement for OCTC to its application, which showed a significant net loss for the first two years of operation and a profit thereafter as follows:

³ The OCTC pro forma income statement appended to this application has been revised and updated from the profit and loss statement appended to A.87-03-008 and referred to in D.87-06-012.

Oxnard Cellular Telephone Company

Profit and Loss Projections
Oxnard, CA
Consolidated

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
New Subscribers	902	823	819	815	811
Average Subs for Year	663	1,354	2,175	2,992	3,805
Cumulative Subscribers	902	1,725	2,544	3,359	4,169
Equipment Sales	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Service Activation Revenue	18,945	23,458	23,538	23,218	23,113
Monthly Service and Usage Revenues	641,716	2,251,557	3,622,536	4,985,724	6,342,699
Roaring Revenues	59,911	241,849	388,373	534,140	674,209
Total Revenues	720,572	2,516,865	4,034,047	5,543,082	7,045,021
Cost of Equipment Sold	0	0	0	0	0
Cost of Service Depreciation for System	575,591	1,175,385	1,392,472	1,681,688	1,938,834
	98,584	265,974	323,523	347,039	375,523
Gross Margin	46,397	1,075,506	2,318,052	3,514,355	4,730,665
General & Administration	918,534	1,045,011	1,133,266	1,223,418	1,315,677
Office Depreciation	9,000	10,000	11,000	12,000	13,000
Interest	370,133	393,633	396,276	312,849	177,281
Pre-Tax Net Income	-1,251,270	-373,138	777,510	1,966,087	3,224,707
Add-Back Depreciation	107,584	275,974	334,523	359,039	388,523
Cash Flow From Operations	-1,143,686	-97,164	1,112,033	2,325,127	3,613,229
Pre-Tax Net Income	-1,251,270	-373,138	777,510	1,966,087	3,224,707
Less Taxes Due With Carry-Forwards	0	0	0	0	984,399
After-Tax Net Income	-1,251,270	-373,138	777,510	1,966,087	2,240,307

From an assumption that the \$1 million of operating cash being advanced as part of the purchase price would cover only two months of 1987 operating loss, it would appear ample to cover the planned future operations to the break even point for OCTC.

In another recent Decision (D.) 87-09-018 dated September 10, 1987, involving an acquisition of an established radio telephone utility by a McCaw family corporation, the Commission determined that the McCaw family had funds forthcoming from a \$755 million sale of its cable television operations which could and were to be used for acquisition and operation of cellular and paging services (Finding of Fact 17). D.87-09-018 also described the McCaw family corporations as having other substantial assets which could and would be committed to its public utility obligations.

Applicant confirmed its commitment in this application by stating that the transferee has sufficient funds through a corporate parent, McCaw Cellular Communications, Inc., to fund these acquisitions and operating costs for one year. These funds have been committed by McCaw Cellular Communications, Inc. for this purpose and have not been committed for other purposes.

Discussion

An entity seeking to enter the cellular telephone business through the acquisition of an existing cellular utility operation is no different from an entity seeking to enter the cellular telephone business through an application for a CPCN. Therefore, we are concerned that the new ownership will be financially responsible and technically capable to carry out efficient, reliable and continuous utility operations.

The transfer of OCTC at essentially 10 times its asset value, within less than six months after issuance of its CPCN, has us concerned, especially because of the early change of ownership. Our concern is heightened because only two facilities-based cellular operations are currently permitted in each operating area.

We do recognize that the applicant in this proceeding has technical expertise in communications businesses, and currently appears to have adequate financial resources to carry on responsible cellular utility operations through OCTC; also the significant investment being made to acquire control of OCTC gives applicant a very real incentive to operate this cellular system in an efficient and effective manner. Nonetheless, we continue to be concerned about the rapid turnover of this specific CPCN (certificate). Accordingly, we place applicant on notice that for any further change in ownership, control, or operations of OCTC we will require full disclosure of the value and worth of such change or transfer. We will also require reasonable proof that any such further transfer of this cellular utility will not aggravate rates or reduce the efficiency or reliability of OCTC's cellular utility service to its customers.

Applicant should also be aware that the acquisition price paid for OCTC provides no basis for a finding of value of the properties or rights being acquired.

In authorizing this transfer we will require applicant to assume the public utility obligations of the seller, including but not limited to the preparation and filing of annual reports, tariff schedules, maintenance of necessary business records and payment of the fee set forth in P.U. Code §§ 401 et seq.

However, since there is no change of name contemplated for OCTC at this time, OCTC will continue to be the entity referred to in, and responsible for the filing of reports and revisions to tariff schedules before this Commission under applicant's new management. OCTC's current corporate identification number (U-3010-C) should continue to be used in the caption of all original filings with the Commission and in titles of other pleadings filed in existing cases as authorized by Ordering Paragraph 14. of D.87-06-012.

Findings of Fact

1. Applicant seeks authority to transfer control of OCTC to applicant.
2. Applicant, is a Washington corporation, and has not shown that it is a corporation in good standing qualified to do business in California.
3. Notice of this filing appeared in the Commission's Daily Calendar on September 15, 1987.
4. No timely protests and/or requests for hearings were received.
5. Applicant through payment of \$40.6 million for the acquisition of First Cellular Group, Inc., will commit \$7.6 million sufficient for the purchase and first year operating costs of OCTC.
6. Applicant has technical expertise in communications businesses and is currently engaged as a provider of cellular telephone service around the country.
7. McCaw Communications Companies, which owns and controls applicant, has recently negotiated the sale of its cable television operations for \$755 million, the proceeds of which are to be used on its cellular telephone, radiotelephone and paging utility operations.
8. Applicant has stated that it is prepared to provide additional financing, if required, to carry out the public utility obligations of OCTC.
9. Financial and technical viability are basic requirements that need to be demonstrated to obtain or to transfer a CPCN.
10. The proposed transfer of OCTC to applicant will not be adverse to the public interest.
11. No name change for OCTC is suggested or contemplated at this time under the proposed transfer.
12. OCTC will continue to use corporate identification number U-3010-C in all formal matters filed before this Commission.
13. A public hearing is not necessary.

14. This decision should be effective today to allow orderly transfer of ownership as proposed without further delay or expense.

Conclusions of Law

1. The financial and technical viability requirement for a CPCN should also be met in a certificate transfer application.

2. The application should be granted as provided for in the following order.

3. OCTC's tariff schedules for wholesale and retail cellular telephone service should continue, as presently in effect, under the proposed new ownership of applicant.

4. This transfer authorization is not a finding of the value of the rights and properties to be transferred.

ORDER

IT IS ORDERED that:

1. McCaw Communications of the Southeast, Inc., (applicant) is authorized to acquire control of Oxnard Cellular Telephone Company, in accordance with the terms set forth in the application.

2. On or before December 31, 1987, applicant shall file the original and 12 copies of a compliance filing with the Commission's Docket Office indicating that it is qualified to do business in California as a condition for acquiring control of Oxnard Cellular Telephone Company as authorized in Ordering Paragraph 1.

3. Applicant shall file written notice of the acquisition of control of Oxnard Cellular Telephone Company, with the Director of the Commission's Evaluation and Compliance Division within 15 days after acquisition of control.

4. Oxnard Cellular Telephone Company's tariff schedules for wholesale and retail services on file with this Commission will continue to be effective and need not be refiled since no change in the utility's name is contemplated under applicant's ownership.

5. The ordering paragraphs and other requirements applicable to Oxnard Cellular Telephone Company, as set forth in Decision 87-06-012 dated June 15, 1987, except as modified herein, will continue to apply to Oxnard Cellular Telephone Company after its transfer to applicant.

6. Oxnard Cellular Telephone Company's corporate identification number U-3010-C shall continue to be included in the caption of all original filings with the Commission and in the titles of other pleadings filed in existing cases.

7. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before December 31, 1987.

This order is effective today.

Dated NOV 13 1987, at San Francisco, California.

STANLEY W. HULETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. O'BANIAN
Commissioners

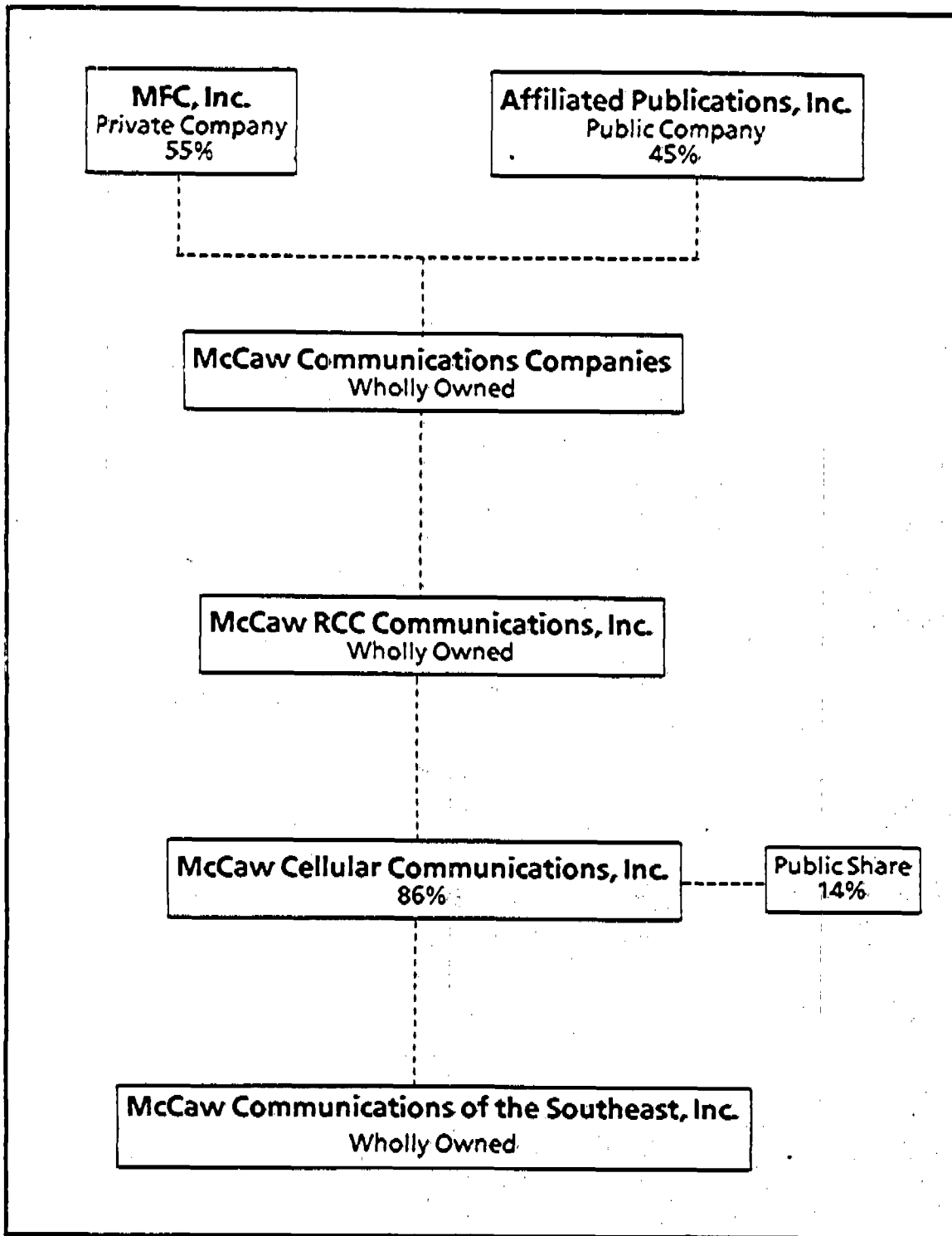
Commissioner Donald Vial, being necessarily absent, did not participate.

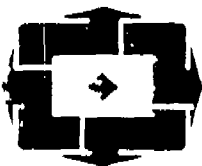
I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weisser, Executive Director

Job

APPENDIX A

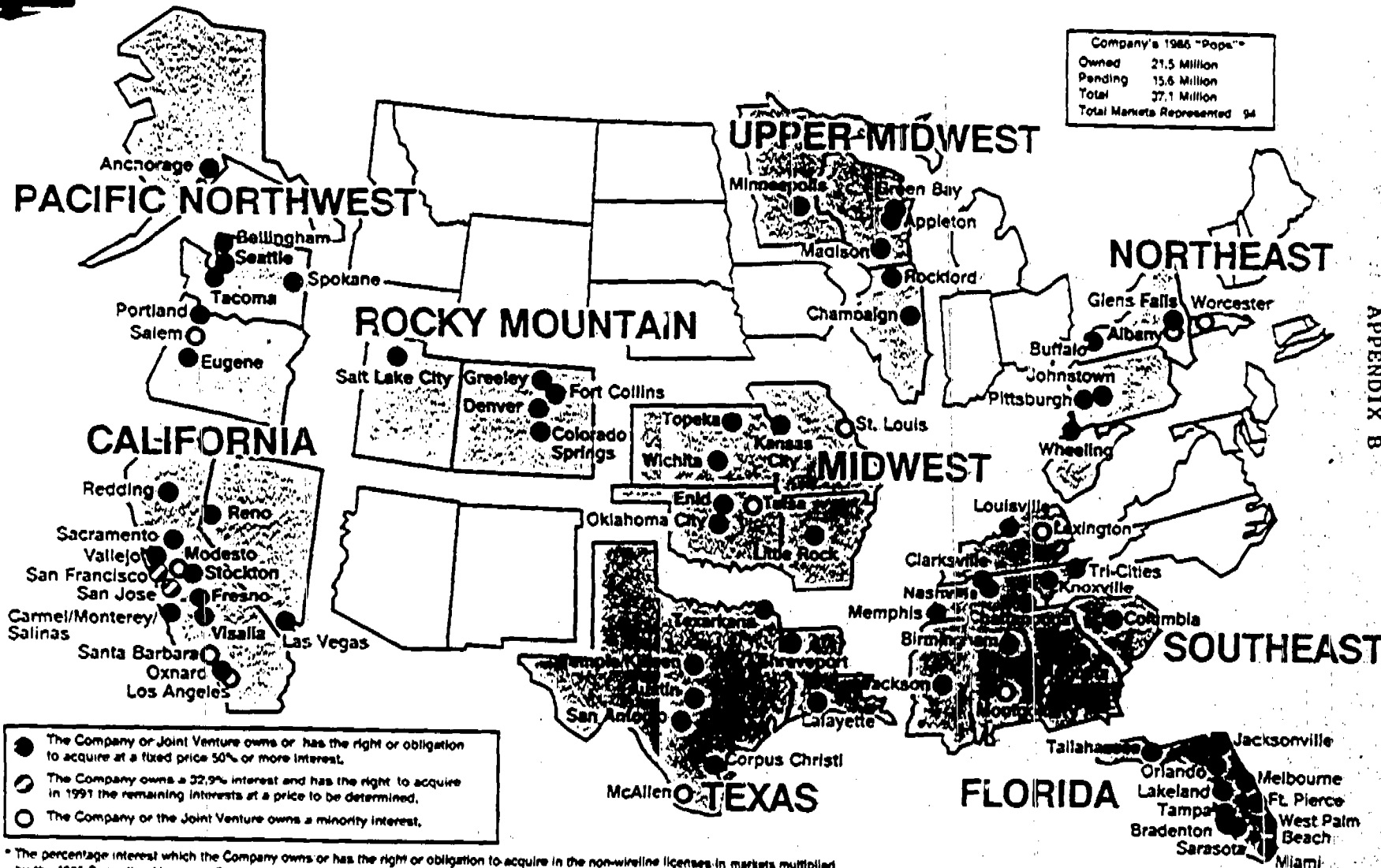




MCCAW CELLULAR COMMUNICATIONS, INC.

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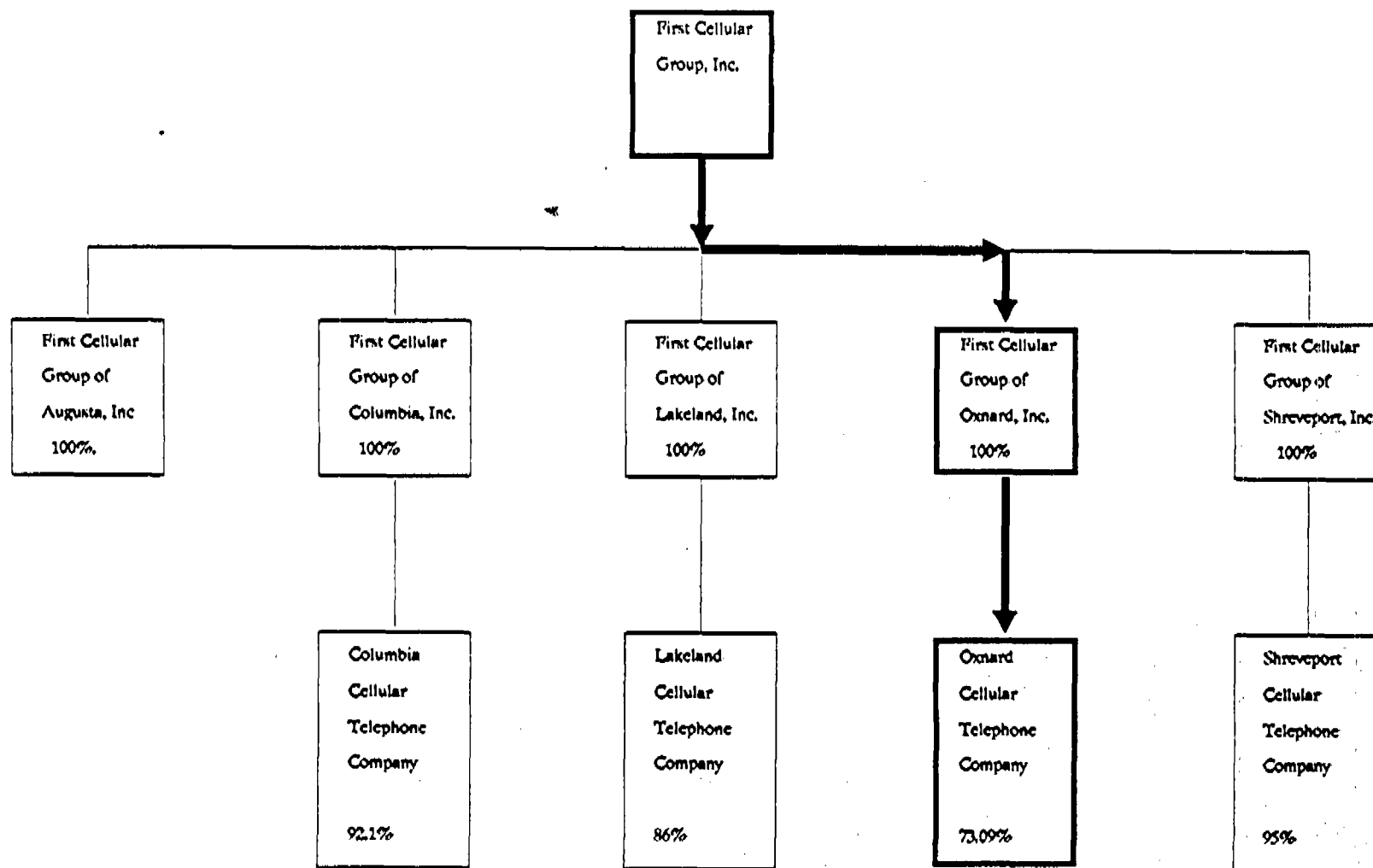
Company's 1986 "Pop."	
Owned	21.5 Million
Pending	15.6 Million
Total	37.1 Million
Total Markets Represented 94	



APPENDIX B

- The Company or Joint Venture owns or has the right or obligation to acquire at a fixed price 50% or more interest.
- ◐ The Company owns a 32.9% interest and has the right to acquire in 1991 the remaining interests at a price to be determined.
- The Company or the Joint Venture owns a minority interest.

* The percentage interest which the Company owns or has the right or obligation to acquire in the non-wireline licenses in markets multiplied by the 1986 Donnelley Marketing Service estimates of population of such markets. Includes 13 small markets which are not shown on the map.



First Cellular Group, Inc. wholly owns each of the first tier companies (First Cellular of Augusta, Columbia, Lakeland, Oxnard and Shreveport, Inc.). First Cellular Group of Augusta, Inc. is an operating company and began operations in April of 1987. Columbia Cellular Telephone Company is 92.1% owned by First Cellular Group of Columbia, Inc. and began operations in May of 1987. Lakeland Cellular Telephone Company is currently 77% owned by First Cellular Group of Lakeland, Inc. with 9% in the process of closing and began operations in August of 1987. Oxnard Cellular Telephone Company is 97.63% owned by First Cellular Group of Oxnard, Inc. and began operations in September of 1987. Shreveport Cellular Telephone Company is currently 92.5% owned by First Cellular Group of Shreveport, Inc. with 2.5% in the process of closing and began operations in September of 1987.