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FEDERAL COMMUNICATIONS COMMISSION
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Building The Wireless Future.™

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Randall S. Coleman
Vice President for Regulatory Policy and Law

April 6, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: *Ex Parte* Presentation
GEN Docket No. 90-314

Dear Mr. Caton:

On Wednesday, April 6, 1994, the Cellular Telecommunications Industry Association's Small Operators Caucus, represented by Michael Kalorgris, James Angle, Bob Broze, Bert Pharis, Michael Azeez, Ernie Preshard, and Scott Caton met with Byron Marchant, Senior Advisor for Commissioner Barrett, to discuss personal communications services. The views expressed in this meeting reflect CTIA's position as previously filed in this docket.

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, an original and one copy of this letter are being filed with your office.

If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Randall S. Coleman

CTIA Small Operators' Caucus

PCS Position Paper

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SUMMARY

CTIA's Small Operators' Caucus believes that:

(1) **The Federal Communications Commission's (FCC) proposed PCS rules will handicap cellular companies in providing PCS services to the public, for no good public policy reason.**

(2) **The FCC's suggested ownership attribution and service area overlap rules will further and needlessly harm small business opportunities, limit competition, and delay the rollout of PCS.**

(3) **The two 30 MHz Major Trading Area (MTA) licenses inappropriately impose a dual market structure on PCS and reduce bidding opportunities. They threaten to swamp smaller licensees in the smaller license areas, needlessly distort business conditions, and deprive rural and small communities of innovative services.**

The FCC's rules threaten to undermine the ability of cellular service providers to invest in PCS on their own, to partner with small, women, minority and rural candidates (SWMRs), and to appeal successfully to the capital markets for financing.

By trying to prejudge the marketplace, and shape it to some preconceived model, the Commission's proposal threatens the participation in PCS of successful wireless entrepreneurs, and thus handicaps the efforts of both new and existing licensees to bring innovative services to urban and rural areas.

CTIA Small Operators' Caucus

PCS POSITION PAPER -- 3 Detailed Points

I. It Serves No Public Policy Purpose to Handicap Cellular Operators

We have first-hand experience and knowledge of wireless communications and a proven track record of investment, service and job creation. In a few short years, we have helped create a new, successful industry serving millions of customers. Yet, the FCC clearly intends to handicap cellular operators in participating in the next generation of wireless services.

The cellular telephone industry is a powerful engine, investing in the future, and bringing many benefits to the American people and economy, including the creation of 8,000 new jobs in 1992 alone. To restrict cellular's entry into PCS <u>because</u> of cellular's successful use of its spectrum is the worst form of public policy. Such action is unfair, unfounded, and economically backwards. Public policy should encourage a continuance of technological innovation, investment, job creation, and hard work, not penalize it.

Furthermore, handicapping cellular goes against the FCC's own PCS goals: (1) fast deployment, (2) diversity of services, and (3) competitive delivery. It simply does not make any sense to restrict cellular when it could play such a key role in achieving these FCC goals.

(1) <u>Fast Deployment</u>

Cellular service was rolled-out nationwide far faster than such services as landline phone service, cable television, paging, or facsimile. In just nine years, 97 percent of the population has been given access to the cellular service. Cellular companies are positioned to deliver new wireless services faster than anyone else.

(2) <u>Diversity of Services</u>

There are at least three visions of what PCS may become in the future -- (a) competition to cellular, (b) competition to telephone/cable companies in the local loop, and (c) competition to cable/computer companies in providing broadband data/video services. Limiting cellular eligibility says that the FCC has "adopted" the first and narrowest possible vision of PCS, as a mere replication of cellular service.

But the fact is that PCS is still a great unknown. Those with some experience in wireless communications, however, realize that PCS will be much more diversified than voice services alone. With the arrival of PCS, niche markets of data, video, and specialized voice services will become abundant. As they are already providing voice services, cellular operators are the most likely to offer these new services first.

(3) Competitive Delivery

On the one hand, the FCC says its wants a PCS environment where the positive effects of competition flourish. However, on the other hand, the Commission proposes to handicap cellular, limiting its participation in the auction. There are no rational public policy grounds for such unequal restrictions.

If the FCC's intention is to restrict entities with cost advantages in offering PCS, that intention is 1) anti-consumer, as it would drive up prices, and 2) then cable and utility companies should rightly also be restricted as they own wired infrastructure with definite economic value for offering PCS. Furthermore, limiting cellular's entry into PCS effectively protects certain large PCS proponents from competition in offering new broadband services -- including many of the same parties who are also planning to offer these services through broadband wired networks.

It is an extraordinary act for the FCC to restrict one player in a marketplace without some shocking abuse of public trust, or proof of a significant threat of one. Is there some record justifying blanket discrimination against cellular? Clearly, the answer is "No."

The cellular industry stands behind a proven record. There has been a rapid increase in cellular subscribers, steady decline in cellular costs, continual expansion of cellular services, rapid pace of technological innovation and diffusion, and heterogeneity of product offerings. An economic analysis compiled by Dr. Stanley M Besen, Dr. Robert J. Larner, and Dr. Jane Murdoch held these factors to be proof of cellular being "a young industry driven by market forces and developing in a competitive context." If "universality" is truly a goal of the FCC, it does not make sense that the most relevant industry that is also currently successful in developing universality be restricted in the development of the new industry.

It is also worth noting that restricting cellular will significantly limit the financial return to the government for the auction of PCS spectrum. Restricting the participation of the industry that is the most experienced in wireless communications, has the highest comfort level with the new, unknown world of PCS, and is the most willing and able to spend large amounts of money to acquire licenses and construct them is a self-defeating position when the government wants to maximize revenues for spectrum and encourage investment in new technology and services.

Caucus Position: *Cellular should be permitted to compete for PCS licenses on a full and equal basis with all other applicants.*

II. Open Cellular Investment in Adjoining Areas and in SWMRs -- Overlap and Attribution

As currently configured, the rules attribute ownership interests of more than 5 percent, and if a company (or an investor, or a partnership) has a combined interest of 20 percent, it is classified as a "cellular company."

The FCC rules then hold that if such a "cellular company" has an ownership interest in a cellular market in which that company's potential subscriber population is 10 percent or more of the population of the potential PCS service area (whether a Basic Trading Area (BTA) or an MTA), it will be prohibited from bidding for that license area.

These rules will constrain not only the largest cellular companies, but also mid-size and small cellular companies, and many individuals and companies not traditionally thought of as cellular providers -- such as passive investors or minority shareholders. Please see "Attachment A" for examples of companies unfairly affected by these restrictions

The Caucus believes that placing ownership attribution and service area overlap percentages at these absurdly low levels serves no public policy purpose. The rules do, however, threaten the ability of cellular companies and investors to invest on their own, or to partner with SWMRs, penalizing them for their interest in and their longstanding commitment to the wireless marketplace. From the start, such restrictions harm the prospects for PCS. In fact, adopting ownership attribution and overlap rules invites special pleading and gaming of the final rules, by forcing investors and potential PCS providers to adjust their strategies and investments to comply with the specific levels chosen.[1]

Caucus Position: *Ownership attribution and service area overlap rules should be at much higher percentages than the FCC has proposed and should apply equally to all parties.*

III. Major Trading Areas and 30 MHz Licenses Should Eliminated -- Allow Fair Competition on a BTA Basis

By creating two huge 30 MHz MTA licenses, the FCC will grant an enormous advantage to a very narrow group of huge companies, eliminate opportunities for companies like ours to compete, construct additional difficulties for companies like ours to obtain investment capital, and create disincentives for the holders of such enormous licenses to build and innovate outside of large, urban centers.

Two 30 MHz licenses on an MTA basis removes one half of the new commercial PCS spectrum and divides it between just two companies. Obviously, only the largest and most wealthy companies can even hope to bid for such licenses. Based on a typical 10 BTAs per MTA, 18-20 additional competitive opportunities are immediately erased by this decision.

Medium and small companies lose a great deal under the proposed rule. All medium companies and the incumbent cellular operators, even if very large companies, are left to fight over three 10 MHz licenses in each BTA, a mere 25% of the total spectrum to be auctioned.

And, as a practical matter, all smaller entities (including minorities, women, rural carriers and small business generally) will be confined to competing for just the two set-aside licenses where only they can bid -- even though some of them could effectively compete without set asides if bidding opportunities had not been so reduced by the grant of these two huge licenses.

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[1]Thus, MCI's proposed nationwide consortium has collapsed, and the investments which it and other companies have taken in wireless service providers have been tailored to fall just below the 20 percent level, at 17 percent in the case of MCI's investment in NEXTEL.

Even when pursuing identical business plans, it is already more difficult for smaller businesses to access capital than large businesses. The FCC is on the verge of creating an even greater inequality by isolating medium and small businesses within comparatively small licenses which will look to investors like they are inferior.

As the FCC staff have already noted, the application of today's digital technology to 5 clear MHz of spectrum allows a new player to do everything a cellular carrier does today. With such incredible disparity in the geographical size and amount of MHz between MTA and BTA licenses, sources of capital, already shy about this untested new concept of PCS, will see that the 30 MHz MTA licensees will be able to (1) offer a full array of PCS services, whereas BTA licensees will not; (2) ignore microwave interference for a long time (and thus increase their bargaining power with incumbent users; and (3) immediately offer service over a wide geographic area without having to negotiate alliances with others. These disparities will either prevent smaller businesses from raising capital to participate in PCS, or greatly increase its cost.

MTAs constitute multistate megamarkets which threaten to leave out the interests of small towns, smaller cities, and rural America. After all, an MTA operator can reach the required percentages of population in an MTA without providing service to the people of rural and small town America.

Smaller markets are better. Smaller markets benefit the public by speeding service to consumers. In supporting small markets, the Small Business PCS Association rightly argues that *"It has been demonstrated in both the cable and cellular industries that rapid deployment is best achieved by many providers working in parallel."* Moreover, as the Chief Counsel for Advocacy for the U.S. Small Business Administration said in Comments filed with the FCC:

> *The most significant advantage of smaller markets is that PCS providers can adapt their offerings to meet the demands of each market, which is extremely helpful to small business customers, rather than force customers to adapt their needs to a nationally and regionally homogenized PCS.*

The hundreds of companies providing cellular service demonstrate the advantages of small markets and the interest of a diverse population of entrepreneurs in providing service. In fact, cellular service has been rolled-out nationwide far faster than such services as paging, facsimile, cable television, or landline phone service.

As no one really knows what PCS will actually be in the marketplace, creating a system where many companies can try their service and technology ideas is far preferable than restricting competition. If the FCC establishes markets and spectrum sizes which are smaller than customers and the market desire, licensees will correct the "error" by aggregating the geographic and spectrum blocks into optimum-size markets. But if the FCC errs by making PCS markets too big and allowing huge entities to hold 30 MHz blocks when far smaller amounts are all that are needed, it will take much longer for the market to correct this mistake.

By sharply limiting the number of bidders for over half the spectrum (both through precluding smaller bidders and through keeping out cellular companies through other rules), and creating uncertainty over the value of the rest, the FCC will reduce revenues to the Government from the auction. The small markets approach -- conducive to small business participation -- will provide the following benefits and more, including:

- faster service to smaller cities and rural areas;
- wider participation (including opportunities for firms with an interest and expertise in particular markets and/or niche technologies);
- attraction of more capital for infrastructure investment
- greater Treasury revenues.

Allowing more entrants per market increases competition, and benefits more people by directly expanding their economic opportunities. More entrants, in smaller markets, means that small businesses -- including minority- and women-owned and directed businesses -- will be able to directly engage in PCS.

Caucus Position: *The FCC should structure its PCS licenses in 10 MHz and 20 MHz blocks, and should use consistent, smaller license areas, for all PCS licenses.*

Attachment A

PROPOSED OVERLAP RESTRICTIONS -- Counterproductive Regulation

The following are examples of how small cellular companies will be greatly restricted from natural courses of growth by the proposed FCC PCS rules.

- Crowley Cellular, which provides service in an Alabama market in which 502,613 people live, would be restricted in seeking to provide PCS service to 3.2 million people.[2] *With less than two-tenths of one percent of the total U.S. population in its Alabama market, Crowley is restricted in seeking to serve 1.2 percent of the American people.*[3]

- Palmer Communications, which also serves two geographically-separated cellular markets within the Birmingham, Alabama, MTA, and five geographically-separated cellular markets in the Atlanta, Georgia, MTA (areas with a total population of about 1.2 million people), would be restricted in seeking to serve some 10.7 million people. *Altogether, with half of one percent of the U.S. population within those cellular service areas, Palmer would be restricted in seeking to serve four percent of the American people.*

- Vanguard Cellular would be restricted in seeking to provide PCS service in 3 MTAs, in which 19 million people live because it provides service to areas within them in which about 3.2 million people live. *With just over one percent of the U.S. population in these cellular service areas, Vanguard would be restricted in seeking to serve 7.4 percent of the American people.*

- Youngstown Cellular Telephone Company provides service in two MSAs and one RSA in Ohio and Pennsylvania, with a total population of 721,898. These markets fall within the Cleveland MTA, which has a population of 4,945,749. Because Youngstown Cellular has 14.6 percent of the MTA pops, the FCC's overlap rule would limit its ability to serve a broader, and naturally extended, market.[4]

- As PMN, Inc. (the general partner in a limited partnership holding a 50 percent interest in the wireline licenses in eight South Carolina RSAs), the Chickasaw Telephone Company *et al.*, and other parties pointed out in their filings on Reconsideration in Docket No. 90-314, the FCC's current restrictions harm companies which entered into partnerships as the result of a deliberate FCC policy to foster such arrangements in order to speed the delivery of cellular service to consumers.

Ironically, the FCC's policy is at war with a benefit which it identified with the participation of cellular companies: the exploitation of the expertise and the economies which such companies possess. In fact, some analysts have estimated that the greatest potential scale and scope economies which cellular companies can bring to the PCS marketplace come from extending service into adjacent markets -- which the FCC's rule will practically foreclose in many cases.

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[2]Unless otherwise indicated, all of the following figures are based on information presented in the October 26, 1993 Paul Kagan *Cellular Investor* newsletter, at p.6.

[3]Based on population figures per Donaldson, Lufkin & Jenrette Spring 1993 Report *The Cellular Communications Industry*, p.65.

[4]Population figures based upon 1990 census figures and Rand McNally's *1992 Commercial Atlas and Marketing Guide* MTA figures, at p.40.