

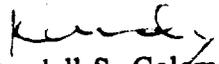
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The public will benefit from such companies' knowledge and the efficiencies of their networks, and the FCC will foster innovation and competition in wireless services.

If there are any questions in this regard, please contact the undersigned.

Very truly yours,


Randall S. Coleman

Enclosure



*Building The
Wireless Future.*

CTIA

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Randall S. Coleman
Vice President for
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April 29, 1994

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W. Room 826
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Commissioner Barrett:

The enclosed White Paper, entitled *Growth of a Sustainable PCS Industry: The Critical Role of Cellular Eligibility*, reviews the impact of the Federal Communications Commission's Personal Communications Services (PCS) rules, and concludes that:

Cellular eligibility in- and out-of-market is the right policy to create a vital and viable PCS industry, because:

- **Cellular carriers are uniquely qualified to provide PCS, given their experience in deploying innovative wireless services nationwide. (see p.2)**
- **Excluding or unnecessarily restricting cellular carriers and investors will harm the public by delaying the deployment of PCS and eliminating production efficiencies. (see p.3)**
- **Excluding or unnecessarily restricting cellular entry is irrational and counter-productive, punishing companies for both actual and *potential* success in serving a growing subscriber population. (see p.4)**
- **Cellular eligibility will foster innovation and competition by exploiting the experience and the facilities of cellular companies and investors. (see p.5)**
- **Elimination of unnecessary and unreasonable ownership attribution and geographic overlap rules is called for to ensure the national information infrastructure is funded and deployed throughout the country, delivering advanced wireless services to rural and urban areas. (see p.7)**

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April 29, 1994

Mr. Ralph A. Haller
Chief, Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 5002
Washington, D.C. 20554

Re: Ex Parte Filing
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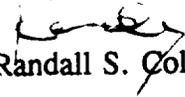
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***PCS WHITE PAPER No. 4
Second Series***

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***Growth of a Sustainable PCS Industry:
The Critical Role of Cellular Eligibility***

April 29, 1994

Growth of a Sustainable PCS Industry: The Critical Role of Cellular Eligibility

In its Reconsideration of the *Second Report and Order*¹ on Personal Communications Services (PCS), the FCC should modify or eliminate the rules which limit the ability of existing wireless providers to utilize PCS spectrum both in their existing service areas and in adjacent markets.

Cellular eligibility in- and out-of-market is the right policy to create a vital and viable PCS industry, because:

- **Cellular carriers are uniquely qualified to provide PCS, given their experience in deploying innovative wireless services nationwide. (see p.2)**
- **Excluding or unnecessarily restricting cellular carriers and investors will harm the public by delaying the deployment of PCS and eliminating production efficiencies. (see p.3)**
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Cellular Eligibility is the Right Policy for a Vital PCS Industry

A policy of open entry for any and all qualified would-be Personal Communications Service (PCS) providers will provide the basis for a sustainable and competitive PCS industry.

Restrictions on entry, whether in the form of complete exclusion or a deliberate handicapping of companies already offering wireless services, threaten to harm the PCS industry, by eliminating the efficiencies these companies have to offer and by distorting the evolution of wireless services, robbing the public of the opportunity to choose among competing visions of PCS.

¹*Second Report and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, 8 FCC Rcd. 7700 (October 22, 1993).*

Even though such restrictions are ostensibly presented with the laudable intent of promoting or fostering competition, their effect will be to undermine the basis for a vital and sustainable industry -- and the Commission should reject them as incompatible with both equity and the Commission's PCS objectives.

A more equitable and more viable policy would modify or eliminate the restrictions to permit greater participation in PCS by cellular carriers and investors.

Relaxation or elimination of the restrictions is not proposed by a narrow class of companies, nor by predominantly large companies. Companies as diverse as the Anchorage Telephone Utility, the Chickasaw Telephone Company, the Concord Telephone Company, the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), Florida Cellular RSA Limited Partnership, Palmetto Mobile Network (PMN, Inc.), the Rural Cellular Association, Point Communications, Radiofone, and McCaw Cellular, Sprint Cellular and U S WEST NewVector Group have argued for the modification or elimination of the cellular eligibility restriction. Some twenty-five reconsideration petitions were filed, on behalf of these and other parties, arguing for modification or elimination of the eligibility restrictions.

Cellular Companies are Uniquely Qualified to Participate in PCS and Expand Services

Cellular companies have been deploying innovative wireless services, building networks across America for the past ten years.

As CTIA's year-end 1993 Data Survey found, cellular companies have:

- invested almost \$ 14 billion dollars in building these systems.
- delivered service to over 16 million subscribers in all 734 geographic markets across America.
- employed almost 40,000 people (and created another 85,000 jobs in related industries), growing employment at an annual rate of 15 % to 30 %.

These companies have invested significant efforts in developing and testing new PCS applications, and as current providers of cellular voice services, have a greater incentive to innovate, developing new applications for the wireless marketplace, including data and messaging services.

By excluding or restricting cellular companies from utilizing PCS spectrum in adjacent markets, the Commission risks limiting the promise of PCS to being little more than a cellular "clone" -- principally offering little more than current cellular voice applications. After all, the voice business is proven and safer than any other potential use of the spectrum.

By *including* cellular companies, and allowing them to acquire *additional* spectrum in-market and in adjacent markets, the Commission will foster the development of new applications, including niche and mass market services such as specialized medical applications and broadband video. *Who better to develop new applications than someone who is already providing voice services?*

Excluding or Unnecessarily Restricting Cellular Companies and Investors Will Harm the Public by Delaying PCS and Eliminating Efficiencies

Proposals that the FCC exclude cellular companies entirely (as suggested by Time Warner Telecommunications, self-described as part of the world's largest media company -- see April 12 En Banc Meeting Transcript at p.14) or to further handicap their ability to compete for and use PCS spectrum (as suggested by MCI, the second largest U.S. interexchange company) risk handicapping competition, by bestowing a guaranteed advantage upon a particular class of providers -- those not denominated "cellular" companies.

Further suggestions that the "cure" for the cellular duopoly is establishment of an effective PCS duopoly characterized by two 40 MHz or 50 MHz licenses (as suggested by Time Warner Telecommunications and their consultants, LCC, Inc.) are inconsistent with efficient spectrum utilization and with the Congressional mandate to promote competition, diversity in services, and opportunities for multiple providers.

As it is, the FCC's 20 percent ownership attribution and 10 percent geographic overlap restrictions threaten the wireless marketplace by selectively and unnecessarily restraining companies on the basis of their involvement in the wireless industry and their potential subscriber base, in effect punishing them for their commitment to the marketplace.

Under this theory, the benefits of new services, efficiently deployed by existing companies, constitute harm to consumers.

This is doubly ironic, as *the FCC has already found that cellular companies can help speed the deployment of PCS by "taking advantage of cellular providers' expertise, economies of scope between PCS and cellular service, and existing infrastructures."*²

In fact, cellular companies' expertise includes:

- their experience with wireless technology deployment, and its technical requirements.

²See *Second Report and Order*, 8 FCC Rcd. at 7744 para. 104.

- the knowledge gained from their PCS trials of the technical, economic and social viability of specific applications.
- their knowledge of, and identification with, the communities which they serve.

As found in the study by David Reed, of the FCC's Office of Plans and Policy, "Putting It All Together: The Cost Structure of Personal Communications Services," *different kinds of firms will bring differing efficiencies to the PCS marketplace.* By including diverse companies from many industries, and by encouraging them to compete on an equal footing for PCS spectrum and in the PCS marketplace, the FCC will exploit their differing visions and capacities to the fullest -- and thereby build a more vital wireless industry.

Moreover, *the following chart from the David Reed study suggests that cellular economies are not so prohibitively stronger than those of other potential PCS providers as to constitute an overwhelming source of market power.*

Scope Economies Possessed by All PCS Applicants

| Infrastructure Alternatives | Operations, Administration & Maintenance | Advanced Signalling Network & Intelligent Nodes | Switching | Transport | Cell Sites | Handsets |
|-----------------------------|--|---|-----------|-----------|------------|----------|
| Telephone Network | ● | ○ | ● | ● | | |
| Cable Television Network | ● | | | ● | | |
| Cellular Network | ● | ◆ | ● | ◆ | ◆ | ● |
| Cable-Cellular Ventures | ● | ◆ | ● | ● | ◆ | ● |
| Interexchange Carriers | ○ | ○ | ◆ | | | |
| Competitive Access Provider | ◆ | ◆ | ◆ | ◆ | | |
| Electric or Gas Utilities | | | | ○ | | |

- Economies of scope found to exist in this component reported in this paper
- Strong economies of scope likely to exist in this component, although not verified by cost model
- ◆ Limited economies of scope like to exist in this component, although not verified by cost model

Source: David Reed Study, Table 9.

Excluding or Restricting Cellular Entry is Unnecessary, Irrational, and Counter-productive

In a marketplace characterized by multiple licensees and product substitutability, excluding, or restricting, any company or investor which has shown a commitment to bringing services to the public, is irrational.

A conclusory statement that wireless service providers *could* have an incentive to restrict output is inadequate to justify excluding or restricting cellular entry. In a market characterized by the multiple providers envisioned in the PCS Order it will not be possible to "warehouse" spectrum, particularly if licensed in such smaller and more efficient blocs as CTIA advocates, since other licensees will have spectrum with which to provide competition. It is contradictory to adopt a policy of excluding or marginalizing those with the experience and incentives to offer new wireless services, in the name of fostering such services.

Ironically, this entry test is also predicated upon *potential* success. Over 300 cellular companies serve a total subscriber base of 16 million, out of a potential base of about 248 million. *Companies in other sectors of the telecommunications industry (such as the interexchange marketplace) have more subscribers than the entire cellular industry. And some potential PCS companies (such as cable operators) have a monopoly grasp on their core businesses -- in comparison to a cellular company having at least one other competitor.*

But CTIA does not advocate restricting interexchange companies, nor cable companies, nor any other would-be PCS providers. CTIA believes that any restrictions (beyond simple financial qualification) are inappropriate, and more harmful than beneficial to the public.

Cellular Eligibility Will Foster Innovation and Competition

Allowing cellular companies to acquire the resources (*i.e.*, the spectrum) to provide new services will extract the most value from their expertise and their existing networks, and provide greater benefits to the public than would be derived by prohibiting or unnecessarily constraining their participation in the PCS marketplace.

Such open entry will permit cellular companies to develop and deploy new services within their existing cellular service areas, and will enable them to deploy both existing voice and new data and messaging capabilities in larger, adjacent markets.

But the current PCS rule regarding ownership attribution in adjacent markets -- and especially the draconian proposals of Time Warner Telecommunications and MCI -- will further limit consumer service.³

³The current PCS rule provides that companies, individuals, or partnerships with a five percent interest in a cellular company have an "attributable" interest. Such companies or partnerships with an aggregate 20 percent interest in a cellular company are themselves classified as "cellular" companies, and are limited to holding one 10 MHz Basic Trading Area (BTA) license "[w]ithin service areas in which there is 10 or more percent overlap between the cellular and PCS service areas" population. See *Second Report and Order*, 8 FCC Rcd. at 7745 paras. 105-107.

Barring cellular providers whose service areas encompass more than 10 percent of the population of a Major Trading Area (MTA) from competing on an equal basis for licenses in the adjoining markets within the MTA -- or for a wide-area MTA license -- will limit their capability to offer a diverse array of services in areas adjoining their cellular markets.

The impact of the adjoining market ownership restriction is actually exponential, as the would-be PCS provider is handicapped in trying to reach a larger marketplace, simply because he/she has an adjacent cellular market which gets caught in the net of the FCC's new, extra-large service areas.

This rule falls heavily on players large and small, whether they operate consolidated or geographically-separated markets, and whether or not they possess controlling or minority interests. Thus, a company such as ALLTEL Mobile, serving areas in which 6.2 million people live, will be restricted across nine MTAs in which 36.1 million people live. Palmer Communications, serving seven geographically-separated cellular markets in which just over 1 million people live, will be restricted across an area in which almost 11 million people live. Youngstown Cellular Telephone Company, which provides service in three cellular markets in Ohio and Pennsylvania, with a total population of about 700,000, would be restricted in its ability to pursue expansion opportunities in the Cleveland MTA, which has a population of 4.9 million.

Other companies, such as Sprint and GTE, which operate geographically dispersed markets are likewise disproportionately impacted by the geographic overlap rule, being effectively restricted in 15 and 23 MTAs, respectively.

And investors or companies which hold passive, minority, non-controlling interests are impacted by the attribution and overlap rules. Thus, the minority partners in many RSAs and MSAs are handicapped in either directly pursuing a PCS role or in partnering with other PCS aspirants across broad geographic areas.⁴

Yet even these anticompetitive results are not enough for some would-be players, who have since argued that the nine largest cellular providers should be barred from bidding for wide-area licenses regardless of whether or not they serve segments of those markets.

MCI, which has argued that PCS is a naturally nationwide service, has argued for gross restriction of the wireless industry across the entire United States.⁵ Ironically,

⁴See e.g., Petitions for Reconsideration of GTE, National Telephone Cooperative Association, OPASTCO, PMN, Inc., and Sprint Cellular, in GEN Docket No. 90-314, filed December 8, 1993.

⁵MCI's proposal, advanced in its Petition for Reconsideration in GEN Docket No. 90-314, filed December 8, 1993, would prohibit the nine largest cellular carriers from bidding for one block of 30 MHz licenses nationwide. Bad policy in and of itself, this proposal would also dramatically reduce the revenues derived from the auctioning of the spectrum for that block.

under MCI's vision of PCS, if the rule that participation in a related market, and over a shared geography were generally held to be grounds for exclusion, MCI would also be excluded from PCS, as a provider of nationwide services and part owner of a wireless company.

But CTIA does not think that it is any more -- or any less -- appropriate to exclude MCI for its role as a nationwide service provider and owner of a wireless company than it is to exclude any cellular companies.

Unnecessary Ownership Attribution and Geographic Overlap Rules Should Be Eliminated

Cellular companies should enjoy full and equal eligibility for PCS licenses, comparable to other spectrum-based providers (such as enhanced specialized mobile radio operators), free from any unjustifiable restrictions.

CTIA believes that the existing eligibility restrictions are too stringent, and that the further eligibility restrictions proposed by MCI and Time Warner Telecommunications are completely inappropriate, being unjustified by any hypothetical exercise of undue market power, and that such restrictions constitute a direct threat to the FCC's PCS goals and the mandates of the Omnibus Budget Reconciliation Act.

The current ownership attribution and geographic overlap rules effectively penalize cellular companies, and their investors who risk being converted into "cellular companies" by virtue of their cumulative, passive investments, for their commitment to the wireless marketplace.

By imposing such restrictions as proposed by MCI and Time Warner Telecommunications, the FCC would risk further undermining the viability of the wireless marketplace, even as its existing policies already threaten to undercut the ability of wireless providers and investors to go forward with the deployment of new services and participate on an equal basis in the new wireless marketplace.

The FCC's current restrictions also threaten the ability of cellular companies and investors to partner with small, women, minority and rural service providers. 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.⁶

⁶Thus, 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.

By relaxing or eliminating these restrictions, the FCC will thereby make it more likely that the resources will be found to deploy the national information infrastructure, and will strengthen that network and the resulting services by ensuring that a wide array of PCS visions -- rural as well as urban -- are applied to delivering advanced wireless services throughout the nation.

Thus the public will benefit from such companies' knowledge and the efficiencies of their networks, and the FCC will foster innovation and competition in wireless services.