DOCKET FILE COPY ORIGINAL RECEIVED

JUN 2 0 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket 93-252
	)	
Regulatory Treatment of Mobile Services	)	

TO: The Commission

COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

American Personal Communications[1/] ("APC") shares the Commission's goal of ensuring that services that will compete against one another in the wireless marketplace operate under similar rules. We particularly support the Commission's efforts to promote competition by placing caps on the amount of spectrum that any one entity can hold in any one geographic area.[2/] Certain other rule changes, however, should be considered on a service-specific basis only.

I. SPECTRUM CAPS

Size of Cap. APC believes that any general spectrum caps adopted in this docket must be applied after the specific limitations that are adopted in individual rule making proceedings. For example, the spectrum cap recently adopted

---

1/ American PCS, L.P., d/b/a American Personal Communications ("APC"), a partnership in which APC, Inc. is the managing general partner and The Washington Post Company is an investor/limited partner.

2/ See Regulatory Treatment of Mobile Services, Further Notice of Proposed Rule Making, FCC 94-100 (GN Docket No. 93-252, May 20, 1994) (the "Further Notice").

0+4

No. of Copies rec'd
List ABCDE

to govern the amount of PCS spectrum that cellular carriers can acquire properly should take precedence over any spectrum caps the Commission adopts in this docket for cellular or PCS carriers.[3] This docket, however, makes the valuable recognition that ESMR carriers will compete effectively with both cellular and PCS, as ESMR proponents have told the Commission and Wall Street for years. Accordingly, we support the Commission's proposal to place a general spectrum cap of 40 MHz of cellular, PCS or ESMR spectrum that any one entity can hold in any geographic area. If LMDS or other services capable of providing wireless voice and data telephony are authorized in the future, they also should be included in the broadband spectrum cap.[4]

We believe, however, that the Commission should treat narrowband and broadband services separately.

---

[3] See Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order, FCC 94-144 (Gen. Docket 90-314, June 13, 1994) ("PCS Reconsideration Order").

[4] It is too early to tell whether 220-222 MHz licensees will provide services that will be competitive with PCS, cellular and SMR; accordingly, we suggest that the Commission determine in a future rule making whether this service should be treated with broadband or narrowband services. We also reserve judgment on the proper treatment of mobile satellite services. It may be that the inherently nationwide character of satellite services would make it inappropriate for spectrum caps to be applied to those services. We believe the Commission should consider the general impact of satellite services in a specific rule making proceeding at the time those services are instituted. Business radio spectrum, however, should be counted toward a broadband spectrum cap to the extent it is utilized as a CMRS provider rather than a private carrier.

Narrowband PCS and general paging services will, of course, compete to some degree with PCS. But the services that will be provided by broadband and narrowband PCS licensees will differ to such a degree that we do not believe it would be appropriate to count narrowband PCS or paging spectrum against the 40 MHz spectrum cap.

Attribution Standard. We believe the 5 percent attribution standard and the 10 percent geographic overlap standard established in the PCS Reconsideration Order should apply to all commercial mobile radio services. In that Order, the Commission determined standards that will govern the two services that arguably will be the most competitive with one another. Accordingly, those attribution and overlap standards should be sufficient for all broadband services.

We do not believe it appropriate for the Commission to adopt across-the-board exceptions to these standards for designated entities, to the extent that such exceptions are appropriate at all. Different services may require exceptions of different scope to facilitate the full participation of designated entities in those services; some services may lend themselves to such an exception while others may not. Any such exceptions, then, should be considered only in the course of service-specific rule making proceedings.

Divestiture. It would be unwise to adopt an across-the-board rule that would permit CMRS providers to bid for spectrum that otherwise would exceed the spectrum cap and

later divest enough spectrum to return to compliance with the cap. As the Commission properly recognized in the PCS Reconsideration Order, permitting such divestiture as a matter of course would skew auction results, drive away independent bidders, and ultimately result in a less competitive marketplace. If divestiture will be permitted as an exception to the general rule for certain specific hardship cases, those cases should be considered in connection with the adoption of service-specific rules.

II. TECHNICAL MATTERS

Power Levels and Antenna Height. Permissible power output and antenna height considerations should be considered in the context of service-specific rule making proceedings. Even similar CMRS services may require different power levels because of operation in different frequency bands or other requirements. In those individual proceedings, the Commission properly will be concerned with whether proposed power levels are consistent with services that will compete with one another, thus fulfilling the goal of Section 332.

Interoperability. As APC has commented in the PCS proceeding, the marketplace will have every incentive to ensure that services that can be interoperable will be interoperable. Requiring interoperability standards to be adopted by industry as a matter of federal regulation would only slow new services from being brought to the public, raise costs that ultimately would be passed on to consumers, and

would ineffectively and unwisely intrude on and obstruct the marketplace.

III. FORMS AND PROCEDURES

APC supports the use of a single, streamlined application form for CMRS providers that will facilitate electronic filing and update current forms. We would note only that the Commission should clarify that no site-specific information should be required from applicants in services where site-specific information is not required to be filed by the substantive rules governing the service. Cf. Further Notice, p. 49 n.181.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

By: J. Barclay Jones /WD

Mr. J. Barclay Jones
Vice President for Engineering
AMERICAN PERSONAL COMMUNICATIONS
1025 Connecticut Ave., N.W.
Washington, D.C. 20036

June 20, 1994