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FEDERAL COMMUNICATIONS COMMISSION  
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June 20, 1994

Mr. William F. Caton  
Acting Secretary,  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D. C. 20554

Via Messenger

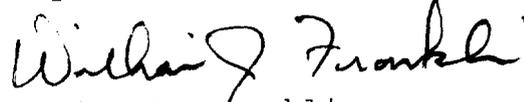
Re: **GN Docket No. 93-252**  
Implementation of Sections 3(n) and 332  
of the Communications Act  
Regulatory Treatment of Mobile Services

Dear Mr. Caton:

Submitted herewith on behalf of the Committee for Effective Cellular Rules ("CECR") are an original plus ten (10) copies of its Comments with respect to the above-referenced docket.

Kindly contact my office directly with any questions concerning this submission.

Respectfully submitted,



William J. Franklin  
Attorney for Committee for  
Effective Cellular Rules

Encs.  
cc: Committee for Effective  
Cellular Rules

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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 No. 93-252

Regulatory Treatment of  
Mobile Services

To: The Commission

COMMENTS OF  
COMMITTEE FOR EFFECTIVE CELLULAR RULES

The Committee for Effective Cellular Rules ("CECR"), by its attorney and pursuant to Section 1.415(b) of the Commission's Rules, hereby files Comments with respect to the Further Notice of Proposed Rulemaking adopted in the above-captioned proceeding.<sup>1/</sup> CECR urges the Commission to retain the one-day filing procedures for Phase II unserved-area cellular applications.

INTEREST OF CECR

CECR is an ad hoc organization of cellular permittees/licenseses, engineering firms, investment bankers, and industry consultants. Its principals have extensive experience in the cellular industry in the ownership, construction, financing, and operation of MSA and RSA cellular systems. CECR members are also applicants for cellular unserved areas.

<sup>1/</sup> 9 FCC Rcd \_\_\_\_\_ (FCC 94-100, released May 20, 1994) ("FNPRM").

CECR has participated extensively in CC Docket No. 90-6 (the unserved-area proceeding) and with respect to specific applications filed with respect to unserved areas. The qualifications of CECR have been demonstrated by declarations of its members, and the facts supporting CECR's standing here are matters of public record.

**THE COMMISSION SHOULD RETAIN THE ONE-DAY FILING WINDOW FOR PHASE II UNSERVED-AREA CELLULAR APPLICATIONS.**

Paragraph 123 of the FNPRM requests comment on the Commission's proposal to change the Phase II unserved-area cellular filing procedures from first-come, first-served ("FCFS") procedures to 30-day filing windows. The Commission bases its proposal on its belief (FNPRM, ¶122) that auction procedures will be more likely than FCFS procedures to "reduc[e] the likelihood of frivolous competing applications being filed." It is also concerned that FCFS procedures "could cause qualified applicants to be excluded from consideration." CECR believes that the Commission's reasoning is incorrect, and its conclusion unwise.

If anything, the sina qua non of FCFS filing procedures is that such procedures almost eliminate the possibility of any competing applications, frivolous or otherwise. Thus, the Commission's first stated reason is inconsistent with the facts. Moreover, because of the minimal likelihood of competing applications, FCFS procedures are more efficient than longer filing windows.

The Commission's concern for eliminating qualified applicants from consideration contradicts its findings in the cellular unserved-area proceeding that:

[M]ost applicants' [cellular] proposals are similar with respect to areas and population to be served. Their differences, if any, are of degree and not kind....<sup>2/</sup>

Here, the Commission cannot really be contending that applications which were virtually indistinguishable for a lottery differ so substantially for an auction that some applicants are more qualified than others?

CECR is concerned that the Commission's proposal is motivated by revenue maximization, which is prohibited by Sections 309(j)(7)(A) & (B) of the Communications Act. Obviously, holding an auction will produce revenues that awarding an authorization to a single FCFS applicant will not. Where the Commission's stated rationales for its policy shift are incorrect, it becomes logical to search for unexplained rationales, such as revenue maximization.

Finally, the Commission should note that the use of FCFS procedures to accept Phase II applications does not preclude the use of auctions if multiple applications are filed the same day. This procedure (FCFS plus auction) gives the Commission the best of both worlds, highly efficient filing procedures plus the asserted elimination of frivolous applications.

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<sup>2/</sup> Cellular Unserved Areas, 6 FCC Rcd 6185, 6217 (1991), subseq. history omitted.

**CONCLUSION**

Accordingly, the Committee for Effective Cellular Rules respectfully requests that the Commission retain the one-day filing procedures for Phase II unserved-area cellular applications.

Respectfully submitted,

**COMMITTEE FOR EFFECTIVE  
CELLULAR RULES**

By: William J. Franklin  
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Its Attorney

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