

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

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

To: The Commission

COMMENTS OF CELLULAR SERVICE, INC.

Cellular Service, Inc. ("CSI") hereby files its comments in response to the question raised in the Second Further Notice of Proposed Rule Making, FCC 94-191 (July 20, 1994) ("Second Further Notice"), whether cellular resale should be treated as an attributable interest in applying the PCS spectrum aggregation cap.

CSI has a certificate of public convenience from the California Public Utility Commission to provide cellular resale. CSI currently services approximately 25,000 subscribers in Southern California. CSI eventually plans to bid on one or more PCS licenses. Those plans would be needlessly frustrated if the Commission should adopt a rule that would make CSI's resale service attributable.

CSI's opposition to any attributable interest for its resale service is not premised entirely on its private interests. There is no public interest basis to justify any policy that would make cellular resale an attributable interest in applying the PCS spectrum aggregation cap. As the Commission explained in the Second Further Notice, the attribution rules are designed to identify those interests which "may affect the incentive or ability of PCS and other CMRS licensees to compete vigorously in the marketplace" or which "may affect the

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number of effective competing providers or the independence of pricing decisions by service providers." Second Further Notice at ¶5. Neither of those purposes would be served by making cellular resale an attributable interest.

By its very nature, cellular resale is dependent on the management and pricing decisions of other parties – namely, the licensed cellular carriers. A cellular reseller has no power whatsoever to dictate the services that a licensed cellular carrier will provide or the prices at which they will be provided. The most that a cellular reseller can do is to purchase those services at wholesale rates and make them available – with or without enhancements – to the public. A cellular reseller's involvement in a separate PCS entity, consequently, will not affect the services that the licensed cellular carrier provides or the prices at which those services are provided. Indeed, it is that very lack of power over facilities, services, and pricing that has frustrated the cellular resellers' ability to enhance the services they would like to provide.\*

If and when a cellular reseller becomes a PCS licensee, the reseller may or may not continue its resale of cellular service. But that decision will not affect the availability of spectrum for cellular services or preclude the provision of resale services. To the extent the cellular reseller discontinues or modifies its service in response to the acquisition of a PCS license, market forces would create an opening for another party to become a cellular reseller on whatever terms and conditions the market could support.

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\* Making cellular resale attributable would also raise basic practical problems. It would be unfair and unnecessary to make any and every resale service -- at whatever level -- an attributable interest. For example, CSI services only a small fraction of the total subscribers serviced by the licensed cellular carriers. The Commission would therefore have to make arbitrary decisions concerning the level of resale service in any attribution rules.

WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission adhere to its decision not to make cellular resale an attributable interest for purposes of the PCS spectrum cap.

Respectfully submitted,

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By:

  
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