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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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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	)	
	)	

REPLY COMMENTS OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

Bell Atlantic Personal Communications, Inc. ("Bell Atlantic"), on behalf of the Bell Atlantic Companies, hereby files the following Reply Comments in the above-captioned matter.[1/]

I. INTRODUCTION

The Comments received in response to the Commission's Second Further Notice of Proposed Rulemaking[2/] are virtually uniform in urging the Commission to refrain from characterizing non-controlling non-equity relationships -- such as management agreements, resale agreements and joint marketing agreements -- as attributable interests under the Commission's rules governing the PCS spectrum aggregation cap or PCS-cellular cross-ownership. These types of arrangements do not pose a threat to competition in the

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1/ These Reply Comments are submitted by the Bell Atlantic telephone companies -- the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, and the New Jersey Bell telephone Company -- as well as Bell Atlantic Mobile Systems, Inc., Bell Atlantic Paging, Inc., and Bell Atlantic Personal Communications, Inc.

2/ In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Further Notice of Proposed Rule Making, GN Docket No. 93-252 (released July 20, 1994) ("Second Further Notice").

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CMRS market. Bell Atlantic agrees with the overwhelming consensus of the commenters that expanding attributable interests to reach non-equity relationships that do not rise to a level of de facto or de jure control is utterly unwarranted and will have negative public interest consequences.

II. DISCUSSION

A. Management Agreements

The Second Further Notice addresses only relationships that by definition must be non-controlling under the traditional criteria set forth in Intermountain Microwave, 24 Rad. Reg. (P & F) (1963).[3] Nevertheless, the FCC has asked whether some non-controlling management agreements may still "involve levels of integration between the managed licensee and the manager's company which have the effect of reducing competitive choices in the marketplace or of creating a sham or front corporation to take advantage of" the broadband PCS auction rules that provide special benefits to designated entities.[4]

The concern expressed by the FCC regarding a possible net reduction in competitive choice as a result of non-controlling management agreements is speculative at best and seems highly unlikely. Under a permissible management agreement that does not involve any unauthorized transfer of control, the manager a fortiori can exercise no control

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[3] See Second Further Notice at ¶ 5. These criteria include whether the licensee (1) has unfettered use of all facilities and equipment; (2) has relinquished control of daily operations; (3) determines and carries out policy decisions, including the preparation and filing of applications with the Commission; (4) is in charge of employment, supervision, and dismissal of personnel; (5) is in charge of the payment of financing obligations; and (6) receives monies and profits derived from operation of the licensed facilities. Id. at ¶ 7 (citing Intermountain, 24 Rad. Reg. (P & F) at 984).

[4] Id. at ¶ 6.

over the licensee or its facilities, and operates solely at the discretion of the licensee.[5] Indeed, as several parties have observed, because PCS spectrum will be auctioned, successful applicants who purchase their licenses for considerable sums are unlikely to jeopardize their investments by choosing managers who do not desire to compete vigorously in the wireless marketplace and maximize the competitive interests of the managed licensee. Thus, although it may be true that the manager has access to certain confidential information, the licensee has both strong incentives and control to ensure that the manager's use of such information inures solely to the benefit of the licensee.

In addition, sufficient legal mechanisms exist to address any anticompetitive conduct that might arise by a manager who abuses or misuses its access to competitive information. As Southwestern Bell points out, for example, both federal antitrust law and state laws on corporate governance impose a fiduciary obligation on owners and key managers to protect company assets that should serve as a powerful deterrent to inappropriate use of such information. Bell Atlantic also agrees that reasonable business entities will likely not enter into a management agreement with an actual or potential competitor without stringent, enforceable provisions regarding any use of confidential information.[6]

Several commenters have pointed to the success of management agreements in promoting the growth of competition and diversity in the SMR industry.[7] If the FCC does not discourage their use here, management agreements will play a similar role with respect to

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[5] Similarly, the Commission's concern with "sham" companies and "front" corporations makes little sense if the manager has not assumed de jure or de facto control of the license. By definition, the enterprise cannot be a "sham" if the licensee retains control.

[6] See Comments of Southwestern Bell at 6.

[7] See, e.g., Comments of American Mobile Telecommunications Association at 6; Comments of Dial Page, Inc. at 6-7; Comments of Motorola at 6-7; Comments of Nextel at 2.

PCS. This is particularly true for small businesses and other designated entities that require expert advice in operating their systems. Designated entities not only require access to sources of capital formation, which the Commission has been actively and continually refining its rules to encourage,[8/] but also to the requisite management and technical expertise to build out and operate their systems. Indeed, the ability of a designated entity entrepreneur to raise capital for a start-up PCS venture may be directly related to its ability to procure an experienced manager who will give outside investors the assurance that the licensee's PCS system will be capably operated.

In its understandable desire to avoid manipulation of the designated entity rules, the FCC must not lose sight of the interests its rules are intended to promote, or of the crucial role that management agreements can and must play in facilitating designated entity participation in PCS. Attributing management and other non-equity arrangements for purposes of the PCS spectrum aggregation cap and cellular-PCS cross-ownership restriction will discourage needlessly the very types of non-controlling alliances between experienced telecommunications players and designated entities that the rules should be seeking to foster.

8/ Most recently, the Commission revised its rules governing the attribution of gross revenues, total assets and personal net worth to establish an applicant's financial eligibility for the entrepreneur's blocks. The FCC will now allow nonattributable investors in a corporate PCS applicant to own up to 15 percent of the corporation's voting stock, hoping to further diminish "the substantial risks associated with committing funds to a PCS applicant and enhance the potential rewards of providing start-up capital to these new ventures." In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Order on Reconsideration, PP Docket No. 93-253 (released August 15, 1994).

B. Resale and Joint Marketing Agreements

The comments received thus far confirm the Commission's recognition of the unlikelihood that any resale agreement short of a transfer of control would reduce the quantity of service available to the public.[9/] Resale by its very nature is dependent upon the management and pricing decisions of the underlying carriers. Because resellers do not exert exclusive control over the spectrum they use, there is no reason to attribute the spectrum of the underlying service provider to the reseller. On the other hand, the Commission has long recognized that resale activities further the public interest by increasing competition. If the Commission creates an attribution rule that discourages an entity's participation in cellular resale because it limits that entity's ability to enter into the market for PCS licenses, the entity may choose not to engage in resale. This would have the anomalous consequence of diminishing competition with other resellers and facilities-based cellular providers.

Similarly, Bell Atlantic agrees with those commenters that have emphasized the benefits of joint marketing agreements in facilitating competition and customer acceptance of new PCS services. Again, the Commission itself has recognized that joint marketing agreements allow providers to pass on savings realized from pooling resources for advertising and direct sales.[10/] The FCC should not discourage these arrangements by making them attributable. Existing antitrust enforcement authority and Commission regulatory control over licensees' conduct will provide ample safeguards against any abuses attending such arrangements.

9/ Second Further Notice at ¶ 13.

10/ Id. at ¶ 14.

III. CONCLUSION

For the foregoing reasons, Bell Atlantic joins in urging the Commission to resist attributing non-controlling, non-equity arrangements in the PCS context. There is simply no sound public interest basis for doing so.

Respectfully submitted,

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