

RECEIVED

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

SEP - 9 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) Gen. Docket No. 90-314
Amendment of the Commission's)
Rules to Establish New Personal)
Communications Services)

REPLY COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits its reply to the Oppositions and Comments to the Petitions for Reconsideration in the above-captioned proceeding.²

I. Introduction

In its Petition for Further Reconsideration ("Petition"), CTIA asked the Commission to reconsider its overly restrictive attribution and overlap rules, and to

¹ CTIA is a trade association whose members provide commercial mobile radio services, including over 95 percent of the licensees providing cellular service to the United States, Canada, Mexico, and the nation's largest providers of ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry. CTIA and its members have a direct and vital interest in the outcome of this proceeding.

² In the Matter of Amendment to the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC 94-144 (rel. June 13, 1994) ("PCS Order"), Further Order on Reconsideration, FCC 94-195 (rel. July 22, 1994). CTIA has participated extensively in all phases of this proceeding.

No. of Copies rec'd
List ABCDE 044

replace the 20%/10% rules with a 30% to 35% cellular/PCS attribution rule and a 40% population overlap rule; CTIA also asked the Commission to allow cellular providers immediate access to the full 40 MHz of cellular/PCS spectrum that the Commission permits all other licensees; and in addition, CTIA asked the Commission to reconsider the portion of its rules that limit post-auction divestiture to cellular providers with less than a 20 percent overlap.

Several commenters support CTIA's petition for further reconsideration and strongly urge the Commission to reconsider its very restrictive rules governing cellular-PCS attribution, the population overlap threshold, the 35 MHz spectrum cap for cellular incumbents, and the post-auction divestiture for cellular providers.³ While these commenters support CTIA's petition, other commenters oppose CTIA's request for further liberalization of these rules.⁴ Specifically, American Personal Communications ("APC") contends that the Commission's cellular eligibility rules are pro-competitive and should be retained to prevent cellular dominance in the emerging PCS

³ BellSouth Comments on Further Reconsideration ("BellSouth Comments") at 1, 26-35; Comments of McCaw Cellular Communications, Inc. ("McCaw Comments") at 1-7; Rural Cellular Association's Comments in Support of Petitions for Reconsideration ("RCA Comments") at 1-6.

⁴ Comments of American Personal Communications on Petitions for Reconsideration ("APC Comments") at 1-11; MCI Comments at 1-2; Opposition and Comments of Pacific Bell Mobile Services at 4-6.

marketplace. APC asserts that cellular incumbents already have significant advantages with regard to geographic coverage, clear spectrum, and market power over their PCS competitors.⁵ MCI contends that permitting cellular carriers to bid on overlapping PCS markets without limitations provides cellular incumbents with an unreasonable advantage in the broadband PCS auction process.⁶

II. "Cellular Head-Start" Allegations Are Not Well-Founded

The commenters that oppose CTIA's requests allege that cellular carriers' experience should penalize incumbent carriers who seek access to PCS spectrum.⁷ While APC claims to know "precisely how [PCS] service offerings will develop,"⁸ CTIA, like the FCC, readily admits that it lacks such perfect knowledge.⁹ Given that PCS service offerings

⁵ APC Comments at 3-8.

⁶ MCI Comments at 2.

⁷ The commenters incorrectly assume that all cellular licensees have been in operation for ten to twelve years. See Pacific Bell Comments at 6. In fact, while the first cellular system began commercial operation on October 13, 1983, the FCC did not finish issuing construction permits for at least one system in every market until December, 1990.

⁸ APC Comments at 5, n.7. Despite APC's claims, it is still experimenting with different technology platforms. See PCS News (Aug. 4, 1994); Mobile Satellite Reports (Aug. 1, 1994).

⁹ See generally, PCS Order at ¶¶ 2-3.

are likely to include not only cellular-like services but "new services offering communications capabilities not currently available ... provided on an entire family of new communications devices",¹⁰ cellular carriers may enjoy no greater benefit than interexchange carriers, like MCI, and local exchange carriers, like Pacific Bell, in providing such new services in conjunction with their existing service. With just 19 million subscribers, the entire cellular industry's installed base is less than either one of these commenters' own "head start" in signing up customers.

III. Cellular incumbents do not have a significant advantage with regard to clear spectrum and geographic coverage.

CTIA continues to believe that the Commission's attribution and geographic overlap rules are overly restrictive, and go far beyond what is necessary to insure competition between PCS and cellular licensees. This is especially true given the fact that it is impossible to predict how the inchoate PCS market will develop. But even if PCS licensees offer nothing more than additional cellular services, the Commission's MTA-based PCS license areas are often larger than cellular service areas, and in many instances the PCS rules will prevent cellular carriers from

¹⁰ PCS Order at ¶ 3.

ever obtaining the geographic coverage and spectrum afforded other PCS licensees.

A comparison of the Baltimore-Washington market for cellular and PCS licensees is illustrative. APC, with its Pioneers Preference award, has obtained the right to provide service within this market and this license area will include the entire Baltimore/Washington MTA.¹¹ This MTA-based PCS license area is larger than the service area of either of the two cellular carriers licensed to provide service within the Baltimore and Washington MSAs. Not only is the PCS MTA-based license area larger than the cellular MSA-based area, the incumbent cellular carriers are precluded by the FCC's rules from obtaining sufficient PCS spectrum to fully compete with the MTA-based PCS licensees.

Such geographic coverage cannot be equaled by the cellular companies in the MTA primarily due to the perverse effects of the Commission's overlap and divestiture rules. For example, within the Baltimore-Washington MTA, Contel Cellular serves Virginia RSAs 7 and 11, but not the Charlottesville MSA, which lies between them. If Contel wants to link its existing RSA markets, it would be required to either purchase the Charlottesville MSA, or bid for the

¹¹ *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services*, Gen. Docket No. 90-314, Third Report and Order, 9 FCC Rcd 1337, 1349, para. 80 (1994).

Charlottesville BTA in the auctions. The latter option, however, is constrained because the RSAs have an 18 percent overlap with the Charlottesville BTA.

While Contel may bid for 10 MHz, it is prohibited from bidding for the second 10 MHz in the Charlottesville BTA because of the population overlap. If Contel divests its interest in RSA 11, it then would be eligible to bid for a total of 20 MHz. However, if it wants to continue to provide service to customers in the component counties which were part of RSA 11, but not part of the Charlottesville BTA, it must bid for the Washington and Fredericksburg BTAs.

Contel would not be restricted in bidding for the Washington BTA, as it has less than a 10 percent population overlap with that BTA. Contel, however, would be precluded from bidding for the Fredericksburg BTA, because the Fredericksburg BTA also overlaps another Contel service area -- Virginia RSA 12. The overlap in this case is 79 percent, and divestiture is disallowed because the Commission's "10 to 20 percent" window rule forecloses divestiture over a certain percentage. Even if Contel could divest this market, with the object of bidding for BTAs which overlapped the area, this would produce further conflicts because the replacement BTAs also overlap other RSAs and MSAs already served by Contel in the Richmond MTA.

Centennial Cellular faces the same dilemma. Centennial serves the Charlottesville MSA which is located in the middle of the Charlottesville BTA. If Centennial wanted to extend its service area to the adjacent areas within that BTA, it would be restricted to bidding for a 10 MHz license because its population overlap is 69.3 percent.

These are only a few examples of how the Commission's rules would perversely prevent wireless providers from providing extended, contiguous service through the amalgamation of cellular and PCS service areas.¹²

APC attempts to justify restricting cellular carriers' access to PCS spectrum by repeating its claim that cellular carriers will have more "clear" spectrum than their PCS competitors because it will take PCS licensees "eight to ten years to clear microwaves."¹³ Not only does this miss the point, since cellular carriers who obtain the even smaller amounts of PCS spectrum permitted them under the rules would be similarly affected, but it is not borne out by APC's own experience in clearing microwave incumbents within its designated PCS band in the Baltimore-Washington MTA.

¹² See also Attachment A which illustrates how the Commission's overlap rule produces a chain of divestiture decisions that limits a cellular company's bidding decision for adjacent markets.

¹³ APC Comments at 4-5.

APC's Vice President, Scott Schelle, indicated at a June 1994 industry conference sponsored by Donaldson, Lufkin & Jenrette that APC already has cleared the Baltimore-Washington MTA of microwave incumbents, and that such clearing takes no more than six to nine months.¹⁴ Mr. Schelle also stated that APC will have achieved 80 percent build-out of the MTA by the first day of operations. Thus, based on its own analysis, APC will have cleared the PCS spectrum in months, rather than years, and will have the immediate benefit of a greater geographic coverage area than any of the cellular companies operating in the Baltimore/Washington MTA.

¹⁴ See *PCS Pointers and Prognostications*, Wireless Telecom Investor News Bulletin, June 22, 1994 at 2.

IV. Conclusion

For the reasons set forth in its Petition and herein, CTIA respectfully requests that the Commission alter the attribution limit, overlap restriction, aggregation rules and post-auction divestiture rules in accordance with CTIA's recommendations.

Respectfully submitted,



Michael F. Altschul
Vice President, General Counsel

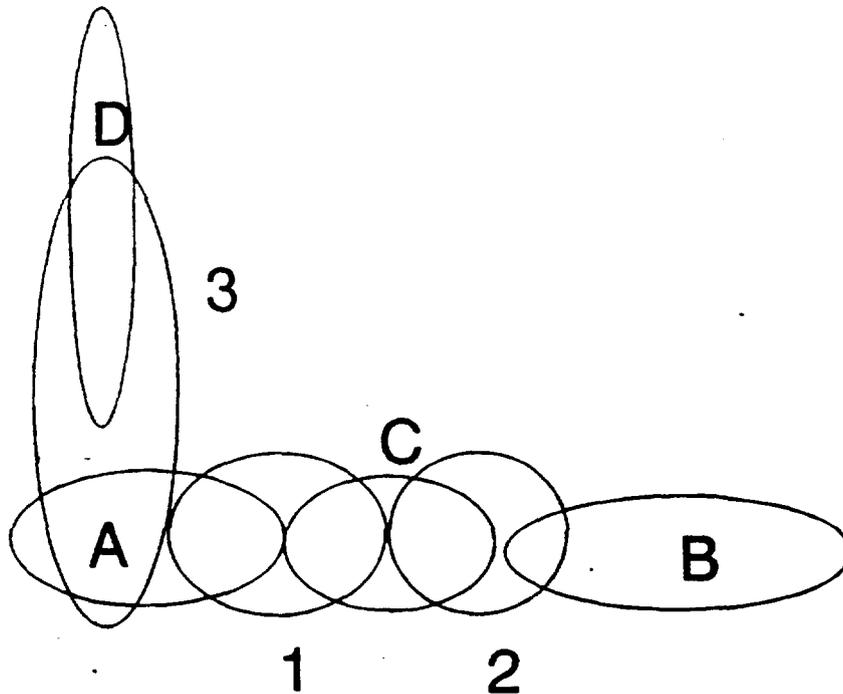
Randall S. Coleman
Vice President, Regulatory Policy and Law

Andrea D. Williams
Staff Counsel

**Cellular Telecommunications
Industry Association**
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

September 9, 1994

ATTACHMENT A



The Commission's overlap rule will produce a daisy chain of divestiture decisions for every bidding decision a cellular company makes for adjacent markets. In the example above, the bubbles represent existing MSAs and RSAs (lettered A through D) and BTAs (numbered 1 through 3).

In this example, a cellular company serves RSAs A and B, but not MSA C. If it wants to link its wireless markets, it must either acquire MSA C, or bid for BTAs 1 and 2. While BTA 2 overlaps with the RSA B, the population overlap is less than 10 percent and the company can bid for up to 20 MHz of spectrum. BTA 1, however, has an overlap of 18 percent with RSA A, and the company is limited to bidding for 10 MHz of spectrum. If the company wants to bid for 20 MHz of spectrum in BTA 1, it must divest RSA A. As this would defeat its objective of assembling a contiguous wireless market, the company would have to bid for BTA 3.

This last bid, however, may be for a BTA which overlaps another RSA (RSA D) already served by the cellular company. If the overlap is more than 20 percent, the company would be ineligible to divest the RSA, and it would be limited to a 10 MHz block in BTA 3. The result would leave the company with the option of either trading a 25 MHz cellular operation for a 10 MHz PCS operation, or forsaking the creation of larger, contiguous markets.

CERTIFICATE OF SERVICE

I, Andrea D. Williams, hereby certify that on this 9th day of September, 1994, copies of the foregoing Reply Comments of the Cellular Telecommunications Industry Association were served by hand delivery upon the following parties:

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

International Transcript Service
1919 M Street, N.W., Room 246
Washington, D.C. 20554


Andrea D. Williams

CERTIFICATE OF SERVICE

I, Andrea D. Williams, hereby certify that on this 9th day of September, 1994, copies of the foregoing Reply Comments of the Cellular Telecommunications Industry Association were sent by U.S. mail, postage prepaid to the following parties:

Anne V. Phillips
J. Barclay Jones
American Personal Communications
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610

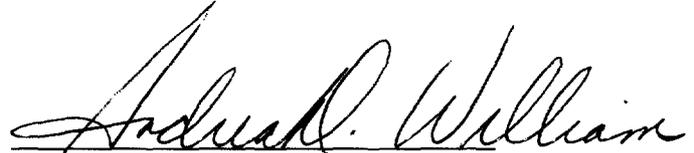
Mr. Leonard J. Kennedy
Mr. Richard S. Denning
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, D.C. 20037
Counsel for Comcast Corp.

Larry A. Blosser
Donald J. Elardo
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Cathleen A. Massey
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, N.W.
Fourth Floor
Washington, D.C. 20036

James P. Tuthill
Betsy Stover Granger
Pacific Bell Mobile Services
140 New Montgomery Street
Room 1525
San Francisco, California 94105

Caressa D. Bennet
Rural Cellular Association
2120 L Street, N.W., Suite 520
Washington, D.C. 20037


Andrea D. Williams