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October 13, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY MESSENGER

The Hon. Reed E. Hundt, Chairman
The Hon. James H. Quello, Andrew C. Barrett,
Susan Ness and Rachelle B. Chong, Commissioners
Federal Communications Commission
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20054

Re: *Personal Communications Services, Gen. Docket 90-314*

Dear Chairman Hundt and Commissioners:

We are among the independent, competitive companies that are preparing to deliver on the promise of PCS to energize local telecommunications markets across the United States. As Chairman Hundt recently told PCIA, spirited and fair competition in PCS is a major goal of the Commission:

"The fundamental policy is competition. . . . Fair competition in PCS means big companies or incumbents are not able to prevent the entry or limit the growth of small, new or fledgling companies. . . . We are committed to continue to auction the spectrum quickly and fairly."^{1/}

We agree with the goal of competition and fairness. But we understand that CTIA is mounting a last-minute lobbying effort to achieve virtually open eligibility for cellular carriers -- *just days before short-form applications must be filed*. This anti-competition campaign, which has been deceptively camouflaged in the guise of minor rule adjustments to benefit small- and medium-size cellular companies, properly was rejected by the Commission in June and must be rejected again.^{2/} As the attached study demonstrates, these rule changes are not intended to benefit small companies, but to permit the largest and most dominant companies to maintain and further consolidate their control of the wireless marketplace.

^{1/} Chairman Reed E. Hundt, Speech to Personal Communications Industry Association Annual Conference, Seattle, Washington, Sept. 23, 1994, at pp. 2-3.

^{2/} See Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order, FCC 94-144, ¶¶ 102-122 (Gen. Docket 90-314, June 8, 1994).

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Despite CTIA's rhetoric of exclusion, incumbent cellular companies are eligible to participate in PCS in the United States to a degree unparalleled in the world. While all other countries that have implemented PCS have imposed absolute prohibitions against any incumbent cellular participation, the Commission has adopted ownership standards that permit virtually all cellular companies to provide PCS to some 98 percent of the population of the United States. And even where in-region cellular companies cannot bid for 30 MHz spectrum blocks, they can obtain an additional 10 MHz PCS license.

It is only in regions where these cellular entities are dominant -- where they have infrastructure, business arrangements, and thousands of customers that can be leveraged to stop new entrants -- that the Commission properly restricts them from also holding 30 MHz PCS licenses.^{3/} CTIA proposes to (1) raise the Commission's PCS-cellular overlap standard from 10 percent to the unprecedented level of 40 percent and (2) to permit *any* cellular carrier to bid on *any* PCS license based upon the empty exercise of placing certain cellular interests under the "control" of a "trustee" with a mere pledge to divest. Neither of these proposals are not intended to benefit the smaller companies that CTIA pretends to champion. They are, in fact, intended to permit dominant cellular companies to further consolidate their market power. If adopted, either proposal would irreparably damage the PCS marketplace and the integrity of the upcoming MTA auctions.

^{3/} Professor Paul R. Milgrom, submitting testimony on behalf of Pacific Bell Mobile Services, is precisely correct when he points out that the "high concentration" in the cellular market "makes it more likely that firms will 'engage in coordinated action that harms consumers'" (quoting the *Department of Justice/Federal Trade Commission 1992 Horizontal Merger Guidelines*):

Besides the general disadvantages of excessive concentration described in the *Guidelines*, there are additional reasons why participation by cellular companies in PCS would be harmful. Cellular companies with substantial holdings of PCS spectrum would be well positioned to influence the emergence of PCS standards and to delay their implementation. With cellular companies rapidly expanding and upgrading their cellular products, they would benefit from a slower development of PCS standards, which would allow them to gain a deeper penetration and firmer hold on their markets before PCS becomes a strong competitor. . . .

To promote effective competition in wireless markets, the Commission should retain its rules prohibiting cellular companies from acquiring more than 10 MHz of additional spectrum in their current service areas. The increased competition is most likely to result in a quicker build-out of PCS networks, lower prices and better quality services for wireless customers.

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The attached analysis of the effect of these changes on the upcoming MTA auctions demonstrates convincingly that CTIA's changes would permit dominant, in-region cellular companies to overwhelm new MTA competitors. For just two examples:

- GTE/Contel would become eligible to bid in the Charlotte/Greensboro and Atlanta MTAs. GTE/Contel owns 100 percent of the cellular pops in 24 communities in this MTA, including Charleston, Florence, Greensboro, and Raleigh-Durham.
- Airtouch/U S West would become eligible in the Spokane/Billings, Portland, Des Moines/Quad Cities and El Paso/Albuquerque MTAs. U S West/Airtouch owns 100 percent of the cellular pops in Spokane, 93.7% of the cellular pops in Omaha and 51 percent of the cellular pops in Albuquerque.

If *either* of CTIA's proposals for (1) eviscerating the cellular eligibility threshold or (2) permitting open eligibility with divestiture pledges were now to be adopted by the Commission in a meeting to be held a scant *eight days before short-form applications must be filed*, the following three direct consequences would result:

- The carefully crafted partnerships, affiliations and business/financing plans of numerous independent bidders, established in reliance on the Commission's established licensing scheme, would become dead letters. These parties' ability to participate in PCS at all would be severely compromised by this unprecedented action just days before applications must be filed.
- Independent bidders and Wall Street will flee an auction that will be controlled by -- and, under the guise of "divestiture," extensively gamed by -- some of the regional Bell companies and other dominant companies with extensive cellular holdings.
- PCS would become nothing more than a chance for the existing cellular companies that now control the wireless marketplace to expand into more spectrum. The consumer benefits, new jobs and expanded tax revenues that a competitive market could produce would be lost.

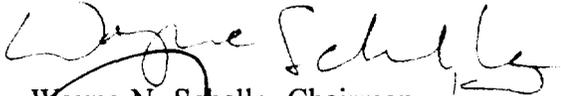
This would be like the Washington National Flight Control Center telling an aircraft to change course ten seconds before landing.

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CTIA's proposals are bad policy, cynically packaged. A 40 percent overlap standard for cellular companies would effectively doom any hope of bringing real competition to the wireless telephony marketplace. As the Commission repeatedly has recognized, in-region cellular companies have innumerable practical advantages over new entrants.^{4/} Moreover, if dominant cellular carriers are permitted to bid for PCS licenses under a mere pledge of divestiture -- regardless of whether that is coupled with the shell of having a "trustee" hold some amount of the cellular holdings until divestiture occurs -- these dominant companies could bid at auction and potentially skew the bidding, and thus prevent new entrants from succeeding, regardless of whether they obtain the license.

We urge the Commission to stay the course and reject CTIA's desperate, last-minute attempt to stop a competitive PCS industry.

Respectfully submitted,


Wayne N. Schelle, Chairman
American Personal Communications


Alexander Netchvolodoff
Vice President of Public Policy
Cox Enterprises, Inc.


Dennis Patrick, President
Time Warner Telecommunications

cc: Docket File
Attached List

^{4/} See Reconsideration Order, ¶¶ 102-122. And as Pacific Bell correctly notes, "[c]ellular companies with substantial holdings of PCS spectrum would be able to exclude competitors, manipulate prices, influence the emergence of PCS standards in order to delay their implementation, and manipulate the standards to make PCS and cellular less directly competitive in the wireless market." Reply Comments, pp. 3-4, citing Milgrom Affidavit.

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Summary of Company Eligibility Changes

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Market	Company	Market Pop	FCC Elig.	FCC Elig. %	CTIA Elig.	CTIA Elig. %
Atlanta		6,942,084				
	ALLTEL		Ineligible	20.86%	Eligible	18.23%
	GTE Contel		Divest	19.83%	Eligible	17.73%
	Palmer Comm.		Divest	19.29%	Eligible	19.29%
Birmingham		3,244,076				
	ALLTEL		Ineligible	20.88%	Eligible	15.64%
	Crowley Cellular		Divest	13.31%	Eligible	13.31%
	Dismissed		Divest	15.04%	Eligible	15.04%
	Palmer Comm.		Divest	14.64%	Eligible	14.64%
Boston - Providence		9,452,712				
	US Cellular Corp.		Ineligible	20.65%	Eligible	20.65%
Buffalo - Rochester		2,777,046				
	AT&T		Ineligible	42.83%	Eligible	0.00%
	Horizon Cellular		Divest	15.28%	Eligible	15.28%
	Rochester Tele.		Divest	13.65%	Eligible	0.00%
Charlotte - Greensboro		9,752,317				
	ALLTEL		Divest	17.51%	Eligible	17.51%
	BellSouth		Divest	12.91%	Eligible	12.91%
	GTE/Contel		Ineligible	34.01%	Eligible	34.01%
	NYNEX and Bell Atlantic		Ineligible	30.04%	Eligible	30.04%
	Palmetto MobileNet		Divest	13.10%	Eligible	13.10%
	US Cellular Corp.		Ineligible	26.07%	Eligible	24.51%
Chicago		12,069,700				
	Sprint Cellular		Divest	12.90%	Eligible	9.12%
Cincinnati - Dayton		4,716,665				
	Independent Cellular		Divest	15.93%	Eligible	15.93%
	Vanguard Cellular		Divest	13.34%	Eligible	13.34%
Cleveland		4,945,749				
	Orwell Tele.		Divest	12.41%	Eligible	0.00%
	Sprint Cellular		Ineligible	26.94%	Eligible	26.94%
	SYGNET Comm.		Divest	14.60%	Eligible	14.60%
Columbus		2,145,561				
	Independent Cellular		Ineligible	21.05%	Eligible	21.05%
	Sprint Cellular		Divest	12.48%	Eligible	12.48%
	US Cellular Corp.		Divest	12.77%	Eligible	12.77%
Dallas - Fort Worth		9,694,157				
	ALLTEL		Divest	10.05%	Eligible	0.00%
	Century Tele.		Divest	17.46%	Eligible	17.46%
	Sprint Cellular		Divest	14.91%	Eligible	14.08%
Denver		3,880,637				
	CommNet Cellular		Divest	18.89%	Eligible	18.89%

June 1994 FCC Rules as compared to CTIA proposed changes (40% overlap with 35% attribution)

Cellular Ownership Source: Paul Kagan Cellular Ownership Data - August 1994.

Summary of Company Eligibility Changes

Market	Company	Market Pop	FCC Elig.	FCC Elig. %	CTIA Elig.	CTIA Elig. %
Des Moines - Quad Cities		3,006,139				
	AirTouch and U.S. West		Ineligible	20.78%	Eligible	14.77%
	CommNet Cellular		Ineligible	21.22%	Eligible	21.22%
	GTE/Contel		Ineligible	20.02%	Eligible	20.02%
	Independent Cellular		Divest	19.91%	Eligible	19.91%
	Sprint Cellular		Ineligible	23.98%	Eligible	18.12%
Detroit		10,001,009				
	Century Tele.		Ineligible	35.52%	Eligible	34.21%
	Sprint Cellular		Divest	12.47%	Eligible	12.47%
El Paso - Albuquerque		2,113,890				
	AirTouch and U.S. West		Ineligible	36.33%	Eligible	28.64%
	Century Tele.		Ineligible	20.16%	Eligible	2.91%
	Sprint Cellular		Ineligible	21.79%	Eligible	21.79%
Honolulu		1,108,229				
	Ram Broadcasting		Ineligible	75.46%	Eligible	0.00%
	US Cellular Corp.		Divest	10.86%	Eligible	10.86%
Houston		5,190,849				
	Centennial Cellular		Divest	11.16%	Eligible	11.16%
Indianapolis		3,017,475				
	Ameritech		Ineligible	63.88%	Eligible	3.01%
	Centennial Cellular		Divest	15.52%	Eligible	15.52%
Jacksonville		2,274,933				
	ALLTEL		Ineligible	31.84%	Eligible	31.84%
	Palmer Comm.		Divest	11.34%	Eligible	11.34%
	Sprint Cellular		Ineligible	23.58%	Eligible	23.58%
	St. Joe Comm.		Divest	18.00%	Eligible	1.63%
	US Cellular Corp.		Ineligible	37.57%	Eligible	33.12%
Kansas City		2,913,304				
	ALLTEL		Divest	11.12%	Eligible	5.61%
	Liberty Cellular		Divest	17.57%	Eligible	17.57%
	Sprint Cellular		Ineligible	59.19%	Eligible	3.35%
	US Cellular Corp.		Divest	12.82%	Eligible	12.82%
	Western Wireless		Divest	11.96%	Eligible	11.96%
Knoxville		1,721,911				
	Bachtel Cellular		Divest	13.74%	Eligible	13.74%
	Highland Tele.		Divest	10.78%	Eligible	10.78%
Little Rock		2,051,667				
	US Cellular Corp.		Divest	15.63%	Eligible	4.95%
Louisville - Lexington		3,556,648				
	Horizon Cellular		Divest	19.41%	Eligible	19.41%
	US Cellular Corp.		Ineligible	24.50%	Eligible	24.50%

June 1994 FCC Rules as compared to CTIA proposed changes (40% overlap with 35% attribution)

Cellular Ownership Source: Paul Kagan Cellular Ownership Data - August 1994

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Market	Company	Market Pop	FCC Elig.	FCC Elig. %	CTIA Elig.	CTIA Elig. %
Memphis - Jackson		3,465,226				
	ALLTEL		Ineligible	22.56%	Eligible	20.67%
	Century Tele.		Divest	12.46%	Eligible	12.46%
	Millington Tele.		Ineligible	35.16%	Eligible	0.00%
	Potosi Company		Ineligible	24.40%	Eligible	21.01%
Miami - Fort Lauderdale		5,136,581				
	GTE/Contel		Divest	16.15%	Eligible	14.63%
Milwaukee		4,541,432				
	Pacific Telecom		Ineligible	34.69%	Eligible	17.35%
	US Cellular Corp.		Divest	11.53%	Eligible	11.22%
Minneapolis - St. Paul		5,986,039				
	CommNet Cellular		Divest	15.39%	Eligible	15.39%
	GTE/Contel		Ineligible	42.18%	Eligible	0.24%
	PriCellular		Divest	12.83%	Eligible	11.87%
	Western Wireless		Ineligible	21.11%	Eligible	21.11%
New Orleans - Baton Rouge		4,925,269				
	Centennial Cellular		Divest	19.56%	Eligible	19.56%
	Century Tele.		Divest	19.16%	Eligible	15.69%
	GTE/Contel		Divest	16.68%	Eligible	16.68%
	Potosi Company		Divest	14.95%	Eligible	11.95%
	US Cellular Corp.		Divest	18.91%	Eligible	18.91%
New York		26,410,597				
	SNET		Divest	12.45%	Eligible	12.45%
Oklahoma City		1,877,478				
	Dobson Cellular		Divest	15.57%	Eligible	15.57%
	Triad Cellular		Divest	11.63%	Eligible	11.63%
	US Cellular Corp.		Ineligible	25.07%	Eligible	25.07%
Omaha		1,659,273				
	AirTouch and U.S. West		Ineligible	36.26%	Eligible	36.26%
	Cellular Sys. of NE		Ineligible	36.26%	Eligible	0.00%
	Lincoln Tele.		Ineligible	49.14%	Eligible	12.88%
	Sprint Cellular		Ineligible	36.26%	Eligible	0.00%
Philadelphia		8,927,748				
	Sprint Cellular		Divest	16.82%	Eligible	16.00%
	Vanguard Cellular		Ineligible	23.24%	Eligible	23.24%
Pittsburgh		4,102,766				
	Horizon Cellular		Divest	17.98%	Eligible	16.81%
	Independent Cellular		Divest	17.19%	Eligible	17.19%
	Sprint Cellular		Divest	12.67%	Eligible	11.59%
	US Cellular Corp.		Divest	15.74%	Eligible	14.57%

June 1994 FCC Rules as compared to CTIA proposed changes (40% overlap with 35% attribution)

Cellular Ownership Source: Paul Kagan Cellular Ownership Data - August 1994.

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Market	Company	Market Pop	FCC Elig.	FCC Elig. %	CTIA Elig.	CTIA Elig. %
Portland		3,059,948				
	AirTouch and U.S. West		Divest	16.13%	Eligible	15.81%
	US Cellular Corp.		Ineligible	23.78%	Eligible	15.89%
Richmond - Norfolk		3,846,210				
	BellSouth		Divest	19.23%	Eligible	19.23%
	US Cellular Corp.		Divest	12.57%	Eligible	11.31%
Salt Lake City		2,573,372				
	CommNet Cellular		Ineligible	26.46%	Eligible	24.66%
	US Cellular Corp.		Divest	17.30%	Eligible	17.30%
San Antonio		2,986,524				
	Century Tele.		Ineligible	21.55%	Eligible	21.55%
	GTE/Contel		Ineligible	55.89%	Eligible	11.72%
	US Cellular Corp.		Ineligible	33.12%	Eligible	20.28%
	Valley Tele.		Ineligible	34.48%	Eligible	0.00%
San Francisco - Oakland		11,891,177				
	Centennial Cellular		Ineligible	25.92%	Eligible	0.00%
	Roseville Tele.		Ineligible	25.52%	Eligible	0.00%
Seattle		3,827,175				
	Pacific Telecom		Divest	15.62%	Eligible	7.02%
	US Cellular Corp.		Divest	11.79%	Eligible	11.79%
Spokane - Billings		1,863,335				
	AirTouch and U.S. West		Ineligible	38.73%	Eligible	32.77%
	AT&T		Ineligible	28.65%	Eligible	28.65%
	Blue Mountain Cell.		Divest	10.78%	Eligible	10.78%
	Dismissed		Divest	10.89%	Eligible	10.89%
	Pacific Telecom		Divest	14.71%	Eligible	1.21%
	US Cellular Corp.		Ineligible	25.47%	Eligible	14.07%
St. Louis		4,663,926				
	ALLTEL		Divest	15.94%	Eligible	13.69%
	US Cellular Corp.		Divest	16.45%	Eligible	16.45%
Tulsa		1,096,396				
	ALLTEL		Divest	13.93%	Eligible	13.93%
	Zephyr Tele-Link		Divest	13.93%	Eligible	13.93%
Wichita		1,124,174				
	Bachtel Cellular		Divest	15.26%	Eligible	15.26%
	HBF Cellular		Divest	11.17%	Eligible	11.17%
	Miscellco Comm.		Ineligible	26.40%	Eligible	26.40%

June 1994 FCC Rules as compared to CTIA proposed changes (40% overlap with 35% attribution)

Cellular Ownership Source: Paul Kagan Cellular Ownership Data - August 1994.