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) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

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COMMENTS OF MCCAW CELLULAR COMMUNICATIONS, INC.
IN RESPONSE TO THIRD FURTHER NOTICE OF PROPOSED RULE MAKING

McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, hereby respectfully submits its comments in response to the Third Further Notice of Proposed Rule Making in the above-referenced docket.[1/] The Third Further Notice solicits comments on whether the 45 MHz spectrum cap adopted in the Third Report and Order[2/] in this docket should be extended to include all cellular, Specialized Mobile Radio (SMR) and broadband personal communications service (PCS) providers, regardless of regulatory classification.

Consistent with the statutory mandate of regulatory parity, and for the other sound policy reasons set forth in the Third Further Notice, spectrum used for Private Mobile Radio Service (PMRS) should be included under the spectrum cap. Moreover, the spectrum cap should

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[1/] Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Further Notice of Proposed Rule Making, FCC No. 95-156 (released May 5, 1995) ("Third Further Notice").

[2/] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commisson's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Third Report and Order, 9 FCC Rcd 7988 (1994).

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immediately be applied to "grandfathered" SMR licensees regulated as PMRS providers until August 10, 1996.

DISCUSSION

Equal treatment of PMRS and CMRS spectrum under a generally applicable spectrum cap comports with the clear Congressional desire for regulatory symmetry. Congress revised Section 332 because it found that the then-existing regulatory structure governing mobile services -- which permitted "private" mobile services to escape regulation while functionally equivalent "common carrier" services were subject to state as well as Federal rules -- could "impede the continued growth and development of commercial mobile services and deny consumers the protections they need."[3/] In the Second Report and Order in this proceeding,[4/] the Commission appropriately emphasized these considerations in fashioning critical elements of the regulatory scheme for commercial mobile radio services.[5/]

The same policy considerations that guided Congress and the Commission in fashioning a unified regime for CMRS providers strongly support adoption of symmetrical regulation of CMRS and PMRS services for spectrum cap purposes. In adopting the 45 MHz spectrum cap for CMRS, the Commission categorically rejected any "preferential treatment" that would allow providers in different service categories to accumulate greater amounts of spectrum than other participants in the mobile services marketplace.[6/] As the Third Further Notice correctly observes, "the services provided by PMRS providers may well be viewed as competitive

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[3/] H.R. Rep. No. 111, 103d Cong., 1st Sess. 260 (1993).

[4/] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411 (1994).

[5/] See, e.g., id. at 1419, 1445-46.

[6/] Third Report & Order, 9 FCC Rcd at 8109-10.

alternatives to CMRS by customers."[7] Consistency therefore demands that providers classified in whole or in part as PMRS for regulatory purposes should be subject to the same ground rules in terms of spectrum accumulation as are those who provide service exclusively as CMRS.[8]

The other policy rationales underlying the CMRS spectrum cap apply with equal force to the accumulation of spectrum for PMRS. Given the scarcity of spectrum, the Commission's goal of maximizing incentives for efficient spectrum utilization applies equally to PMRS.[9] The inclusion of PMRS services in the spectrum cap would also prevent PMRS licensees from accumulating and artificially withholding spectrum from competing uses.[10] Finally, as the Commission recognizes in the Third Further Notice, application of spectrum caps to PMRS will provide a bright line test, permitting greater certainty in the planning and provision of mobile radio services, and more effective enforcement of the spectrum cap.[11]

The Commission should also immediately apply the 45 MHz spectrum cap to SMR licensees that are grandfathered as PMRS until August 10, 1996. The main justification for grandfathering -- the need for a transition period to adapt to new regulatory burdens -- is inapplicable to a prospective policy such as the spectrum cap. Moreover, there is simply no

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[7] Third Further Notice at ¶ 3.

[8] For example, McCaw can envision packages of services for large customers which might include both interconnected and non-interconnected elements.

[9] See Third Report & Order, 9 FCC Rcd at 8108 (failure to apply spectrum caps to SMR CMRS licensees would "reduce the incentives of SMR operators to act vigorously to make efficient use of both their SMR and PCS spectrum allocations.").

[10] See id.

[11] Third Further Notice at ¶ 4. See also Third Report & Order, 9 FCC Rcd at 8104-05.

sound reason to permit grandfathered SMR licensees to accumulate spectrum in excess of the spectrum caps which would have to be divested after the end of the grandfathering period.

CONCLUSION

For the foregoing reasons, the Commission should include PMRS services in the 45 MHz spectrum cap, and apply this spectrum cap immediately to grandfathered SMR licensees.

Respectfully submitted,

MCCAW CELLULAR COMMUNICATIONS, INC.

Cathleen A Massey by SFS

Cathleen A. Massey
Vice President, External Affairs
Douglas Brandon
Regulatory and Antitrust Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Of Counsel:

Howard J. Symons
James A. Kirkland
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

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CERTIFICATE OF SERVICE

I, James Waddy, hereby certify that on this 5th day of June, 1995, I caused copies of the foregoing "Comments of McCaw Cellular Communications, Inc. in Response to Third Further Notice of Proposed Rule Making" to be sent by First Class mail, postage prepaid, or to be delivered by messenger (*) to the following:

Regina Keeney, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Sally Novak*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Lisa Warner*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

James Waddy

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