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

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	)	

To: The Commission

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REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to Section 1.415 of the Commission's Rules[1] and in response to the Third Further Notice of Proposed Rule Making ("Third NPRM") in this docket[2] submits reply comments in support of the Commission's tentative conclusion that all providers of cellular, broadband Personal Communications Service ("PCS") and Specialized Mobile Radio ("SMR") Service, regardless of their regulatory classification, should be subject to the 45 MHz spectrum cap adopted for Commercial Mobile Radio Service ("CMRS") providers of the same services.[3] In support thereof, RCA shows the following:

1. RCA is an association representing the interests of small and rural cellular licensees providing commercial services to

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1/ 47 C.F.R. § 1.415.

2/ Third Further Notice of Proposed Rule Making, GN Docket No. 93-252, FCC 95-156 (rel. May 5, 1995).

3/ See Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7933 (1994) ("Third Report and Order"), adopting the 45 MHz spectrum cap for broadband PCS and cellular and SMR service providers whose activities are regulated as CMRS.

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subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. By virtue of the Third Report and Order, RCA member companies and other cellular and commercial PCS service providers are subject to the 45 MHz spectrum limitation, as are SMR service providers which are regulated as CMRS service providers. Because services regulated as PMRS may constitute reasonable alternatives to the customers of CMRS providers, it is appropriate to apply the principles of regulatory parity with respect to the spectrum limitation in order to promote full and fair competition within the market.

2. In the Third NPRM, the Commission noted that the original rationale for imposing the limitation on the amount of spectrum available to a carrier within a given geographic area was to preclude the anticompetitive activity of spectrum "lock-out," or the aggregation of large blocks of spectrum to limit its availability to competitors.[4] The Commission also noted that a carrier may be tempted to engage in this activity regardless of its regulatory treatment as "commercial" or "private" because the impetus for such activity is securing a competitive advantage.[5] Consequently, since mobile services which may be offered by "commercial" and "private" licensees are and will continue to be competitive with one another, regulatory parity principles require

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4/ Third NPRM at para. 3.

5/ Id.

that all licensees be treated similarly.[6]

3. Providers of mobile services compete among themselves for customers with a variety of requirements. In an era of increasing competition, the market will reward those licensees which recognize and respond to evolving trends and tailor services to fit specific market segments. Identification of these requirements and design of innovative service offerings will occur within both the "commercial" and "private" industries. Since CMRS and PMRS are and will continue to be competing to serve the same customer base, different regulatory standards are inappropriate and will impede the ability of CMRS carriers to compete efficiently and effectively.[7]

Many commenters agree that a level playing field is necessary to ensure full and fair competition. PCS PRIMECO, for example, voiced concern that "[a]symmetrical regulatory schemes" could encourage "spectrum acquisition as opposed to more efficient - and

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[6]/ See also Comments of McCaw Cellular Communications, Inc., at p. 2, noting the Congressional mandate for regulatory parity.

[7]/ Contrary to the position taken by the American Mobile Telecommunications Association, Inc. ("AMTA") (see Comments of AMTA at pp. 6-8), the Commission correctly assessed the potential for competition between and among entities classified as "CMRS" or "PMRS" service providers. Consumers will choose among service providers according to their perception of the value of service offered, without regard to the carriers' regulatory status. Consequently, availability of a more narrowly-tailored service at a competitive price will certainly weigh in a consumer's choice. One would expect PMRS service providers to capitalize on that fact in seeking to compete with CMRS providers.

capital intensive - use of existing spectrum."[8] Clearly, the public interest requires the application of the principles of regulatory parity where there exists the possibility that a competitive disadvantage will otherwise result.

WHEREFORE, for the reasons outlined above, RCA respectfully supports the Commission's tentative conclusion that all cellular, SMR and broadband PCS licensees, regardless of their regulatory classification, should be subject to the 45 MHz spectrum cap.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

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Dated: June 26, 1995

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[8]/ Comments of PCS PRIMECO at p. 1. See also Comments of Airtouch Communications, Inc.; Comments of Pacific Telesis Mobile Services and Pacific Bell Mobile Services; Comments of GTE Service Corporation.

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, of Kraskin & Lesse, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Reply Comments of the Rural Cellular Association" was served on this 26th day of June, 1995, by first class, U.S. mail, postage prepaid, to the following parties:

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