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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	)	WT Docket No. 96-59
	)	
Amendment of the Commission's Cellular/PCS Cross-Ownership Rule	)	GN Docket No. 90-314

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To: The Commission

REPLY COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation ("BellSouth"), by its attorneys, hereby responds to the comments of AT&T Wireless Services, Inc. ("AT&T") on BellSouth's petition for reconsideration of the Commission's *Report and Order* in this proceeding.[1]

BellSouth had urged the Commission to reconsider its decision to include all SMR spectrum within the 45 MHz CMRS spectrum cap, instead of including only "covered" SMR spectrum. AT&T did not oppose BellSouth's position, but it argued that if the Commission grants BellSouth's request "it must also exclude the data services provided by cellular and broadband PCS licensees

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[1] *Amendment of Part 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*, WT Docket 96-59, GN Docket 90-314, *Report and Order*, FCC 96-278 (June 24, 1996). AT&T filed its Comments on Petition for Reconsideration of BellSouth Corporation, and Opposition to Petition for Reconsideration of Omnipoint Corporation ("AT&T Comments") on August 28, 1996. The Commission subsequently established new dates for filing comments (October 2, 1996) and reply comments (October 15, 1996). *See* Public Notice, *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, Report No. 2152, 181 Fed. Reg. 48,952 col. 3 (Sept. 17, 1996). Accordingly, this reply is timely filed.

from the spectrum cap."[2] As we explain below, AT&T's position is not meritorious, and its proposal is both unworkable and contrary to the public interest.

BellSouth urged the Commission to exclude spectrum dedicated to non-covered SMR service from the CMRS spectrum cap because non-covered SMRs, by definition, do not offer real-time, interconnected voice service. The Commission has elsewhere recognized that the services of covered SMRs—*i.e.*, real-time, interconnected voice services—are directly competitive with the core services offered by cellular and broadband PCS licensees, while non-covered SMR services are not. The fact that some cellular and broadband PCS licensees may offer auxiliary or ancillary services similar to non-covered SMRs does not change this.

The 45 MHz spectrum cap is a limit on an entity's ability to accumulate *spectrum* that has been *dedicated* to a particular purpose. The Commission has recognized that spectrum dedicated to narrowband services, such as paging and narrowband PCS, is not used for a service similar to cellular and PCS, and it therefore excluded narrowband spectrum from the 45 MHz spectrum cap. Non-covered SMRs have likewise dedicated their spectrum to a "narrowband" service that is more akin to paging or narrowband PCS than to cellular or broadband PCS, and for the same reason spectrum dedicated to non-covered SMR purposes should also be excluded from the 45 MHz spectrum cap. Covered SMRs, on the other hand, have dedicated their spectrum to a service that is similar to cellular and PCS and their spectrum is, therefore, appropriately included in the 45 MHz spectrum cap.

The fact that the Commission's rules give cellular and broadband PCS licensees the ability, at their option, to offer services other than real-time, interconnected voice services does not change the fact that the core purpose of the spectrum held by cellular and broadband PCS licensees is to

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[2] AT&T Comments at 3.

provide real-time, interconnected voice service. Cellular and broadband PCS licensees, unlike non-covered SMRs, do not *dedicate spectrum* to these narrowband-like data and messaging services. Instead, they carry data or messaging traffic over the same spectrum used for voice service, utilizing the same facilities. In essence, they squeeze the narrowband-like traffic into the gaps between voice transmissions. While the data and messaging services that cellular and broadband PCS licensees can offer in this way are similar to those offered by non-covered SMR, paging, or narrowband PCS licensees, there is no spectrum set aside for this purpose, and there is therefore no justification for excluding any of their spectrum from the 45 MHz spectrum cap.

It is difficult to see how AT&T's proposal could be implemented, in light of the fact that no spectrum is dedicated to "narrowband" purposes by cellular or broadband PCS operators opting to offer such services. Which portion of a cellular licensee's 25 MHz spectrum allocation would be excluded from the 45 MHz spectrum cap? The simple answer is that no portion of the spectrum allocation can be excluded, because no portion of that allocation is not used for "broadband" services. The same spectrum that AT&T uses to carry data transmissions is also used to carry interconnected voice traffic. Clearly, any spectrum that is used for real-time, two-way interconnected voice traffic must be included in the cap.

Even if there were some way to identify the portion of a cellular or broadband PCS licensee's spectrum used for "narrowband" purposes at a given time, that portion would vary depending on the ratio of voice to non-voice traffic. Thus, if a cellular or broadband PCS licensee were allowed to exclude some portion of its spectrum from the 45 MHz spectrum cap based on its current traffic pattern, the licensee would still have access to that spectrum for "broadband" purposes as the traffic ratio changes. As a result, AT&T's proposal would vitiate the spectrum cap entirely, because it would effectively exempt cellular and broadband PCS spectrum from the spectrum cap even though the spectrum could be used for broadband purposes. This would undermine the Commission's

determination that the public interest requires a 45 MHz limit on the broadband spectrum to which any single entity may have access.

Respectfully submitted,

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October 15, 1996

CERTIFICATE OF SERVICE

I, Phyllis Martin, hereby certify that copies of the foregoing Reply Comments of BellSouth in WT Docket 96-59 were served via first class U.S. mail, postage prepaid, this 15th day of October, 1996, to the parties below:

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