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

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In the Matter of	)	
Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")	)	GN Docket No. 96-228

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To: The Commission

INITIAL COMMENTS
OF
VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard" or "Company"), acting through counsel and in accordance with the Commission's Notice of Proposed Rule Making in this docket,[1/] hereby files its Initial Comments in this proceeding.

I. Background

1. Vanguard is one of the largest independent providers of cellular radio telephone service in the United States. The Company currently operates 29 Frequency Block A cellular systems east of the Mississippi with a total of over 485,000 subscribers. In addition, Vanguard has significant investments in other wireless telecommunications entities and has been at the forefront of developing and deploying

[1/] In the Matter of Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS") (Notice of Proposed Rule Making), FCC 96-441, released November 12, 1996 ("NPRM").

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new wireless services in its service areas. Therefore, Vanguard has a direct and substantial interest in the outcome of this docket.

II. The Commission's Rules Must Strive To Minimize Potential Problems of Shared Spectrum Use

2. The Commission proposal would leave the entire band allocated for WCS also subject to secondary or, in the case of satellite DARS, co-primary use. Such an allocation creates the prospects for substantial frequency coordination efforts and potential interference squabbles. If the Commission is committed to such a shared approach, it must take all technical steps necessary to minimize the prospect for such co-use problems. The Commission's recent experiences with PCS and LMDS dictate that these issues be addressed now. In doing so, the Commission must satisfy itself, and all who would be potentially affected, that any spectrum sharing envisioned is and will be feasible.

III. WCS Spectrum Use Flexibility Should Not Be Exclusive

3. Vanguard supports the proposal for flexible use of the WCS spectrum. This approach is consistent with the Commission's recent trend in allocating new radio spectrum (see, e.g. General Wireless Communications Service) and relaxing restrictions on previously-established services (see, e.g., use of CMRS frequencies for fixed services). Vanguard believes, however, that, subject to adherence to interference protections, the licensee should be free to use the spectrum for any feasible service

offering, not just those proposed in the NPRM. This permits the licensee to make the most efficient use of the spectrum from the broadest possible list of choices.

4. In any case, competitive services should have comparable flexibility. The Commission's decisions in setting up new services should not leave previously-established competitors with greater spectrum use restraints. Otherwise, the regulatory parity provisions of § 332(c) of the Communications Act would be undermined. 47 U.S.C. § 332(c). If necessary, the Commission should review its existing regime for other wireless mobile services to ensure comparable flexibility with respect to spectrum use. In addition, the Commission should forbear from imposing certain Title II obligations on WCS, consistent with its forbearance for other wireless mobile services.

IV. Licensing Should At Least Be On An Economic Area Basis

5. Vanguard opposes licensing of WCS on a nationwide basis. Particularly, in light of the use of competitive bidding, a nationwide licensing scheme would disenfranchise many bidders who would be genuinely interested in more regional authorizations. Vanguard would be one such interested potential bidder.

6. A nationwide licensing format would only further the trend towards major telecommunications enterprises either obtaining or funding the licenses awarded. The Commission's experience in the recent PCS auctions, even the spectrum blocks set aside for entrepreneurs, tells the story. And these auctions involved regional licenses. In the PCS Block A and B auctions the largest winners were basically the major

telecommunications companies in the United States. And in the PCS Block C auctions, the largest winners were backed by large domestic and overseas conglomerates. The PCS Block D, E and F auctions seem likely to produce a similar scenario.

7. Employment of nationwide licensing will only fuel a trend toward a small oligopoly of carriers with the largest pocketbooks controlling the largest blocks of spectrum on a nationwide basis. It will not promote or assist diversity of ownership or control of radio spectrum. Rather it will tend to promote concentration. Such a trend is inconsistent with the dictates of the competitive bidding statute itself, as the Commission noted in its NPRM. NPRM, p. 11 (¶ 16).

8. A nationwide license is not necessary to ensure roaming and interoperability of services. Cellular has implemented such capabilities with licensing based on much smaller geographic areas. Modern technologies allow roaming and interoperability to be implemented much more quickly with minimum inconvenience to customers.

9. The prospect of geographic partitioning, spectrum disaggregation and leasing, although helpful, will not guarantee the dissemination of spectrum to smaller businesses. Such actions are totally voluntary and may not be offered on terms that make economic sense. Therefore, although Vanguard fully supports granting WCS licensees that flexibility, it does not, in Vanguard's view, justify a nationwide licensing scheme.

10. The Commission should license at least a portion of the WCS spectrum on an Economic Area ("EA") basis. The Commission has previously-recognized the sense of using such divisions for the General Wireless Radio Service. See 47 C.F.R. §26.102(a). Such a geographic breakdown will provide licensing opportunities for a broader array of prospective bidders. At the same time it will reasonably adhere to the Commission's desire to use larger geographic service areas to facilitate operation of the broadest possibly range of new communications services. The Commission did not employ nationwide licenses for broadband PCS, GWRS or LMDS. The Congressionally dictated schedule for WCS should not drive that decision here.

V. Licensing Should Be In Two 15 MHz Slices

11. To maximize the potential services that can be offered by licensees, the Commission should assign 15 MHz of spectrum to each license. Again, a single 30 MHz license would limit the opportunities for prospective bidders and, depending on the geographic area chosen, mean as few as 1 licensee on a nationwide basis or 51 licenses (if MTA(s) were selected) available for bidding. Vanguard believes that if the Commission awards one 15 MHz block on an MTA basis and one 15 MHz block on an EA basis it will provide the opportunity for more potential bidders to participate while keeping well within the Commission's licensing parameters for timely completion of the auction and collection of proceeds. Such a proposal would involve a total of 223 licenses.

VI. Consideration Of Public Safety Needs

12. Section 3001 of the Omnibus Consolidated Appropriations Act, 1997 ("Appropriations Act") requires the Commission "in making the bands of frequencies . . . available for competitive bidding . . . to take into account the needs of public safety radio services."

13. Vanguard does not believe that the Appropriations Act authorizes the Commission to carve out a portion of the spectrum and assign it to public safety radio services without competitive bidding. Section 3001(a)(2) states that the use of the frequencies at issue is to be assigned by competitive bidding.

14. That being the case, however, Vanguard already has been a strong supporter of public safety use of its cellular facilities, particularly during and after emergencies such as hurricanes and law enforcement efforts. To that end, Vanguard has supported the current proposal being considered by the Commission to establish formal regulatory procedures for the use of cellular services during such emergencies.

VII. CMRS Spectrum Cap

15. The CMRS spectrum cap should not be applied to WCS spectrum. It was not applied to GWCS spectrum when the Commission established that regulatory regime. It has not been applied to LMDS spectrum.

16. Further, the CMRS field, particularly in mobile telephony, is increasingly competitive from a spectrum license availability perspective. There are two cellular

licensees and up to six PCS licensees per market. There are or will be providers of Enhanced Specialized Mobile Radio Service. Moreover, this does not even consider resellers of these services. Therefore, it is difficult to perceive how a CMRS provider who obtained one WCS license could dominate the marketplace. To the extent that "dominate" equates with the ability to dictate prices the Commission need only look to the marketplace to see that in the wireless area such dominance does not exist. The advent of PCS, for example, has provided strong evidence that as that service is deployed it will offer strong competition.

17. As the Commission correctly questions, application of the spectrum cap could "exclude firms with the most experience and innovative technologies from participating in the auction and having the opportunity to use this spectrum to serve the public." NPRM, p. 15 (¶25). Such a result is inconsistent with maximizing the number of responsible bidders who might participate in the auction.

VIII. The Commission Should Approve Geographic Partitioning, Spectrum Disaggregation and Franchising

18. Vanguard supports the ability to partition service areas and disaggregate spectrum. It will give options to both licensees and smaller businesses who cannot participate in MTA/EA license bidding. Moreover, it would help expedite the provision of services to more rural or less populated areas where existing service providers already have an infrastructure that can be used, economically, to support deployment. The Commission should not restrict the size or scope of partitioning and disaggregation

beyond that which it proposed in WT Docket No. 96-148 (i.e., county lines and one MHz of spectrum).

19. Similarly, the Commission should approve franchising/leasing of WCS spectrum. However, such leasing should be permitted only on a non-discriminatory basis.

IX. There Should Be Construction/Performance Requirements

20. To protect against warehousing of spectrum, the Commission has with most new services set build-out requirements. NPRM, p. 25 (¶ 56). The Commission has initially decided not to do so here.

21. Vanguard sees no reason for the Commission to depart from its prior policy in this regard. Other services in which such build-out requirements were imposed (e.g., PCS, GWRS) are also subject to award by auction. In fact, Section 309(j)(4) of the Communications Act requires that competitive bidding regulations include performance requirements. 47 U.S.C. § 309(j)(4). So the argument that auctions protect against such warehousing and are therefore unnecessary has not prevailed in the past. Moreover, the grant of such wide flexibility in use of the spectrum would appear to make build out requirements less of a burden. The 5 and 10 year build-out requirements for PCS should be used as a model, as they were for GWRS.

X. Treatment Of Designated Entities

22. The Appropriations Act does not repeal the goals set forth in Section 309(j) of the Communications Act for the competitive bidding process. Nor will geographic partitioning, spectrum disaggregation and franchising flexibility serve as any guarantee that such goals will be met.

23. Bidding credits certainly would help stimulate the interests of small businesses in participating in this auction. For some it might provide the only opportunity to do so.

24. The Commission's definition of "small business", however, has in Vanguard's view been too small. It has excluded many businesses, like Vanguard, who are dwarfed by the telecommunications giants that scooped up most of the Block A and B PCS licenses or that funded or had substantial equity interests in Block C winners. To that end, the Commission should expand the size of its definition of small businesses to include companies with up to $500 million in revenues and $1.5 billion in assets.

XI. Conclusion

25. The rules for WCS should be crafted to provide opportunities for more than just the largest telecommunications companies. Licensing should not be on a nationwide basis. CMRS providers should not be frozen out from the WCS opportunity by artificial spectrum caps.

Respectfully submitted,

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