

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

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FEDERAL COMMUNICATIONS COMMISSION
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DOCKET FILE ORIGINAL

In the Matter of

Inquiry Concerning the
Deployment of Advanced
Telecommunications Capability
To All Americans in a
Responsible and Timely Fashion,
And Possible Steps To Accelerate
Such Deployment Pursuant to
Section 706 of the
Telecommunications Act of 1996

CC Docket No. 98-146

**REPLY COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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October 8, 1998

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The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Reply Comments in the above-captioned proceeding.

I. INTRODUCTION

As CTIA noted in its Comments in the this proceeding, the Commission should ensure the continued development of competitive CMRS markets by making prudent policy decisions regarding spectrum allocations, fostering a regulatory environment that promotes market-driven decisions, and

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

making a conscious effort, when developing regulatory policies, to consider the competitive environment in which wireless technology flourishes.² The wireless industry will continue to play a prominent role in the delivery of advanced telecommunications capabilities and services to American customers.³ The advent of enhanced high-speed wireless data capabilities, the development of cellular digital packet data (CDPD), and the successful use of narrowband frequencies for a multitude of business applications demonstrate both the realized and future potential for the wireless industry to provide advanced telecommunications capability.⁴ The Commission should adopt policies that enhance the availability of advanced telecommunications services and capabilities which utilize CMRS. Specifically, CTIA recommends that the Commission forbear from its regulations governing the 45 MHz spectrum cap. Moreover, the Commission should foster the development of wireless services as a part of the statutory

² Comments of CTIA, CC Docket 98-146, filed September 14, 1998, at 2.

³ See id.

⁴ Id. at 2-6.

mandate of section 706 to promote the availability of advanced telecommunications services and capability.

II. THE COMMISSION SHOULD FORBEAR FROM THE 45 MHZ CMRS SPECTRUM CAP AS PART OF ITS EFFORTS TO ENSURE THE AVAILABILITY OF ADVANCED TELECOMMUNICATIONS SERVICES

The 45 MHz CMRS spectrum cap has outlived its usefulness. The spectrum cap was designed to ensure the development of a competitive CMRS marketplace by preventing the dominance of incumbent cellular providers through the unfettered accumulation of spectrum:

We adopted the 45 MHz CMRS spectrum cap in the *CMRS Third Report and Order* in order to 'discourage anti-competitive behavior while at the same time maintaining incentives for innovation and efficiency.' We were concerned that 'excessive aggregation [of spectrum] by any one of several CMRS licensees could reduce competition by precluding entry by other service providers and might thus confer excessive market power on incumbents.'

As CTIA set forth in its Petition for Forbearance from the 45 MHz Spectrum Cap,⁶ the Commission is obligated to

⁵ Amendment of Parts 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 No. 96-59 and GN Docket No. 90-314, Report and Order, 11 FCC Rcd. 7824, ¶ 95 (1996) ("Spectrum Cap Order").

⁶ Petition for Forbearance of the Cellular Telecommunications Industry Association, filed September 30, 1998, at 5 ("CTIA Forbearance Petition").

forbear from the spectrum cap pursuant to 47 U.S.C. § 10. The CMRS market is very competitive, as the Commission's Third Report to Congress on CMRS market conditions documents.⁷ The spectrum cap is unnecessary for preventing unreasonable or discriminatory carrier practices, given the nature of competition in the CMRS marketplace and given the central requirements of sections 201 and 202, which are applicable to all CMRS carriers. In fact, retention of the spectrum cap may have the unintended consequence of impeding innovation and loss of efficiencies.⁸

Upon enactment of the spectrum cap, the Commission pledged to continue evaluating the 45 MHz cap in its present form.⁹ The present Notice of Inquiry examining the deployment of advanced telecommunications capability and possible steps to accelerate deployment should necessarily include an evaluation of the spectrum cap. The availability of spectrum and the consideration of current market conditions should be an automatic component of any

⁷ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Third Report, 12 Communications Reg. (P&F) 623, at 663 (1998) ("Third Annual Competition Report").

⁸ CTIA Forbearance Petition at ¶ 26.

⁹ Spectrum Cap Order at ¶ 106.

forward-looking proceeding, whereby the Commission seeks to determine how it can best facilitate the deployment of advanced services to all Americans in a reasonable and timely fashion, and even on an accelerated basis. The Commission would be remiss if it did not make findings regarding the availability of spectrum in the context of its inquiry into the availability of advanced telecommunications capability.

III. THE COMMISSION SHOULD FOSTER WIRELESS SERVICES AS AN AVENUE FOR GROWTH OF ADVANCED TELECOMMUNICATIONS CAPABILITY

CMRS carriers provide another avenue to offer advanced telecommunications services to the public. The purpose of this proceeding, pursuant to section 706(b), is for the Commission to determine the availability of advanced telecommunications services and, ultimately, to take immediate action to accelerate deployment by removing barriers to infrastructure investment and to promote competition in the telecommunications market. The Commission should not stand in the way of this statutory mandate.

Congress specifically recognized and approved of wireless carriers providing basic telephone service in

competition with wireline providers.¹⁰ Indeed, the Commission has sanctioned the competition between wireless and wireline in its decision to impose service provider number portability upon the wireless industry in the absence of direct statutory authority - the justification being the predicted future substitution of wireline phones with wireless phones by an increasing number of consumers. However, the broad public interest benefits resulting from permitting use of CMRS spectrum for advanced services will be sacrificed if such services are subjected to burdensome, unnecessary regulation.

Notions of regulatory parity have emerged as a rationale for regulating fixed wireless services as a local exchange provider. However, such a "one size fits all" approach ignores the very real differences between industry segments. One salient difference is that the wireless marketplace is increasingly competitive and, therefore, regulatory policies and models applicable to wireless carriers should be tailored to the competitive nature of facilities based wireless services. Furthermore, asymmetrical regulation is completely appropriate where service providers are not similarly situated. Firms are inherently not similarly situated if they possess differing

¹⁰ See CTIA initial comments, WT Docket 96-6, at 10-13.

levels of market power; therefore, disparate regulatory treatment applied to monopoly and competitive firms is fully justified as necessary to protect the public interest.¹¹

Congress has recognized that the presence of competition, and the corresponding absence of substantial, persistent market power, is the determining factor in setting the appropriate level of regulatory oversight.¹² It continues to be the case that the CMRS marketplace is very competitive, and increasingly so. CMRS carriers provide another avenue by which to promote the creation and development of advanced telecommunications services.

IV. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission forbear from the 45 MHz spectrum cap, make pro-competitive regulatory decisions that promote the growth of wireless advanced telecommunications services, and generally adopt policies and regulations which support

¹¹ Reply Comments of CTIA, WT Docket 96-6, filed December 24, 1996, at 3-13.

¹² Id.

the availability of wireless advanced telecommunications services and capabilities.

Respectfully submitted,



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