

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

In the Matter of)	
)	
1998 Biennial Regulatory Review –)	WT Docket No. 98-205
Spectrum Aggregation Limits)	
for Wireless Telecommunications Carriers)	
)	
Cellular Telecommunications Industry)	
Association’s Petition for Forbearance)	
From the 45 MHz CMRS Spectrum Cap)	
)	
Amendment of Parts 20 and 24 of)	WT Docket No. 96-59
the Commission's Rules – Broadband PCS)	
Competitive Bidding and the Commercial)	
Mobile Radio Service Spectrum Cap)	
)	
Implementation of Sections 3(n) and)	GN Docket No. 93-252
332 of the Communications Act)	
)	
Regulatory Treatment of Mobile Services)	

REPLY COMMENTS OF TRITON CELLULAR PARTNERS, L.P.

Twenty-eight parties filed comments in response to the Notice of Proposed Rulemaking (“NPRM”) regarding the Commercial Mobile Radio Service (“CMRS”) Spectrum Cap, currently codified at 47 C.F.R. § 20.6. In its initial comments, Triton Cellular Partners, L.P. (“Triton”), which operates cellular telephone systems in sixteen rural cellular markets in the Pacific Northwest, Kansas, and the Southeastern United States, argues that the attribution rules associated with the Spectrum Cap should be significantly modified because in its present form the Spectrum Cap in many cases frustrates investment and impedes the introduction of wireless competition — the very opposite of its intended result. None of the commenters disagrees with Triton’s argument. As set forth below, those that discuss the attribution standards agree that the

current standard tends to discourage investment and, thus, impede the introduction of CMRS competition. These commenters also generally support the replacement of the current standard with a control test. A majority of the commenters think that the Spectrum Cap should be eliminated, which would of course render moot any concern about the attribution standard.

But even those commenters who believe that the Spectrum Cap is still needed did not refute Triton's argument. They articulate a concern about a single entity amassing a large quantity of CMRS Spectrum in a market, thereby reducing the number of actual or potential competitors.¹ The attribution standard, by contrast, comes into play *only* when a person has an interest in multiple licenses in a given market. The desire to ensure a larger number of competitors would in fact be furthered by adopting Triton's suggestion, thereby encouraging investment in multiple, competing providers.

Some of the commenters agree with Triton and specifically note that the attribution rules are outdated and could have a chilling effect on investment and innovation in the telecommunications industry. AT&T states that the 20 percent attribution rule created a disincentive for investment in new wireless services. As AT&T points out, this rule was initially adopted because the Commission was concerned that one 20 percent interest could create the possibility of *de facto* control. AT&T argues that the 20 percent attribution creates a disincentive to invest in new wireless services and thereby limits the investment capital available to new CMRS competitors. Like Triton, AT&T urges that the FCC repeal the 20 percent rule and permit investments up to *de facto* or *de jure* control without attribution.

Chase Capital Partners ("Chase") submitted comments that reflect the same concerns as AT&T. Chase states that the attribution rules define too narrowly what constitutes

an attributable interest, thereby reducing capital available to CMRS providers. Chase proposes that in the case of an “institutional investor,”² attribution would not be triggered unless and until the institutional investor had actual control over the CMRS licensee.

Chase also proposes that the attribution rules contain an exemption for “insulated” officers and directors, much as the Commission currently does in the broadcast context. While this proposal may provide some relief for positional interests in large diversified companies, they would not afford any help in the context of entrepreneurial companies like Triton, whose only business is the provision of CMRS services. There would be no way for an investor-appointed director of Triton to be insulated from Triton’s CMRS activities. The Commission should not view insulation as a substitute for real attribution relief to promote financial investment in competitive CMRS providers.

Sonera provides a similar illustration of the perverse effect of the attribution rules. In its comments, Sonera describes a scenario that arose stemming from Sonera’s investment in Aerial Communications (“Aerial”), a C-Block PCS licensee, and their prospective investment in other CMRS licensees. Sonera added that a Wireless Telecommunications Bureau interpretation of 47 C.F.R. § 20.6 that would prohibit it or Aerial from investing in further licenses or in CMRS spectrum in other markets was, therefore, overly restrictive. Sonera notes that insulated minority owners should not be precluded from making investments solely because of the attribution rules and that the attribution rules limit the universe of potential investors, which could have a negative impact on competition and innovation.

¹ See, e.g., Comments of the Telecommunications Resellers Association; Comments of the Personal Communications Industry Association.

² Chase believes that the Commission should adopt the same definition of “institutional investor” as already exists for designated entity affiliation purposes under 47 C.F.R. § 24.720(h).

Consistent with Triton's argument that rural areas may suffer the most from a rigid application of the Spectrum Cap, a number of commenters note that rural areas tend to be hurt the most by the Spectrum Cap and the attribution rules because these rules tend to slow the deployment of new wireless services.³ One commenter, DiGiPH PCS, Inc., concedes that although the Spectrum Cap may remain necessary in certain urban markets, some less populated markets may benefit from removal of the cap. This concern reinforces Triton's view that reform of the attribution rule is even more desperately needed in rural areas than in metropolitan areas.

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The current Spectrum Cap and its associated attribution rules do not fulfill the stated goals of the Commission to foster competition and to regulate only when fixing an obvious market failure. Many of the commenters agree with Triton that the Spectrum Cap often frustrates investment and impedes the introduction of CMRS competition. The Commission should ensure that equity ownership, and director and officer positions, that do not convey control are not deemed attributable interests for purposes of the Spectrum Cap.

³ See, e.g., Comments of Sonera; Comments of the Rural Telecommunications Group.

Respectfully submitted,

TRITON CELLULAR PARTNERS, L.P.

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By: /s/ James F. Rogers
James F. Rogers, Esq.
Joseph F. Scavetta, Esq.
LATHAM & WATKINS
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, DC 20004
(202) 637-2215

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