

Before the  
Federal Communications Commission  
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	
Spectrum Aggregation Limits	)	WT Docket No. 98-205
for Wireless Telecommunications Carriers	)	
	)	
Cellular Telecommunications Industry	)	
Association's Petition for	)	
Forbearance From the 45 MHz	)	
CMRS Spectrum Cap	)	
	)	
Amendments 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 SBC WIRELESS, INC.

Comes now SBC Wireless, Inc. ("SBCW")<sup>1</sup> on behalf of itself, its subsidiaries and affiliates, and files these Reply Comments in the above-referenced docket.

I. INTRODUCTION

The Comments filed in this docket strike several recurring themes:

- the wireless market is fully competitive,

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<sup>1</sup> SBCW files on behalf of itself and its subsidiaries Southwestern Bell Wireless Inc., Southwestern Bell Mobile Systems, Inc., Pacific Bell Wireless ("PBW"), and SNET Mobility, and the affiliates and partnerships of each, collectively referred to as "SBCW."

- the commercial backdrop that existed when the spectrum cap (“cap”) rules were written no longer exists,
- in today’s wireless market place, the cap has become an impediment to innovation, and
- other safeguards exist to ensure competitive viability.

These facts override the self interest promoted by some commenters, for within this framework the Commission is obligated to eliminate rules that are no longer necessary or feasible.<sup>2</sup>

## II. REPLY TO INDIVIDUAL COMMENTS

America One Communications argues that a trend towards mergers in the industry militates in favor of maintaining the cap.<sup>3</sup> This argument overlooks the role of the Department of Justice<sup>4</sup> in a major transaction, as well as the fact that the Commission’s authority to review transfers of control<sup>5</sup> provide sufficient safeguards to address the concerns stated in these comments. America One’s comments regarding resale are not based in fact and are outside the scope of this docket.

MCI Worldcom<sup>6</sup> cites a purely speculative fear that there is a potential for increased consolidation. However, MCI does not explain why the current ability of the Commission to review “potential” consolidation before it could become fact, which will survive the elimination of the cap, is an insufficient safeguard against that unsubstantiated “potential.” In fact, such safeguards are sufficient and render MCI’s arguments moot.

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<sup>2</sup> See Third Annual CMRS Competition Report at 2-4.

<sup>3</sup> Comments of America One Communications Inc. at p. 3; see also Comments of Digiph PCS, Inc. at p. 7.

<sup>4</sup> Hart-Scott-Rodino Antitrust Improvement Act, 15 U.S.C. § 18.

<sup>5</sup> 47 C.F.R. § 22.137

<sup>6</sup> Comments of MCI Worldcom at pp. 6-7

The Personal Communications Industry Association (“PCIA”) cites the fact that some licensed PCS carriers have not constructed their networks as evidence that the wireless market is not fully competitive. There is no logical or factual argument that elimination of the cap will discourage a licensed carrier from building out its network, or, conversely, that continuation of the cap will encourage build-out. The cap has been in place since PCS licenses were awarded, many of which are several years old. The failure to build-out a license has a genesis in issues wholly unrelated to outdated regulation. The PCIA cannot argue with the fact that PCS carriers generally have made tremendous competitive inroads, and many have built costly and effective digital networks to compete with incumbent cellular carriers. SBCW has done so with its own PCS licenses in California, Nevada, and Tulsa, Oklahoma. Therefore, PCIA’s concern regarding recalcitrant entrants is neither persuasive nor universal.

To argue the Commission cannot change the cap rule because it existed when PCIA members bid on licenses is untenable.<sup>7</sup> This argument would suggest the Commission cannot alter any relevant rule that was in place when a license was awarded. This conclusion is clearly contrary to the Commission’s *obligation* to reassess its rules and regulations in light of a changing competitive environment.<sup>8</sup>

Sprint PCS argues that the cap “enhances” new technologies.<sup>9</sup> This argument is not borne out by the facts. In a fully utilized cellular network, there exists a valid and increasing capacity issue. When the network is fully engaged in providing voice and current features to customers, and the number of customers and minutes of use continues to increase, there is a

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<sup>7</sup> PCIA Comments, at pp. 10-11.

<sup>8</sup> 47 U.S.C. § 161

<sup>9</sup> Comments of Sprint PCS at p. 10, See too, Comments of PCIA at p. 12-14.

very real exhaustion issue that Sprint ignores. Additional spectrum is necessary to promote 3-G services and future innovations for all wireless customers.

Sprint PCS also argues that proposed mergers could decrease competition.<sup>10</sup> Sprint is conveniently ignoring the fact that both the Bell Atlantic/GTE and the SBC/Ameritech proposed mergers are subject to review by the Department of Justice and approval of transfer by the Commission. The ultimate approval of either of these mergers will occur only after these agencies have, within their various spheres of responsibility, fully investigated the competitive aspects of these transactions. Sprint PCS is simply wrong in its assertion that the overlap markets that exist in the SBC/Ameritech merger would be operated by a single carrier.<sup>11</sup>

In short, the comments filed that oppose elimination of the cap are based upon illusory fears of market consolidation that are insupportable given the continuing structure in place to review wireless transactions. Other arguments, such as the ability to offer advanced service on current spectrum, are not founded where networks are fully utilized delivering basic services.

There is no supportable argument that wireless is not fully competitive. If a given PCS carrier has not built-out for economic or other funding issues, the continuation of the cap is not going to miraculously spur that reluctant carrier to enter the competition. If it has not done so thus far, under the cap there is no valid presumption that continuation of the cap would prompt it to do so in the future.

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<sup>10</sup> Sprint PCS, at p. 7.

<sup>11</sup> See Joint Application of SBC Communications and Ameritech in CC Docket No. 98-141; Public Interest Showing at p. 10 (filed July 24, 1998) (“While SBC and Ameritech have competing cellular systems in Chicago and St. Louis, they will be disposing of their overlapping cellular interests ... .”)

However, for every PCS carrier that has not built out its network, there is another PCS carrier who has built out and who is competing today and would continue to do so if the cap was eliminated. Not only do PCS carriers provide competition, but so do ESMR providers. This increased competition is viable and has resulted in a market place that no longer requires the artificial limitation of the spectrum cap.

III. CONCLUSION

The cap should be eliminated in light of the competitive wireless market place that exists today. Existing and continuing safeguards will ensure review of wireless transactions with an eye towards competition without the unnecessary imposition of the cap. Likewise, elimination of the cap will spur innovation and more rapid introduction of new technologies.

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DATED: February 10, 1999

CERTIFICATE OF SERVICE

I, Carol L. Tacker, hereby certify that I have caused to be served on this date, a true copy of the foregoing Reply Comments by U.S. First Class Mail, postage prepaid, to the parties on the attached service list.



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