

ORIGINAL

February 10, 2000

EX PARTE OR LATE FILED

RECEIVED

FEB 11 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Ex parte Submission:

*Implementation of the Commission's Rules To Establish New Personal
Communications Services, Narrowband PCS*

*General Docket No. 90-314
ET Docket No. 92-100
PP Docket No. 93-253*



Personal
Communications
Industry
Association

Dear Ms. Salas:

Enclosed please find a written *ex parte* contribution to the referenced docket. Please incorporate the document entitled "White Paper Supporting Elimination of the Narrowband PCS Spectrum Aggregation Limit" in the referenced docket.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter are hereby filed with your office. Electronic and hand-delivered copies are being supplied to the individual FCC staff members listed below.

Please refer any questions in connection with this matter to me at 703-535-7482.

Sincerely,

Robert L. Hoggarth
Senior Vice President, Paging & Messaging

cc: Kathleen O'Brien Ham
Mark Bollinger
Walter Strack
Pieter Van Leeuwen
Diane Conley
Alice Elder

Handwritten initials "JH" and a signature line.



**Personal
Communications
Industry
Association**

RECEIVED

FEB 11 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**WHITE PAPER SUPPORTING ELIMINATION
OF THE NARROWBAND PCS SPECTRUM AGGREGATION
LIMIT**

**prepared by the
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

**for submission to the
FEDERAL COMMUNICATIONS COMMISSION**

February 10, 2000

SUMMARY	3
I. INTRODUCTION.....	4
II. REMOVAL OF THE SPECTRUM AGGREGATION LIMIT WILL PROVIDE NARROWBAND PCS PROVIDERS REGULATORY PARITY.....	5
A. Broadband CMRS Licensees Do Not Have Similar Aggregation Limits.....	5
B. Similar Narrowband Services Are Not Restricted By The Narrowband PCS Aggregation Limits.	7
III. FUNDAMENTAL CHANGES IN THE WAY NARROWBAND PCS SERVICES ARE PROVIDED JUSTIFY REPEAL OF THE SPECTRUM AGGREGATION LIMIT.....	8
A. Evolution of the Mobile Wireless Messaging Market.	8
B. Paging/Messaging Services Are Now Facing Direct Competition From Broadband Mobile Service Providers.....	9
C. The Narrowband PCS Spectrum Aggregation Limit Artificially Hinders Consolidation of Traditional Messaging Carriers.....	13
1. Consolidation of these carriers is potentially critical to the future of competitive advanced messaging services.	13
2. The spectrum aggregation limit unnecessarily hinders consolidation.....	16
III. REPEAL OF THE NARROWBAND PCS SPECTRUM AGGREGATION LIMIT WILL NOT CAUSE UNDUE SPECTRUM CONCENTRATION FOR THE PROVIDERS OF MESSAGING SERVICES.	16
IV. REPEAL OF THE NARROWBAND PCS SPECTRUM AGGREGATION LIMIT IS CONSISTENT WITH COMMISSION PRECEDENT.	18
CONCLUSION	22

SUMMARY

The Personal Communications Industry Association (PCIA) is the leading international trade association representing the personal communications services (PCS) industry. PCIA represents the chief providers of wireless voice and data communications to both consumers and businesses. PCIA's member companies include PCS licensees and others providing commercial mobile radio service ("CMRS") including cellular, paging, ESMR, SMR, mobile data, cable, computer, manufacturing, and local interexchange sectors of the industry, as well as technicians, wireless systems integrators, communications site owners, distributors, service professionals, and private corporate system users.

Based on PCIA's thorough knowledge of the CMRS industry, and as documented below, PCIA has concluded that the narrowband PCS spectrum aggregation limit unnecessarily hampers wireless messaging providers from competing in the CMRS marketplace. The narrowband PCS component of the mobile wireless industry has changed dramatically since the aggregation limit was adopted in 1993; it now serves neither the purposes for which it was adopted nor the broader public interest. Indeed, the narrowband PCS spectrum aggregation limitation impedes competition in the advanced messaging services market because it prevents narrowband PCS licensees from engaging in competition-enhancing transactions and from acquiring sufficient spectrum to adequately compete with licensees in other services who provide advanced messaging services but are not subject to this spectrum limitation, many of whom are able to aggregate 45 MHz of spectrum.

PCIA therefore urges the Commission to repeal the narrowband PCS spectrum limitation.

I. INTRODUCTION.

The narrowband PCS spectrum is divided into 26 channels, as follows¹:

- Five 50 kHz/50 kHz paired channels licensed nationwide
- Three 50 kHz/12.5 kHz paired channels licensed nationwide
- Three 50 kHz unpaired channels licensed nationwide
- Two 50 kHz/50 kHz paired channels licensed in large regions
- Four 50 kHz/12.5 kHz paired channels licensed in large regions
- Two 50 kHz/50 kHz paired channels licensed in Major Trading Areas
- Three 50 kHz/12.5 kHz paired channels licensed in Major Trading Areas
- Two 50 kHz unpaired channels licensed in Major Trading Areas
- Two 50 kHz/12.5 kHz paired channels licensed in Basic Trading Areas²

In 1993, the Commission adopted Section 24.101(a) of the FCC's rules,³ which prohibits narrowband PCS licensees from holding an ownership interest in more than three of the 26 narrowband PCS channels in any geographic area. Thus, the rules prohibit a single entity from holding licenses for more than three 50 kHz channels, paired or unpaired (*i.e.*, no more than 150 kHz paired with 150 kHz) in any geographic area. The Commission established this 300 kHz narrowband PCS spectrum aggregation limit in 1993, reasoning that some limits on the holding of multiple licenses are appropriate to ensure that narrowband PCS is offered on a competitive basis.⁴ The Commission also justified the three channel narrowband PCS limit by saying:

¹ See 47 C.F.R. § 24.129.

² The channels designated for licensing by Major Trading Area and by Basic Trading Area have not yet been auctioned.

³ See 47 C.F.R. § 24.101(a).

⁴ *Amendment of the Commission's Rules to Establish New Personal Communications Services, First Report and Order*, 8 FCC Rcd 7162, 7168 (1993). The spectrum aggregation limit was not viewed as a protection against spectrum warehousing. Instead, the Commission found that the cost of spectrum at auction coupled with construction requirements provides a significant disincentive to warehouse spectrum. *Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order*, 9 FCC Rcd 1309, 1313 (1994).

[W]e also want to provide opportunities for licensees to aggregate or combine channels to provide multiple offerings or wider bandwidth services. . . . This plan will allow PCS providers considerable flexibility to combine channels to accommodate specific service needs while also ensuring competition in the provision of services.⁵

The purpose of the narrowband PCS spectrum cap X affording provider flexibility while ensuring competition X is unachievable in an intensely competitive wireless messaging marketplace in which narrowband providers compete with other broadband and narrowband providers who are not encumbered with similar, restrictive limitations on spectrum aggregation. Services offered by narrowband PCS carriers compete directly with those offered by their broadband competitors, but a *single*, broadband PCS or cellular carrier holds in a *single* license more spectrum and, in some cases, many times more, than the entire FCC allocation for narrowband PCS spectrum. As they receive increasing competition from cellular, broadband PCS, digital SMR and other operators, narrowband carriers need to be able to acquire additional spectrum on which to provide advanced messaging services in order to compete. To have the flexibility envisioned by the Commission when adopting the narrowband spectrum cap, narrowband PCS carriers must be able to utilize more than three narrowband PCS licenses in any market.

II. REMOVAL OF THE SPECTRUM AGGREGATION LIMIT WILL PROVIDE NARROWBAND PCS PROVIDERS REGULATORY PARITY.

A. Broadband CMRS Licensees Do Not Have Similar Aggregation Limits.

In establishing the CMRS requirements, the Commission determined that its goal was to create a symmetrical regulatory framework in order to foster economic growth and expanded

⁵ *Id.*

service to consumers through competition.⁶ Additionally, the Commission determined that services should be considered substantially similar if they compete or have the reasonable potential, broadly defined, to compete in meeting the needs and demands of consumers.⁷ Thus, broadband and narrowband service licensees should be subject to similar regulatory requirements where these services compete.

However, broadband service providers are not limited to so strict a spectrum aggregation limit as our narrowband PCS licensees. The Commission has determined that broadband licensees, who have 189 MHz of spectrum currently allocated subject to the cap, may not aggregate more than 45 MHz in a given area.⁸ This means that a broadband provider is able to accumulate almost 24 percent of all spectrum allocated to its service without invoking any aggregation limits. Additionally, other broadband spectrum such as the Wireless Communications Service spectrum allocated at 700 MHz and 2.3 GHz, do not count towards the broadband spectrum limit. In contrast, narrowband PCS providers, while not subject to the broadband spectrum cap limit, are restricted to 300 kHz of the available 2 MHz of spectrum or only 15 percent of all spectrum.

As is discussed in more detail below in Section III, broadband licensees are now effectively competing with narrowband providers for messaging services. With the critical mass of spectrum that broadband providers are able to aggregate, narrowband providers are currently at a severe disadvantage with a mere 300 kHz of spectrum. Elimination of the narrowband spectrum

⁶ See e.g., *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988 at ¶ 23.

⁷ *Id.* at ¶ 24.

⁸ See 47 C.F.R. § 20.6.

limitation will further the Commission's goals of providing expanded, competitive service for consumers and ensuring that all substantially similar services are regulated in a similar fashion.

B. Similar Narrowband Services Are Not Restricted By The Narrowband PCS Aggregation Limits.

In addition to competing with broadband licensees, narrowband PCS competes with 800 MHz SMR, 900 MHz SMR and 220 MHz SMR providers in the two-way messaging market. Narrowband PCS carriers compete with mobile data carriers such as AMSC's ARDIS unit and BellSouth Wireless Data, who provide services using SMR spectrum. In many markets, such carriers hold licenses for far more than the 150 kHz to which narrowband PCS carriers are limited.⁹ In fact, 800 and 900 MHz SMR carriers are permitted to accumulate all SMR spectrum, with only 10 MHz counting towards the broadband CMRS spectrum cap limits.¹⁰ 220 MHz SMR providers are able to accumulate 220 MHz spectrum without limitation,¹¹ and are not subject to the broadband CMRS cap. Therefore, significant competitors in the wireless messaging market have effectively been given a regulatory advantage over the narrowband PCS service. As demand for wireless data services increases, driven by the explosive growth of the Internet and email, the effects of this handicap will be even more acutely felt. PCIA therefore urges the Commission to level the regulatory playing field for narrowband PCS carriers and enable equitable competition between messaging service providers by eliminating the narrowband PCS spectrum limitations.

⁹ In some markets, BellSouth Wireless Data holds licenses for 500 kHz of outbound spectrum, and in many others, for 375 kHz of outbound spectrum.

¹⁰ See 47 C.F.R. § 20.6(b).

¹¹ See 47 C.F.R. § 90.739.

III. FUNDAMENTAL CHANGES IN THE WAY NARROWBAND PCS SERVICES ARE PROVIDED JUSTIFY REPEAL OF THE SPECTRUM AGGREGATION LIMIT.

A. Evolution of the Mobile Wireless Messaging Market.

Paging services were first provided to the public over frequencies allocated in the late 1940s, with a simple service offering either a beep to alert subscribers that someone was attempting to reach them, or a rudimentary voice page. It was not until the 1980s that pagers were introduced that displayed a telephone number entered by the calling party, thereby allowing the paging subscriber to return the page.¹² This type of paging device allowed paging subscribers to remain in touch at all times for the first time.

At around the same time, as the FCC began to allocate new spectrum,¹² paging services began to expand. Soon, new entrants were providing alphanumeric display paging, which offered text messaging to paging customers, at prices considerably higher than they are today.

When cellular telephone service began in the mid-1980s, some industry analysts believed that cellular would supplant paging altogether. Because of the high price for cellular service in its early days, however, as well as other factors (such as short battery life, limits on the scope of geographic coverage and the size of the phone), paging carriers were able to market paging service as a complement to cellular service. A cellular subscriber (who also subscribed to paging service) could receive a page and then return the call at his/her convenience using a cellular phone. Even

¹² See Amendment of Parts 2, 22 and 90 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band, and to Establish Other Rules, Policies and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Services and the Private Land Mobile Radio Services, Second Report and Order, 91 F.C.C. 2d 1214 (1982). Since then, the FCC has permitted paging to be offered over numerous other frequency allocations, among them, cellular, PCS, SMR, 220 MHz, FM subcarrier channels, to name a few.

though technological developments improved cellular phone size, geographic scope and battery life, the cost to subscribe to cellular service remained high until the mid- to late-1990s, when additional competition in the form of new broadband PCS carriers forced incumbent cellular carriers to reduce prices. The advent of broadband PCS enabled enhanced capacity and better power control for wireless voice handsets which in turn has allowed broadband carriers to greatly reduce prices and extended the battery life of broadband devices.

Moreover, the entry of new broadband providers stimulated not only price competition, but also service competition. Both cellular and PCS carriers expanded their geographic reach both through roaming and other types of affiliation agreements. The services offered expanded from plain old two-way voice to encompass both numeric and alphanumeric services traditionally offered by carriers over paging frequencies. These types of services, now known as short messaging, are available from most broadband carriers, and in effect, are ultimately capable of supplanting those services that have traditionally been offered by narrowband carriers.

Furthermore, the explosion in popularity of email and Internet access has driven the rapid growth in demand for wireless data and messaging capabilities. When the Commission initially decided to allocate spectrum for narrowband PCS, the Internet was not accessible to the general public nor had email gained the widespread acceptance that it has currently. As such, consumers are demanding that their email, calendar, address book, Internet news and data be supplied to them no matter their location.

B. Paging/Messaging Services Are Now Facing Direct Competition From Broadband Mobile Service Providers.

The segmentation of the wireless messaging market discussed above has been shattered by

the economics of digital technology. In today's digital marketplace, broadband carriers are able not only to offer short messaging services bundled with voice services, but also to offer these additional services at little or no additional cost to the subscriber.¹³ Clearly, paging carriers are facing a radically different competitive landscape than existed only a few short years ago.

A recent report found that the purchase of a cellular phone is one of the top reasons paging customers gave for discontinuing their paging service.¹⁴ Another study showed that almost one-fifth of potential turnover customers are considering replacing their pagers with mobile phones.¹⁵

The financial markets have naturally recognized that paging companies are facing a

¹³ See U S WEST Wireless website at http://www.uswestwireless.com/advanced_pcs/learn/dataservices/data_services.html (site visited Dec. 13, 1999) (advertising PCS phone replacing pagers); Other carriers are offering and advertising similar services. See Sprint PCS website at <http://www.sprintpcs.com/service'skb/paging.html> (site visited Nov. 18, 1999) (advertising multiple paging service options using Sprint PCS phone/service); AT&T Wireless website at http://www.attws.com/personal/txt_msg/main.html (site visited Nov. 18, 1999) (advertising one-rate plan for packages of services that include text messaging along with voice services); Bell Atlantic Mobile website at http://www.bam.com/ne/ne_tmsg_ben.html (site visited Dec. 13, 1999) (advertising service packages that include voice along with text messaging services); Cellular One website at http://www.getcellone.com/pro_serv2html (site visited Dec. 13, 1999) (advertising Adigital edge≡ plans which are flat-rate plans for service packages that include messaging along with phone service); Omnipoint website at http://www.omnipoint.com/store/omnirates/pa_ph/welcome.html (site visited Dec. 13, 1999) (advertising monthly pricing plans for packages of services that include numeric paging along with digital voice service); Powertel website at http://www.powertel.com/products_main.asp (site visited Dec. 13, 1999) (advertising one-rate plans for packages of service that include short messaging along with voice services). See also Andrew Seybold's *OUTLOOK*, June 30, 1999, at 6-8.

¹⁴ The top three reasons for discontinuing use of a pager were: AChange in Business situation≡ (23%); ABought a cell phone≡ (18%); and ADidn't need it≡ (17%). PCS Americas U.S. Paging Operations Marketing Research and Information, *The Market Monitor Report: Insights to the Adult Paging Market*, July 1999, at 331.

¹⁵ *Id.* at 41, citing *Customer Churn Stirs Up Paging Industry*, News Release, The Strategis Group, Nov. 5, 1998.

different and more significant competitive threat as a result of the introduction of digital cellular and PCS services. Merrill Lynch Capital Markets has concluded that there is a general sluggishness in the traditional paging sector with increased competition from other mobile wireless alternatives X especially lower cellular and PCS pricing≡ and it Aremain[s] concerned about the continued competition from the cellular and PCS operators¹⁶ In addition, a recent report by Morgan Keegan & Co. states:

We believe investor concern about the future outlook for the paging industry was compounded by the launch of broadband PCS (AbPCS≡) services using digital technology . . . in the second half of 1996. The launch of bPCS services, which is primarily in competition with existing cellular services, was promoted as having a capability to offer multiple services, such as voice, paging and two-way messaging, off the same handset. Initial pricing of bPCS was aggressive, with several operators offering unlimited service for a low fixed price for a year. . . . We believe this exacerbated investor concern about the outlook for paging carriers. This has continued to the present. . . .¹⁷

The competitive threat to paging and other narrowband services posed by broadband services is accelerating. Indeed, advances in technology and changing broadband pricing structures enable broadband mobile service providers to offer services that are substitutable for, and not just complimentary to, the paging device. The Commission itself has recognized that

¹⁶ D. Wuh, *et al.*, *Paging Network*, Merrill Lynch Capital Markets *available in* WL Investext Report No. 2858631, at p. 2 (May 12, 1999). Similar concerns are reflected in numerous other reports from financial analysts. C.L. Trabuco, *United States Paging Industry*, Wheat First Union *available in* WL Investext Report No. 2773257, at 1 (Dec. 16, 1998) (AWheat First Union≡) (AThe industry has experienced strong competition from other wireless operators, including cellular and PCS carriers.≡); *id.* at 6 (A>Pure-play= paging operators will continue to contend with competition from the messaging divisions of larger telecom entities such as AirTouch and BellSouth, along with the competition fostered by the bundling of short messaging services with cellular and PCS services.≡).

¹⁷ R.P. Kasargod, *Paging Network*, Morgan Keegan & Co., Company Report, *available in* WL Investext Report No. 2907718, at 5 (July 28, 1999).

Digital technology employed by digital cellular, broadband PCS, and digital SMR providers allows two-way handsets to act as one-way pagers and advanced messaging devices,¹⁸ and licensees in the Phase II 220 MHz Service are also permitted to provide voice, data, paging and fixed communications.¹⁹ Further, the Commission's Wireless Telecommunications Bureau recently has found that services offered by cellular and broadband PCS firms are increasingly competing with services offered by paging and messaging providers.²⁰ PCIA believes in fact that consumers are using these wireless services more interchangeably now, and that this trend will continue unabated. Several satellite providers also offer one-way paging and advanced messaging services.²¹ That these offerings are available as additional services from a variety of broadband providers for little or no cost to consumers constrains the price that can be charged for traditional paging and advanced messaging services offered over frequencies specifically allocated for narrowband services.

In addition, with one-rate plans offered by broadband providers which provide wireless

¹⁸ *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 14 FCC Rcd 10145, 10185 (1999) (A Fourth CMRS Competition Report).

¹⁹ *Id.* at 10194.

²⁰ *In re Application of Various Subsidiaries and Affiliates of GEOTEK Communications, Inc., Debtor-in-Possession, Assignors, and Wilmington Trust Company or Hughes Electronics Corporation, Assignee*, File Nos. 0000013318 *et al.*, *In re Applications of Wilmington Trust Company or Hughes Electronics Corporation, Assignors and FCI 900 Inc., Assignee*, File Nos. 911830, *et al.*, *For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, Memorandum Opinion and Order*, DA 00-89, &27 (rel. Jan. 14, 2000).

²¹ *Fourth CMRS Competition Report*, 14 FCC Rcd at 10187.

services including messaging for a single monthly rate becoming increasingly prevalent, customers are more inclined to leave their broadband phones turned on and give out their mobile number, allowing them to receive calls without incurring additional air time charges. As a result, consumers no longer need a pager to use as a screen for mobile phone calls and broadband mobile phone service is brought into even more direct competition with paging. In short, because broadband providers can now package together narrowband services with broadband services, broadband carriers now directly compete with narrowband PCS carriers.

For narrowband carriers, messaging is their primary offering. For broadband carriers, messaging is an incidental service bundled with voice and other services. To survive, narrowband carriers must be able to offer services that are distinct from the essentially free or reduced-price messaging services offered by broadband carriers. To do this, narrowband carriers must have what broadband carriers possess today X the ability to hold enough spectrum to offer new and innovative services, with high information content. Clearly, 300 kHz of narrowband spectrum is not enough.

C. The Narrowband PCS Spectrum Aggregation Limit Artificially Hinders Consolidation of Traditional Messaging Carriers.

1. Consolidation of these carriers is potentially critical to the future of competitive advanced messaging services.

In addition to the increasing direct competition from broadband providers, paging carriers currently face other financial and industry concerns. There is such robust competition in the traditional one-way paging market that services have been essentially commoditized, with

competition based primarily on price and coverage.²² Price pressures have reduced operating margins down to a level that provides little opportunity for profit making, driving down stock market valuations of most paging companies. Wall Street's perception of the paging industry was further damaged by a report by The Strategis Group estimating that almost every paging carrier experienced a decline in its subscriber growth rates in the first half of 1999.²³

To combat declining subscriber growth and increasing competition, numerous narrowband carriers have committed to deploying advanced messaging services over narrowband PCS spectrum. Thus, these carriers also have to contend with the substantial costs of building-out narrowband PCS networks and deploying new services. These mounting financial difficulties are now endemic and have driven some companies X such as CONXUS Communications, Inc. and MobileMedia Corporation X to seek bankruptcy protection.

To survive, narrowband providers must have sufficient spectrum and other resources in order to be able to offer new, innovative services X including wireless data services such as wireless e-mail and Internet access X to successfully compete with their broadband competitors. Through consolidation, some narrowband carriers can become stronger competitors in the newly broadened messaging market by realizing economies of scale and scope and achieving cost efficiencies through a combined company=s size. These benefits will be meaningful, however, only if these carriers are permitted to hold enough spectrum to enable them to roll-out new, innovative products and services in competition with the broadband companies with whom they

²² *Fourth CMRS Competition Report*, 14 FCC Rcd at 10180-81, n.196.

²³ The Strategis Group, *The State of the U.S. Paging Industry: 1999*, § 1.1.1 (November 1999).

compete on a day-to-day basis.

Mergers have already begun to reshape narrowband service providers. As the Commission has recognized, two consolidations X Metrocall with AT&T's Advanced Messaging Division and Arch Communications Group with MobileMedia X have been completed in the last year, along with a number of smaller mergers.²⁴ These mergers reflect the recognition that larger, stronger companies with greater resources will be better able to meet the demand for new and innovative messaging services at competitive prices. Further consolidation among narrowband carriers is now taken as a given by industry analysts, one of whom has written about the continued trend toward consolidation into major national companies²⁵

Recent events confirm this trend toward consolidation in the narrowband industry. Arch Communications Group, Inc. and PageNet, two large paging companies, have agreed to merge.²⁶ Further, Metrocall recently announced new investments from AT&T Wireless and PSINet, among others, in a move it said was designed to better position the company to enter the Internet data and two-way messaging markets.²⁷

²⁴ *Fourth CMRS Competition Report*, 14 FCC Rcd at 10183.

²⁵ D.H. Leibowitz, *Broadcasting Cable and Wireless*, Donaldson, Lufkin & Jenrette Securities, An Industry Report, available in WL Investext Report No. 2812679, at 3 (Jan. 8, 1999).

²⁶ The Arch/PageNet merger is currently awaiting antitrust and other regulatory approvals. The combined company would hold five narrowband PCS licenses if allowed by the Commission.

²⁷ See Company News Releases: AAT&T Wireless to Exchange Metrocall Preferred for Common Stock: AT&T Wireless Will Be Largest Metrocall Common Stockholder (found at http://biz.yahoo.com/prnews/000203/va_metroca_2.html); and APSINet and Hicks, Muse, Tate & Furst Make Significant Investment in Metrocall: Each Company to Invest

2. The spectrum aggregation limit unnecessarily hinders consolidation.

As shown above, consolidation is critical for narrowband PCS carriers to compete in the new messaging marketplace, especially as that marketplace expands to include wireless data services. Broadband carriers have more than enough spectrum to provide advanced messaging and data services along with voice and other services, so narrowband PCS carriers must be given the flexibility to combine forces to create competitors of sufficient size and spectrum resources to compete in this newly broadened messaging market. Under current FCC rules, such mergers are virtually guaranteed to run afoul of the narrowband PCS spectrum aggregation limit, requiring carriers to divest one or more narrowband PCS licenses.²⁸ Declining valuations, however, have reduced the value of narrowband PCS licenses to significantly less than their auction prices, and carriers will be unlikely to recover their investment if they are forced to divest a license. The current narrowband PCS spectrum aggregation limit, therefore, stands as a major impediment to the creation of narrowband companies whose financial strength will enable them to effectively compete with their much larger and better financed competitors. For this reason, the spectrum aggregation limit contravenes the public interest.

III. REPEAL OF THE NARROWBAND PCS SPECTRUM AGGREGATION LIMIT WILL NOT CAUSE UNDUE SPECTRUM CONCENTRATION FOR THE PROVIDERS OF MESSAGING SERVICES.

Obviously, consolidation will reduce the number of separate carriers who hold narrowband

More Than \$17 Million for Major Stake in Metrocall's Wireless Data and Messaging Future (found at http://biz.yahoo.com/prnews/000203/va_metroca_3.html).

²⁸ Some narrowband wireless data providers use SMR spectrum and thus are not prevented from consolidating by the narrowband PCS spectrum aggregation limit.

PCS channels, and the Commission may be concerned that repealing the spectrum aggregation limit will unduly concentrate narrowband PCS spectrum in too few hands. Respectfully, this is not a relevant inquiry given the realities of today's messaging marketplace. Narrowband PCS carriers cannot be said to compete in a separate market from broadband PCS, digital cellular or enhanced SMR carriers, and the messaging services provided by narrowband and broadband providers can no longer be easily differentiated. Furthermore, as demand for new data services increases, narrowband providers need to be in a position to compete aggressively.

Though repeal of the spectrum aggregation limit will allow narrowband PCS licensees to have more spectrum than the FCC originally contemplated, they still will have far less than their competitors in broadband PCS and other services. Allocations of spectrum for broadband services that now compete with those provided by narrowband carriers contain hundreds of times more capacity than is required for advanced messaging services, giving broadband carriers the ability to provide these services at little or no cost.²⁹

Moreover, technological network improvements, such as low powered microcells that can be more easily located on and in buildings, have improved digital cellular and broadband PCS coverage and negated the advantage paging companies traditionally had in terms of building penetration. The difference in battery life between pagers and mobile phones is narrowing as mobile phone technology improves and pagers provide more and more sophisticated services. All of these factors point to ever-increasing competition between advanced messaging service providers and broadband providers.

²⁹ As noted above, broadband carriers are offering messaging and data services in a bundled package with voice services, and in their advertising are urging customers to abandon their pagers.

Moreover, the Commission has yet to auction the MTA and BTA narrowband PCS licenses that have been allocated, and an additional 1 MHz of narrowband PCS spectrum is currently being held in reserve.³⁰ Also, additional spectrum is being or can be made available. The Commission has scheduled other auctions in the near term, including Economic Area Grouping licenses in the 700 MHz band which the Commission has stated can be used to provide a wide range of advanced wireless services.³¹

IV. REPEAL OF THE NARROWBAND PCS SPECTRUM AGGREGATION LIMIT IS CONSISTENT WITH COMMISSION PRECEDENT.

Relevant precedent demonstrates that the Commission has been willing to amend its spectrum rules so as to accommodate the needs of licensees to remain competitive or to respond to changing market conditions.

In the mid-1980s, the Commission determined that cellular licensees needed additional allocated spectrum in order to meet current demand and future growth, and it amended its rules to allocate additional spectrum to the two cellular carriers in each market.³² In that circumstance, the Commission flexibly applied its spectrum policies in response to licensees' needs and market

³⁰ Consequently, more than one-third of the total spectrum allocated for narrowband PCS remains to be auctioned at some future date.

³¹ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, *First Report and Order*, FCC 00-5, & 1 (rel. January 7, 2000).

³² *Amendment of Parts 2 and 22 of the Commission Rules Relative to Cellular Communications Systems, Report and Order*, 2 FCC Rcd 1825, 1826 (1986), *reconsideration denied*, 2 FCC Rcd 2515 (1987), *further reconsideration denied*, 4 FCC Rcd 6016 (1989).

developments. Narrowband carriers today face an analogous circumstance X the narrowband PCS spectrum cap prevents them from responding to changing market conditions.

More recently, in the *Spectrum Cap Order* the Commission raised the broadband CMRS spectrum cap from 45 to 55 MHz in rural areas, recognizing that because of different competitive conditions in these markets, strict imposition of a 45 MHz spectrum cap is not warranted. Further, the Commission declined altogether to adopt a spectrum aggregation limit in its recent order establishing service rules for the 746-764 and 776-794 MHz bands, or to count license holdings in these bands under the 45/55 MHz CMRS spectrum cap, despite the fact that these bands may be used for mobile services comparable to cellular, broadband PCS and enhanced SMR spectrum.³³ The Commission concluded that this new spectrum should *not* count against the broadband CMRS spectrum cap because the existing CMRS cap is a sufficient safeguard against consolidation of spectrum from mobile services:

Recognizing that the spectrum cap limits were set on the basis of the particular amount of spectrum (180 megahertz) available at that time for CMRS, we indicated in the *Spectrum Cap Report and Order* that we would evaluate whether the cap should apply, or be adjusted, at the time that we made more spectrum available for CMRS. It has been our expectation that, as we made more spectrum available for CMRS services, we would either adjust the cap upward or refrain from including the new spectrum within the scope of the cap. . . . We have determined that the 747-762 MHz and 777-792 MHz bands, if used to provide CMRS, should not count against the 45/55 megahertz spectrum cap.³⁴

³³ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, *First Report and Order*, FCC 00-5, & 48 (rel. January 7, 2000).

³⁴ *Id.* at && 52-53. The Commission has similarly declined to adopt spectrum caps in other recent orders regarding spectrum auctions for LMDS, WCS and 220 MHz SMR services. *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, Report and Order*, 12 FCC Rcd 10785, 10787 (1997); *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by Private Land Mobile Radio Service, Third Report and Order and Fifth*

The Commission's willingness to adapt its spectrum policy to market realities is further illustrated by the grant of waivers to Nextel Communications, Inc. (then known as Fleet Call) allowing the company to aggregate spectrum for the construction and operation of innovative wide-area SMR systems.³⁵ The Commission's action allowed for creation of base station configurations that facilitated deployment of a new and innovative technology to react to marketplace realities and meet future demands.³⁶

As discussed above, the market for advanced messaging services is not dominated by a few large, well-financed carriers. Instead, it is intensely competitive, and it is characterized by none of the features that led the Commission to continue application of the CMRS spectrum cap. This market includes a variety of service providers, ranging from relatively small traditional paging service providers to the large broadband carriers. Narrowband PCS licensees need to have access to sufficient spectrum to develop and deploy new and innovative services to remain competitive and meet future demand. The narrowband PCS spectrum aggregation limit restricts this access. The spectrum aggregation limit no longer serves the Commission's original objective of ensuring that narrowband PCS is offered on a competitive basis. Under these circumstances, no reason exists to maintain this rule.

Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 10951 (1997); *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Second Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12626-27 (1997).

³⁵ *Fleet Call, Inc.*, 6 FCC Rcd. 1533 (1991).

³⁶ *Id.* at 1536.

CONCLUSION

The market for wireless messaging services has changed dramatically since 1993 and the narrowband PCS spectrum rules need to change to reflect new market realities. PCIA urges the Commission to repeal the narrowband PCS spectrum aggregation limit in order to permit narrowband providers to compete effectively with other CMRS providers.