

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Installment Payment Financing)
For Personal Communications Services (PCS))
Licensees)

WT Docket No. 97-82

REPLY COMMENTS OF SOUTHERN LINC

By:

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Pursuant to Section 1.415 of the Rules of the Federal Communications Commission, Southern Communications Services, Inc., d/b/a Southern LINC ("Southern LINC") respectfully submits Reply Comments in response to the comments filed in the *Further Notice of Proposed Rulemaking* ("FNPRM") released June 7, 2000 in the above-captioned matter.¹

INTRODUCTION

In the FNPRM, the FCC sought comment on a number of issues pertaining to the upcoming broadband Personal Communications Services ("PCS") C and F block auction, designated as Auction No. 35. It received approximately 39 comments in response to the FNPRM, with commenters addressing the various issues. In this pleading, Southern LINC replies to the comments that concern the Commercial Mobile Radio Services ("CMRS") spectrum cap. Southern LINC opposes lifting or revising the spectrum cap for Auction No. 35.

¹ In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Further Notice of Proposed Rulemaking*, WT Docket No. 97-98, FCC 00-197 (June 7, 2000) ("FNPRM").

Southern LINC operates a digital, wide-area Specialized Mobile Radio ("SMR") system classified as a Commercial Mobile Radio Service ("CMRS") under Commission rules. It is the largest centrally switched, state of the art digital 800 MHz SMR system in the world, with an authorized service area of over 127,000 square miles. Sheriffs' departments, emergency management agencies, school systems, and businesses - well over 150,000 users in all - rely on the Southern LINC 800 MHz SMR system for critical communications. The continued viability and growth of Southern LINC is important to all of its current and potential customers, but is particularly important to the public safety community that uses it on a daily basis. By way of example, in the immediate aftermath of Hurricane Opal, Southern LINC 's system was the only telephone service operating in parts of coastal Alabama and Florida where wireline and cellular service were disabled.

Southern LINC is committed to continuing to provide its entire service area with an advanced communications system that meets the unique needs of public utilities, governments, emergency management agencies, ambulance services, and law enforcement. It firmly believes that the spectrum cap will be an important aspect of accomplishing that goal in that it is presently necessary to restrain market concentration and permit meaningful competition.

As a related matter, Southern LINC would note its opinion that the FCC has not allocated an appropriate amount of spectrum to SMR. Southern LINC submits that this is one of the reasons there are so few major players in the SMR marketplace. Given that the FCC has concluded that 800 MHz SMR licensees are entitled to comparable regulatory treatment with

other CMRS providers,² this is a matter that demands additional consideration in a future proceeding.

DISCUSSION

Of the approximately 39 parties submitting comments, only five disagreed with the FCC's tentative conclusion that the CMRS spectrum cap should be retained for Auction No. 35. Their reasons for not retaining the cap can be reduced to two main arguments: (1) the cap is harmful to competition; and (2) the cap will hinder the provision of third generation ("3G") wireless services. As explained below, those arguments are wrong and/or unsubstantiated. Thus, they must be rejected.

A. The Spectrum Cap Is Necessary To Promote Competition.

Several parties opposing retention of the CMRS spectrum cap for Auction No. 35 assert that it is harmful to competition because it "hinder[s] the growth of the most successful competitors."³ This argument is based on a distorted and overly narrow view of "competition," not to mention of what constitutes a "successful competitor." Another reason parties assert for abandoning the cap is that competition in the wireless marketplace has reached a point at which the cap is no longer necessary.⁴ That argument, however, is shortsighted and not grounded in reality. Rather, the true bottom line of this matter was voiced by the FCC just over nine months ago in its *Report and Order* ("*Spectrum Cap Order*") in the *1998 Biennial Regulatory Review - Spectrum Aggregation Limits for Wireless Telecommunications Carriers* ("*Biennial Regulatory*

² In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Amendment, *Third Report and Order*, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, FCC 94-2129, 9 FCC Rcd. 7988, ¶ 94 (Sept. 24, 1994) ("*1994 Third Report and Order*").

³ Comments of The Cellular Telecommunications Industry Association, p. 5; *see also* Comments of Voicestream Wireless Corporation, p. 13.

⁴ Comments of AT&T Wireless Services, Inc., pp. 4-5; Comments of BellSouth Corporation, p. 14 (referencing Petition for Reconsideration of BellSouth Corporation).

Review").⁵ There, the FCC stated its finding that "there remain significant reasons to be concerned about the effects of undue concentration of CMRS spectrum."⁶

The argument that the cap is harmful to competition because it "hinder[s] the growth of the most successful competitors" takes a far too narrow view of competition. Markets are often composed of more than the so-called "most successful competitors," especially developing markets such as CMRS. Also, a carrier does not have to be extremely large to be successful, as this argument implies. Accordingly, public policy should not cater to such a narrow slice of the industry. Rather, the correct view of "competition," and the one espoused by the FCC, encompasses all viable players.

The cap has advanced this true definition of competition. Upon adopting it after notice and comment in September 1994, the FCC was specifically concerned with curbing excessive license aggregation, explaining, "If firms were to aggregate sufficient amounts of spectrum, it is possible that they could unilaterally or in combination exclude efficient competitors, reduce the quality of service available to the public, and increase prices to the detriment of consumers."⁷ Use of the cap turned out to valid, as shown when it was thoroughly reevaluated in the *Biennial Regulatory Review*. In the resulting *Spectrum Cap Order* issued just over nine months ago, the FCC concluded that the cap should be retained.⁸

In addition to the fact that the *Spectrum Cap Order* is barely nine months old, the *FNPRM* notes that as of May 31, 2000, no parties had submitted new material information

⁵ In the Matter of Amendment of 1998 Biennial Regulatory Review - Spectrum Aggregation Limits for Wireless Telecommunications Carriers, *Report and Order*, WT Docket No. 98-205, FCC 99-244 (Sept. 22, 1999) ("*Spectrum Cap Order*").

⁶ *Id.* at ¶ 25.

⁷ *1994 Third Report and Order* at ¶ 248.

⁸ *Spectrum Cap Order* at ¶¶ 1, 62.

indicating that the cap is not still beneficial to competition.⁹ Also, the comments filed in this proceeding do not contain any such information. Therefore, there is no basis on which to conclude that the cap harms competition and should be lifted.

The claims of several parties that there is currently sufficient competition to preclude the need for the cap likewise do not stand up to scrutiny. First, in deciding to retain the cap just over nine months ago, the FCC concluded:

Competition, while growing steadily, is still developing as new licensees enter these markets. Ultimately, we do not want to place in jeopardy the substantial benefits of greater competition in CMRS markets just as they are beginning to be realized. *At the present stage of development of CMRS markets, we find that these risks pose a significant threat to our goals of promoting and protecting competition in CMRS markets.*¹⁰

It is hard to imagine such a strong statement becoming outdated on a national scale in nine months. In fact, the FCC declined to adopt a sunset provision for the cap in the *Spectrum Cap Order*, explaining that it was more appropriate to reassess the CMRS marketplace during the 2000 biennial review.¹¹

The argument that the findings in the *Spectrum Cap Order* are still valid is bolstered by the current telecommunications business climate, which is heavily focused on mergers and acquisitions. When evaluating competition in the CMRS marketplace, the FCC considers the likelihood of reconsolidation erasing competitive gains.¹² At this point in time, even with the spectrum cap in place, major carriers have sought mergers and acquisitions not just of smaller carriers, but *amongst themselves*.¹³ Based on their current behavior, it is highly arguable that if

⁹ *FNPRM* at ¶ 50.

¹⁰ *Spectrum Cap Order* at ¶¶ 48 (emphasis added).

¹¹ *Id.* at ¶ 26 n.75.

¹² *Id.* at ¶ 30.

¹³ See Federal Communications Commission Approves Bell Atlantic-GTE Merger with Conditions, *News Release* (June 16, 2000); Vodafone Airtouch and Bell Atlantic Seek FCC Consent to Transfer of Control

the cap is lifted the major carriers will seek even more spectrum through acquisitions of smaller carriers, or that smaller carriers will be forced to merge to survive. Either way, meaningful competition will severely decrease.

B. The Complaints Regarding 3G Services Do Not Justify Lifting The Cap.

Several parties assert that retaining the CMRS spectrum cap for Auction No. 35 will hinder their ability to provide 3G services because they will not be able to obtain enough spectrum to deploy 3G technologies.¹⁴ However, this argument is unsubstantiated. Also, these parties again take an overly narrow view of the marketplace, paying insufficient regard to the needs of smaller companies while seeking to modify the rules to suit themselves.

As an initial matter, the FCC considered and rejected this argument just over nine months ago in the *Spectrum Cap Order*.¹⁵ Southern LINC would submit that circumstances have not changed so much in nine months as to merit overturning that decision now. As noted in the *FNPRM*, as of May 31, 2000 no parties had submitted new material information sufficient to justify lifting the cap.¹⁶ Also, the comments filed in this proceeding do not contain any such information. While the comments of some parties make broad statements that additional spectrum will be needed to deploy 3G services, none of them contain actual evidence that carriers' will be hindered by retention of the cap for Auction No. 35. Therefore, the commenting parties fail to present any reason for changing the status quo.

Additionally, the parties seeking to have the cap lifted, primarily large carriers, are not the only companies capable of providing 3G services. Small to medium-size companies are

of Bell Atlantic's and Vodafone Airtouch's Wireless Licenses, *Public Notice* (Nov. 5, 1999); FCC approves SBC-Ameritech Merger Subject to Competition-Enhancing Conditions, *News Release* (Oct. 6, 1999).

¹⁴ See, e.g., Comments of AT&T Wireless Services, Inc., pp. 5-6; Comments of The Cellular Telecommunications Industry Association, p. 5.

¹⁵ *Spectrum Cap Order* at ¶ 61.

similarly capable, and the PCS C & F blocks at issue here were specifically set aside for them by the FCC.¹⁷ This was in keeping with a Congressional directive to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women would be able to provide services requiring spectrum.¹⁸ However, removing the cap, combined with other measures to open the C & F blocks to large carriers, will allow large carriers to usurp this spectrum from smaller carriers. Consequently, smaller carriers who might themselves have hoped to provide 3G services will be unable to do so. Thus, removal of the spectrum cap will defeat the FCC's, and ultimately Congress's, original intent for the C & F blocks.

Additionally, large carriers will have at least one other option for obtaining spectrum for 3G services in the upcoming September 6, 2000 auction for licenses in the 747-762 and 777-792 MHz bands ("700 MHz Bands"). Large carriers are permitted to participate in this auction, and

¹⁶ *FNPRM* at ¶ 50.

¹⁷ In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, ¶ 113 (July 15, 1994).

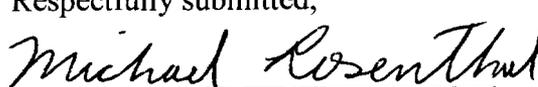
¹⁸ 47 U.S.C. § 309(j)(4)(D).

spectrum obtained through it is excluded from the spectrum cap.²⁶ Of course, spectrum in the 700 MHz Bands is well-suited to 3G services; in fact, the FCC expressly stated that it is "interested in facilitating the use of these bands for next generation applications that would benefit from those economies of scale provided by licensing on a national or large regional basis."²⁷ Although the spectrum is currently encumbered with broadcasters who have several years to vacate it, the FCC is actively working to ameliorate that problem and recently initiated a rule making regarding it.²⁸ Thus, parties' assertions that it is absolutely critical to have the cap lifted for spectrum obtained in Auction No. 35 are incorrect.

CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Southern LINC respectfully asks the FCC to act in the public interest in accordance with the proposals set forth herein and, thus, retain the CMRS spectrum cap for Auction No. 35.

Respectfully submitted,



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Dated: June 30, 2000

²⁵ 47 U.S.C. § 309(j)(4)(D).

²⁶ In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, WT Docket No. 99-168, FCC 00-5, ¶ 52 (Jan. 7, 2000).

²⁷ *Id.* at ¶ 52.

²⁸ FCC Affirms Rules for the 700 MHz Band and Considers Possible Voluntary Measures to Facilitate Spectrum Clearing and Accelerate DTV Transition, *News Release* (June 22, 2000).

CERTIFICATE OF SERVICE

I, Michael D. Rosenthal, do hereby certify that on this 30th day of June, 2000, a single copy (unless otherwise noted) of the foregoing "Reply Comments Of Southern LINC" was hand-delivered to the following:

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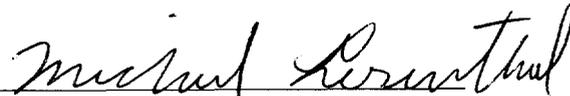
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