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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Bell Atlantic Mobile, Inc.)
Petition For Limited Forbearance From)
The CMRS Spectrum Cap For The)
Reauction of Broadband PCS Licenses)

PETITION FOR LIMITED FORBEARANCE

BELL ATLANTIC MOBILE, INC.

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from the spectrum cap rule generally. The cap would continue to apply to spectrum aggregation in the secondary market. Granting the limited forbearance requested would thus not lead to any consolidation of existing CMRS licenses.

SUMMARY

The Commission has begun a proceeding to review proposals to modify the auction eligibility rules for the PCS reauction.³ Any such review must begin with an assessment of whether the “gates” those rules impose to block certain bidders from participating are still warranted, given the need of existing wireless carriers for spectrum to meet accelerating customer demands for wireless services, and the vigorous competition among carriers for subscribers. These gates are in fact not needed to serve their original purpose, and are both discriminatory and counterproductive. They prevent carriers from planning for the spectrum they need. Rules that disqualify a company from participating in an auction because of the amount of spectrum it would hold post-auction are no longer justified. They discriminate among competitors by allowing some to obtain more spectrum while others cannot. They threaten to impede the further growth and success of the

³ Public Notice, “Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc’s Petition Regarding PCS C and F Block Spectrum; Extension of Filing Deadline for Comments to SBC Communications Inc.’s Request for Waiver,” DA 00-191 (rel. Feb. 3, 2000).

nation's wireless industry. And they conflict with the Commission's stated goal to ensure these licenses are put to work to serve the public as soon as possible.

Section 10 of the Act mandates that the Commission "shall forbear from applying any regulation or any provision of this Act" when enforcement is not necessary to achieve just and reasonable rates and practices for wireless service and to protect consumers, and where forbearance is "consistent with the public interest." 47 U.S.C. § 160(a). The Commission must also consider whether forbearance will "promote competitive market conditions," and this determination may support a finding that forbearance would be in the public interest. 47 U.S.C. § 160(b).

Limited forbearance is ideally suited to this situation. Given the competitive nature of the CMRS market, enforcement of the spectrum cap in the specific context of the PCS reauction is not necessary to guard against unreasonable rates or to protect consumers. In addition, forbearance would be fully consistent with the public interest because it would permit an open auction that would allow parties that value the spectrum the highest to participate, thereby achieving the Commission's auction policies and generating other benefits. Forbearance also has the advantage of being a simple, statutory procedure that enables the Commission to act without the need to conduct a lengthy rulemaking proceeding, which is important given the Commission's desire to complete consideration of the rules for the PCS reauction as soon as possible.

The Commission should thus declare that the CMRS spectrum cap, codified at Section 20.6(a) of the Rules, will not apply to the licenses included in the PCS

reauction. This will ensure maximum participation by all parties who currently compete in the wireless marketplace, on even terms.⁴

By forbearing from applying the spectrum cap to the PCS reauction, the Commission will promote the public interest by enhancing opportunities for rapid and efficient deployment of the reaucted PCS frequencies, ensure a fair and open auction for this valuable spectrum, foster innovation and competition in the wireless industry, and obtain the highest auction revenues by allowing any firm that values the spectrum to bid.⁵

⁴ Consistent with the benefits of open, unrestricted auctions, the Commission should also remove, for purposes of the PCS reauction, the rule that prohibits non-designated entities from participating. Other parties have previously submitted petitions to the Commission seeking such relief. Nextel Communications, Inc. Petition for Expedited Rulemaking, filed Jan. 31, 2000; SBC Communications Inc. for a Waiver of the Eligibility Requirements, filed Jan. 21, 2000. Changes to the designated entity rules must, however, be applicable to all parties evenhandedly and be coupled with limited spectrum cap forbearance.

⁵ Because the requested forbearance would be specific to the upcoming auction, it would not remove the cap for the secondary market and thus would not allow the aggregation of existing licenses or consolidation of ownership beyond the current limits, which was the Commission's primary concern in deciding to retain the cap. 1998 Biennial Regulatory Review: Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Report and Order, WT Docket No. 98-205, FCC 99-244 (rel. Sept. 22, 1999) ("Spectrum Cap Order"). Any Commission concern about potential reconcentration is not implicated by the limited forbearance BAM seeks.

I. FORBEARANCE FROM APPLYING THE SPECTRUM CAP TO REAUCTIONED LICENSES WILL SERVE THE COMMISSION'S AUCTION AND SPECTRUM GOALS.

A. The Cap's Goal of Using PCS Auctions to Promote Competition Has Been Achieved.

The spectrum cap's use as a restraint on the primary market for spectrum, FCC-conducted auctions (as opposed to the secondary or after-market transfer of previously auctioned licenses), had a specific goal: place spectrum in the hands of companies that could compete with existing cellular carriers. That goal has been met, obviating the need to continue the rule as a constraint on parties who would otherwise value and bid on new spectrum. In Section 10's terms, enforcement of the cap in the context of the upcoming reauction is simply "not necessary."⁶

⁶ The Commission has granted in whole or in part numerous petitions for forbearance. Personal Communications Industry Association's Petition for Forbearance for Broadband Personal Communications Services, 13 FCC Rcd at 16897-98 (forbearing from requirement to file information tariffs to achieve pro-competitive benefits of the *CMRS Second Report and Order*); Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, 14 FCC Rcd 10840 (1999) (granting forbearance would remove unnecessary regulatory barriers); Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, from Certain Activities, 13 FCC Rcd 2628, 2643-46 (CCB 1998) (forbearing from separate affiliate rule because rule imposes substantial costs without increasing quality of service); Policy and Rules Concerning the Interstate, Interexchange Marketplace, 11 FCC Rcd 9564, 9576 (1996) (forbearing from geographic rate averaging for certain services because forbearance will "ultimately benefit consumers by encouraging widespread offerings of new services").

In 1993 and 1994, when the Commission was drafting its rules for spectrum ownership and auctioning the new PCS spectrum, “Most parts of the country received mobile voice services from two cellular providers. Thus the purpose of the CMRS spectrum cap was to provide an expedited means of ensuring that multiple service providers would be able to obtain spectrum in each market and thus facilitate development of competitive markets for wireless carriers.”⁷ The Commission recognized that granting PCS licenses to existing cellular licensees could promote deployment of PCS because cellular carriers had expertise in wireless telephony, had a readily available infrastructure, and could take advantage of economies of scope and scale.⁸ But it restricted cellular eligibility in order to end the cellular duopoly. It wanted to establish PCS as a separate service that could compete with cellular telephony. Initially, the Commission imposed a cellular-PCS cross-ownership rule, then added a broader spectrum cap rule, both of which had the effect of preventing cellular carriers to bid and hold PCS licenses which would exceed the cap.⁹

That goal of the limit on acquiring new spectrum has been achieved. Its impact was to jump-start new mobile technologies and services that now vigorously

⁷ Spectrum Cap Order, at ¶ 3.

⁸ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd 7700, 7742 (1993) (“PCS Second Order”).

⁹ See 47 C.F.R. § 24.204 (1994).

compete with cellular, as the Commission intended. This is clearly demonstrated by its most recent Fourth Annual Report on competitive market conditions in the commercial mobile radio services.¹⁰ According to the Fourth Annual Report, at the end of 1998, BTAs containing approximately 74 percent of the population have at least five mobile telephone providers (new entrants and cellular operators), up from 54 percent of the population at the end of 1997.¹¹ Subscribership for mobile telephone service grew from 55 million at the end of 1997 to 68 million at the end of 1998, an increase of 25 percent, which is the largest 12-month increase in the history of the mobile telephone sector.¹² These statistics are due in part to the increase in service by PCS providers. At the end of 1998, "broadband PCS service has been launched in at least some portion of 320 BTAs containing nearly 229 million POPs."¹³ Of these BTAs, 111 BTAs have two PCS operators, 54 have three PCS operators, and eight BTAs now have four PCS operators. As Chairman Kennard testified before Congress last week:

Since Congress gave the FCC the authority to conduct auctions late in 1993, we have seen wireless competition explode across the country. . . . The result is that consumers are benefiting from more choices and lower prices. Indeed, more than three-

¹⁰ See Fourth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 14 FCC Rcd 10145 (1999) ("Fourth Annual Report").

¹¹ Id. at 10164.

¹² Id. at 10152.

¹³ Id. at 10175.

quarters of American consumers now have a choice of at least five competing mobile phone providers. We have seen a range of other impressive benefits to the consumer. For instance, the average mobile phone subscriber bill dropped from \$61 per month in 1993 to \$40 per month in 1999.¹⁴

These data establish that the Commission's goals to promote broader CMRS ownership and increase competition have been achieved, and that the cap, as a limit on eligibility for auctioned PCS licenses, has served its purpose. Given that the Commission has itself pointed to the CMRS market to demonstrate the success of its pro-competitive policies, application of the cap to the reauction cannot be necessary to guard against unreasonable rates or protect consumers.¹⁵

B. The Cap Threatens To Prevent Wireless Companies From Acquiring The Spectrum They Need for 3G Technologies.

The achievement of the cap's original goal to promote new entry is reason enough not to apply it to the PCS reauction. There is an even more compelling reason to forbear. Dennis F. Strigl, President and Chief Executive Officer of Bell

¹⁴ Statement of William E. Kennard, Chairman, Federal Communications Commission, Before the Committee on the Budget, United States Senate, February 10, 2000, at 2-4.

¹⁵ The Commission's primary rationale for maintaining the spectrum cap was to prevent what it feared might be a loss of competition that could result from "market concentration." Spectrum Cap Order, at ¶ 80. Although BAM disagrees with that rationale based on the economic analysis and other information it presented in the spectrum cap rulemaking, the rationale is, in any event, not grounds to deny the limited forbearance BAM requests here, because forbearance would apply only to the licensing of reaucted spectrum, and would not affect the rule's application to consolidation of spectrum.

Atlantic Mobile, testified last week before the United States Senate Committee on the Budget that the cap “threatens to impair the very competition that it was intended to promote and to penalize carriers for their competitive success.”¹⁶ Mr. Strigl explained why the spectrum cap’s constraint on acquiring new spectrum is unnecessary and stands in the way of rapid deployment of 3G wireless technologies. He explained how access to additional spectrum will promote new mobile services and improvements to existing services.

BAM, like most CMRS carriers, uses its existing spectrum to meet the demands of mobile voice subscribers. Significant additional spectrum, however, will be needed to provide high-speed, wide-bandwidth technologies, multimedia, Internet access, imaging and other “3G” services. Acquiring additional spectrum will facilitate the industry’s ability to respond to growing demand for existing services and these new spectrum-intensive services.

Mr. Strigl reviewed how past projections of demand for wireless services were significantly underestimated. Originally, experts predicted that wireless customers in the United States could reach 1 million by the end of 1999, but instead, there were approximately 80 million. Subscriber penetration is now predicted to reach 70 percent of the U.S. population, up from the current 30 percent. Cumulative capital

¹⁶ A copy of Mr. Strigl’s prepared statement to the Senate Budget Committee on February 10, 2000, is attached to this petition.

investment exceeds \$66 billion, an important part of the nation's long-term economic expansion.

The wireless industry has evolved to meet this demand and to create an environment for even greater demand. The capacity and efficiency of networks has increased, handset features and choices are enhanced, battery time lasts longer, and equipment size and costs have been reduced. As a result, wireless service is becoming a part of subscribers' daily routine, causing a tremendous surge in usage. Over the past four years, average monthly minutes of use per subscriber on BAM's network more than doubled, from 79 minutes to 175 minutes.

BAM has been able to meet this demand and expects to continue to do so. However, the increased demand for voice capacity has compressed BAM's business planning horizon. As Mr. Strigl explained, BAM expects fast-growing customer demand for high speed, wide-bandwidth data services, and intends to deploy 3G technologies to meet that demand. These technologies promise dramatic improvement in data rates, which will allow BAM to provide innovative services over mobile telephones such as Internet access and other high-speed data services. But these technologies are new, and the demands for spectrum they involve did not exist when the cap was adopted. To support such data services, 30 MHz or more of spectrum is needed.

Congress and the Commission have repeatedly emphasized the importance of not imposing unnecessary regulatory burdens on CMRS.¹⁷ By precluding parties from seeking the spectrum they intend to use to provide new services, not only does the spectrum cap unnecessarily constrain competition for that spectrum, but it will place much of the auctionable spectrum that is particularly suitable for 3G applications off-limits to companies that can efficiently deploy that spectrum. By penalizing capable companies, limiting competition, impeding the introduction of new services, and favoring some competitors over others, the cap is clearly now contrary to the public interest. Forbearance from applying the cap to the PCS reauction would alleviate this constraint for some highly valued spectrum.

C. Forbearance Will Also Serve Auction Policy Goals.

Lifting the spectrum cap for the PCS reauction will enable any existing CMRS carrier to bid on and, if it wins licenses in the PCS reauction, to put these frequencies into service quickly. The Commission has recognized that acquisition of PCS spectrum by existing licensees can speed rapid deployment of service. Those licensees have the expertise to use the frequencies to provide expanded service to the public; they can benefit from economies of scale and scope by reusing frequency in neighboring or overlapping markets; and they already have an infrastructure in

¹⁷ See 47 U.S.C. § 332; Petition of the Connecticut Dep't of Public Utility Control, 10 FCC Rcd 7025, 7031 (1995), aff'd 78 F.3d 842 (3d Cir. 1996); Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1418 (1994).

place to commence service to end-users.¹⁸ As the Commission has frequently noted, access to increased amounts of spectrum allows CMRS carriers to take advantage of significant economies of scale that reduce costs and lower prices for consumers.¹⁹

This is particularly important with respect to the PCS reauction. This auction will include markets where C-Block licenses were granted years ago but where the spectrum has not been put to use, contrary to the Commission's efforts to ensure rapid deployment of this new service. Chairman Kennard has repeatedly stated that it is his objective to get this fallow spectrum working as soon as possible for the benefit of the public.²⁰ By allowing all CMRS carriers to participate in the PCS reauction, the Commission can significantly improve the likelihood that this result will occur.

There is an additional reason for granting forbearance from the cap for the reauction. The Commission has declared that auctions should be designed to enable those parties that value the spectrum the highest to be able to bid, because it is precisely those firms that are most likely to put the spectrum to work. As Chairman Kennard told the Senate Budget Committee on February 10:

¹⁸ PCS Second Order, 8 FCC Rcd at 7742.

¹⁹ See, e.g., Vanguard Cellular Systems Inc. and Winston, Inc., 14 FCC Rcd 3844 (1999) (access to additional spectrum in a market can have public interest benefits).

²⁰ "This spectrum has laid fallow for too long. Now it is time to act swiftly to acution this spectrum and put it to productive use for U.S. consumers." News Release, "FCC Informs Court that NextWave License Have Cancelled and Sets Date for Auctions," Statement of Chairman William E. Kennard, Jan. 12, 2000.

Competitive bidding ensures that the spectrum goes to the highest value end use. . . . With auctions, we award licenses to those who most value the license and are the most interested in providing service to the public. Auctions enhance competition by expeditiously getting licenses into the hands of those who are in the best position to deliver service to the public.

BAM agrees. But this policy is frustrated, not achieved, by a rule that blocks interested parties – who may value the spectrum most highly – from participating. Competitive bidding will not “ensure that the spectrum goes to the highest value end use” if there are constraints on who can bid.

Moreover, as Mr. Strigl testified, restricting the eligibility of bidders through the cap restricts the revenues that can be raised in spectrum auctions. Companies such as BAM that have substantial business justification for additional spectrum are likely to assign high values to spectrum at auction. Therefore, the cap has a secondary likely effect of depriving the federal government of recovering the true value of this public resource in an auction. Forbearance from applying the rule will also benefit the public interest by increasing auction revenues for the public fisc.

II. IN THE ALTERNATIVE, THE COMMISSION SHOULD WAIVE THE SPECTRUM CAP RULE FOR THE PCS REAUCION.

The Commission has the authority to waive its rules for “good cause.”²¹

Grant of a waiver of the Commission’s Rules is appropriate when such grant would

²¹ 47 C.F.R. § 1.3; see also 47 C.F.R. § 1.925(b)(3) (broadband PCS rules may be waived when the underlying purpose of the rule would not be served or would be

(continued...)

not undermine the policy of the rule sought to be waived and would serve the public interest.²² The Commission has recognized that it has “an obligation to seek out the public interest in particular, individualized cases when, for example, an applicant seeking a waiver of a rule proposes a new service that will not undermine the policy served by the rule.”²³

The Commission may decide that applying a waiver rather than forbearance is preferred for spectrum cap relief. If so, it should waive the spectrum cap for purposes of the PCS reauction. As discussed above, the history of PCS licensing and the competitive nature of the market for wireless telephony demonstrate that the waiver standard is met as well as the forbearance standard. The goal of Section 20.6 as an entry restraint has been achieved and accordingly will not be disserved by waiving these rules for the PCS reauction. Moreover, as demonstrated above, the public interest will be served by allowing an open auction in which established CMRS carriers can bid on and obtain PCS spectrum. The evidence presented herein clearly demonstrates that “good cause” is present for granting spectrum cap relief.

(...continued)

frustrated by their application in a specific case, and grant of a waiver would serve the public interest, or when application of the rule would be inequitable, unduly burdensome, or contrary to the public interest).

²² See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969); see also Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²³ Hughes Communications Mobile Satellite, Inc., 4 FCC Rcd 6041, 6051 (1989) (footnote and subsequent history omitted).

CONCLUSION

The Commission should use the PCS reauction as a means to get the available spectrum into the hands of the firms that value it most. It should open the auction to all bidders. To accomplish this goal, the Commission should forbear pursuant to Section 10 of the Act from applying the CMRS spectrum cap to any spectrum blocks included in the PCS reauction. Alternatively, it should grant a waiver of this rule to allow an open auction with participation by all interested parties.

Respectfully submitted,

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TESTIMONY
OF
DENNIS F. STRIGL
PRESIDENT AND CEO, BELL ATLANTIC MOBILE
BEFORE THE
COMMITTEE ON THE BUDGET
UNITED STATES SENATE

February 10, 2000

Introduction

Mr. Chairman and Members of the Committee, I want to thank you for inviting me to give my perspective on the FCC's auction of wireless licenses and budget policy. As the Committee knows, there is an FCC rule -- the spectrum cap rule -- that severely restricts my company and many other companies from bidding for new spectrum we think we can productively use to serve the public. My basic message today is that lifting the spectrum cap, and allowing an open and fair auction of available PCS spectrum, will favor innovation and competition in the wireless industry, and yield the highest auction revenues by allowing any firm that values the spectrum to bid. Accordingly, I urge Congress to repeal the spectrum cap rule for all new spectrum auctions, including in particular the auctions of "C" and "F" block PCS licenses that the FCC has scheduled for this coming July. What is needed is a full, fair, and open auction that permits any carrier to bid, by lifting all bidding restrictions.

Why do I feel this way? The answer for Bell Atlantic Mobile, at least, is that we seek access to new spectrum to implement plans to introduce the

next generation of wireless services -- the broadband voice and data services known as 3G, Third Generation. To productively implement this broadband technology over the next several years requires 30 MHz of new spectrum or more in our largest markets. Meanwhile, we must also accommodate the tremendous surge in voice usage we are experiencing.

The spectrum cap worked during the 1990s to encourage wireless voice competition. Obviously, competition among wireless providers has blossomed. But market and technological developments have made the cap outmoded as we seek new spectrum to meet future opportunities. With as many as six wireless voice competitors in some of the larger markets, the cap discriminates among competitors by allowing some to bid on new spectrum while others cannot. It penalizes the most successful carriers by denying them access to the additional spectrum resources they seek to offer new services. In effect it penalizes us because we have been successful in sparking robust demand.

Furthermore, the spectrum cap's adverse impact on budgetary policy is obvious, a matter of supply and demand. It reduces auction revenues by excluding carriers that are likely to place the highest value on the new spectrum. For the reasons I indicated, we have a strong business case for placing high valuation on new spectrum. And the business case is made more compelling because of the nature of the "C" and "F" block spectrum that will be auctioned -- it is particularly suited to our business, available for

immediate use, and it already has attracted manufacturers to develop infrastructure and end-user equipment.

My testimony focuses on the negative impact of the spectrum cap in particular, but I should stress that we favor the lifting of *all* blanket restrictions on a full and open auction, including the bidder eligibility restrictions in the FCC's "designated entity" rules. In the last session of Congress, proposals were advanced which directed the FCC to reauction these PCS licenses under selective changes to the auction rules that would have eliminated the designated entity restriction, without any change to the spectrum cap rule. Those proposals would have enabled only some wireless carriers to bid, which is obviously discriminatory and anti-competitive. For the "C" and "F" block licenses, any change to the designated entity rule, whether made in Congress or at the FCC, without accompanying spectrum cap relief, would discriminate among wireless competitors and should be rejected out of hand.

The Spectrum Cap Rule

The FCC's spectrum cap rule dates from 1994, and generally prohibits any company from holding more than 45 MHz of cellular, PCS and specialized mobile radio (SMR) spectrum in the same geographic area, with a higher limit of 55 MHz in rural areas. The non-uniform nature of the size of license areas and the width of licensed bands further prevent carriers from approaching even these caps in their full footprint. This economic regulation

was not required by Congress. To the contrary, in the 1993 Omnibus Budget Reconciliation Act, Congress had replaced traditional wireless regulation, such as entry and price controls, with a competitive, market-driven model.

A goal of the FCC's 1994 spectrum cap rule was to end the cellular duopoly the agency had created in 1981, with two (but only two) wireless carriers competing in each market. The FCC set a cap of 45 MHz, then auctioned the new PCS licenses in 30 MHz and 10 MHz blocks. Because cellular carriers already held 25 MHz blocks, the practical (and deliberate) impact of the 45 MHz cap was to prohibit cellular companies from acquiring any of the new 30 MHz licenses in any of their existing cellular license areas.

The cap achieved its goal. New PCS licensees built networks and now compete vigorously with the cellular carriers. In addition, Nextel deployed its own network on SMR spectrum. In the Washington, D.C. market, for example, we compete against SBC, AT&T, Sprint and Nextel. The FCC has acknowledged the strong competition that exists in the wireless industry today.

Now, however, the cap threatens to impair the very competition that it was intended to promote and to penalize carriers for their competitive success.

The Increasing Demand for Spectrum

Against this regulatory backdrop, the story of increasing demand for spectrum in our industry is important, because obviously our long term

ability to grow and provide customers with new opportunities depends on it.

By now everyone knows the story of how early demand projections for wireless services were grossly underestimated. Instead of a million customers at the end of 1999, as some once predicted, by the turn of the century there were over 80 million wireless subscribers in the United States. They were generating over \$37 billion in annual service revenues, and the industry is adding more than 42,000 new subscribers every day. Cumulative capital investment exceeds \$66 billion. Today the experts are predicting U.S. penetration could climb from the current 30% to 70% or more, a level that a number of European markets are already rapidly approaching. The introduction of digital technology has been a catalyst. The capacity and efficiency of our networks have increased, handset features and choices have been enhanced, battery time has lengthened and equipment size and cost have been reduced. As a consequence, wireless services have become a part of many customers' daily routine, often used by customers as an alternative to picking up a wireline telephone.

This has been accompanied by a tremendous surge in usage. Between December, 1995 and December, 1999, the average monthly minutes of use per subscriber at my company increased by 122%, from 79 minutes to over 175 minutes. During the same period, the average price we charged our customers for these minutes of use, considering both monthly access and per minute usage charges, dropped by 60%. These trends, together with the

continued rapid growth of our subscriber base, explain why, between calendar years 1995 and 1999, the total minutes of use for our entire customer base has jumped over 320%, from about 2.7 billion minutes to 11.7 billion minutes annually.

We at Bell Atlantic Mobile have met this demand, and we expect to continue to do so. But the increased demand for voice capacity has definitely compressed our business planning horizon. To fulfill our customers' anticipated demand in the relatively near future for high-speed, high-bandwidth data services, the key is Third Generation high-speed data technology, and to implement this technology, we seek new spectrum. The wireless industry's existing Second Generation CDMA technology can only deliver raw data rates that average a relatively slow 14.4 kilobits per second. The 3G technologies presently under development hold out the promise of a dramatic improvement in data rates, enabling us to offer our customers data rates of 144 kb/s and higher, truly liberating consumers from "plugged in" PC's. In addition to e-mail and general internet access, wireless broadband means location services such as tailored, real-time traffic information, access to large data files, including enhanced police access to critical information, and greatly enhanced point of sale and field service automation information. High-speed broadband access involves shorter response times and quicker and fuller information flow. Perhaps the greatest significance of 3G is the untapped potential of this new technology--the wireless applications and

devices we cannot predict or conceive of today but which we know will be exploited to their fullest.

With 75% of U.S. wireless users having some type of access to the internet, it is not surprising that surveys show 40% of current US wireless users would like mobile data capabilities. In Japan, NTT DoCoMo recently introduced wireless data service, and signed up 3.4 million subscribers in the first 12 months. It continues to add wireless data subscribers at the rate of 100,000 a week. Last year, the International Telecommunications Union ("ITU") adopted 3G standards, and while some obstacles remain to be resolved, notably European Technical Standards Institute standards restrictions, the ITU action will facilitate global access to 3G's high-speed, high-bandwidth wireless voice and data services.

Bell Atlantic Mobile wants to compete for the licenses that the FCC is planning to auction on July 26, because these licenses are particularly suitable for 3G and global roaming applications. The fact is that the industry and the technology are advancing too rapidly. We need to be able to make our business plans based upon the opportunities and the needs of this exploding market and to meet the global competition that 3G will intensify. Other governments do not have caps, and they are working aggressively to provide 3G spectrum to their carriers. In the highly competitive United Kingdom market, each of the four national wireless providers presently hold between 53 and 60 MHz of spectrum. In addition, an auction process is

currently ongoing to facilitate the provision of 3G services by making each of these providers eligible to bid for an additional 25-30 MHz. When the UK auction is complete, it will be possible for one or more of these UK carriers to own double the amount of spectrum permitted under the U.S. cap.

By penalizing capable companies, limiting competition, impeding the introduction of new services, and favoring some competitors over others, the cap is clearly not in the public's interest. From my point of view, I am concerned that we will not be able to compete for access to the spectrum bands that are most suitable for our customer and market needs, while a select few of our competitors will enjoy preferred access to that spectrum. I am not seeking a preference, I am asking for the opportunity to compete for the licenses.

Auction Revenues

For the reasons I explained, my company would be very interested in bidding on spectrum that would meet our future needs, most particularly the PCS licenses which the FCC has announced for auction this July. And obviously, allowing us and other companies blocked by the spectrum cap to bid would make the auction more competitive.

Put another way, restricting us will significantly reduce the revenues raised in spectrum auctions. This is because it will exclude many bidders whose business justification for additional spectrum is high, given their projected customer demand and their expected substantial opportunities to

realize economies of scale and scope. These companies will tend to assign high values to that spectrum in their business cases. Each company has its own business case, of course, but my point is that some companies will be willing to offer a higher price than others -- that is the very point of an auction. Since no one can accurately predict which companies will assign the highest value to the spectrum, the only way to maximize revenues is to let them all bid.

For the record, I have been asked to call the Committee's attention to a study that you were previously given, prepared by Michael L. Katz, entitled Effects of Bidder Eligibility Restrictions on Government Revenues From the Re-Auction of PCS C- and F- Block Spectrum Licenses. I understand that, in effect, this study concludes that when the number of bidders for a license increased during the A and B block PCS auctions, significantly greater prices were paid. That is exactly the point I am trying to make when I refer to the business fact that different companies assign different values to spectrum that is up for auction based on their market assessment and operational efficiencies.

In my company's case, for example, our operational efficiency will shape our valuation for new spectrum. On a per subscriber basis, Bell Atlantic Mobile has one of the lowest cash expense ratios in the industry. Goldman Sachs found us to be one of the best in the industry in terms of capital efficiency in 1999. Our consistent high performance in the annual JD

Powers surveys indicates high quality back-office and customer service organizations and systems. We feel that we can make efficient use of new spectrum. But unless we are allowed to bid on the licenses we seek, we and others of the US wireless industry's most capable companies -- those firms most able to innovate and most efficiently execute on new technologies -- are artificially excluded.

I have described for the Committee the growth needs that Bell Atlantic Mobile has identified and the high value we place on the spectrum, notably the PCS spectrum. In the event we are able to bid on these licenses, we expect to do so, keenly and competitively. Simply put, Bell Atlantic Mobile will place a high value premium on these licenses because we can and will put them to prompt and valuable use.

I should also point out that the FCC recently announced an auction of spectrum in the 700 MHz range -- without a spectrum cap. Continued application of the cap in the PCS auction does not square with the FCC decision not to apply the cap in the 700 MHz auction. The 700 MHz decision is commendable. It is the right policy decision because it recognizes the market changes in our business and our need for more spectrum. The same rationale and outcome logically applies to the PCS situation. We will be eligible in May 2000 to bid for the 30 MHz of 700 MHz licenses being auctioned in our cellular markets, but we will not be eligible in July 2000 to bid on the 30 MHz of PCS licenses in many of those same markets, even

though we likely place a higher value on the PCS licenses. This makes no sense.

Both of these bands are suitable for expansion to broadband data services, but the PCS band is superior. Network infrastructure equipment and customer terminals are readily available for PCS spectrum, while the 700 MHz network infrastructure and customer terminals will not be available for at least a few years. Furthermore, the 700 MHz band is encumbered by UHF broadcasters, which are operating throughout the country, especially in densely populated areas. These broadcasters are not required to vacate these frequencies until 2006 at the earliest. This difference likely translates into more rapid implementation of 3G in the United States -- if we are allowed to bid for the PCS spectrum. In addition, PCS spectrum is close to being aligned globally, while only the US has allocated 700 MHz spectrum for commercial wireless, meaning greater economies of scale and global roaming are possible with the PCS spectrum licenses.

Conclusion

In my view, it is necessary for the Congress to act.

The FCC has allowed for the possibility of limited waivers of the spectrum cap. Not knowing what criteria would be used to decide a waiver request or the timeframe in which a decision would be made, it is difficult for a capital and technologically-intensive industry to plan future technology introductions and make infrastructure investment plans on such a case-by-

case, market-by-market basis with the hope that a waiver will be forthcoming—and in time to prepare for a competitive auction.

For the reasons I've explained, I urge Congress to lift the spectrum cap restrictions for any "C" and "F" block auctions this year, as well as other future auctions. To be valuable, that relief must be included in legislation at the earliest opportunity so it will be in effect in time for companies to qualify for the FCC's July PCS auction schedule. This relief is fair to all parties, and it allows market forces to determine winners and losers.

From our perspective, to conduct these auctions without permitting companies such as mine to bid for the licenses would penalize everybody. It would penalize my company by discriminating against us for our market success. It would penalize customers by impeding the orderly rollout of new broadband services. It would penalize the Government by realizing sub-optimal returns in the auctions. It would penalize the economy by misdirecting spectrum resources to other than their highest economic use. And it would penalize the country by putting us at a comparative disadvantage to the spectrum usage in other countries.

Finally, let me repeat my opposition to discriminatory measures -- such as Congress saw last year -- that would open auctions to my competitors but not to my company. The cap is unfair and discriminatory because all wireless carriers are not equally affected by the rule. This would be especially so in any PCS auction if the designated entity restriction were

waived while the cap was retained. The spectrum cap rule on its own is a problem, but retaining the spectrum cap while waiving the designated entity rules would amount to government's taking an affirmative act to impose time-to-market advantages and cost efficiencies upon favored competitors while imposing burdens on others.

Thank you for your attention.