

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

In the Matter of)	
)	
2001 Biennial Regulatory Review)	WT Docket No. 01-14
Spectrum Aggregation Limits)	
For Commercial Mobile Radio Services)	

To: The Commission

**REPLY COMMENTS OF
VOICESTREAM WIRELESS CORPORATION AND
WESTERN WIRELESS CORPORATION**

VoiceStream Wireless Corporation and Western Wireless Corporation¹ hereby jointly submit these reply comments in response to the Commission’s Notice of Proposed Rulemaking (NPRM) in this proceeding.

VoiceStream and Western Wireless wholeheartedly support the comments made by a broad array of wireless operators – large and small, rural as well as urban – that the Commission’s spectrum aggregation limits and cellular cross interest rules should be eliminated.² The Commission’s NPRM is grounded in the mandate contained in Section

¹ VoiceStream is the fastest growing provider of broadband Personal Communications Services (PCS) in the United States. Currently serving approximately 4.4 million subscribers, VoiceStream is the only U.S. wireless carrier that owns and operates a near-nationwide network using the GSM standard– the world’s most widely used digital standard. Through pending mergers and recent license purchases, VoiceStream will have a licensed footprint of over 272 million American consumers. Western Wireless is a provider of rural telecommunications services with state-of-the-art facilities in place throughout a 19-state, 800,000 square mile coverage area. Western Wireless provides cellular (TDMA) service to nearly one million customers today.

² See Comments of AT&T Wireless Services, Inc., the Cellular Telecommunications & Internet Association, Cingular Wireless LLC, Nextel Communications, Inc., the Rural Telecommunications Group and the Organization for the Promotion and Advancement of Small Telecommunications Companies, and Verizon Wireless. In addition, the Coalition of Independent Cellular Carriers and Sprint PCS submit different pro-

11 of the Communications Act, as amended, that requires the Commission to repeal or modify regulations that it determines are “no longer necessary in the public interest as a result of meaningful economic competition” among CMRS providers. The salutary benefits of the spectrum cap and cellular cross ownership rules have served their purposes. The record being developed in this proceeding amply demonstrates that these rules and policies were intended to expire over time and, under current market circumstances, they can no longer be justified as “necessary in the public interest” and, therefore, must be repealed.

Specifically, a chorus of commenters in this proceeding have forcefully enunciated the range of economic ills associated with continued imposition of the spectrum cap and cellular cross interest rules. As the Cellular Telecommunications and Internet Association (CTIA) states, “the CMRS business at this stage is indistinguishable from many other industries subject only to case-by-case antitrust scrutiny of their consolidations. The CMRS business is well beyond any transition phase of protecting ‘nascent’ competition.”³ A host of economic studies submitted in this proceeding document that, given the “meaningful” competition that currently exists in the CMRS market, continued imposition of the spectrum cap and cellular cross interest rules – far from being necessary to advance public interest – in actuality harm the public interest. These prophylactic rules needlessly inject substantial inefficiencies and distortions into what would otherwise be a

posals for relaxing or sunseting the spectrum cap, while the National Telephone Cooperative Association does not oppose the elimination of the spectrum cap.

³ CTIA Comments, p. 3.

vibrant and competitive market that efficiently responds to consumer demand for more and advanced wireless services.⁴

Further, the spectrum cap and cellular cross ownership rules needlessly duplicate existing law enforcement and regulatory tools for preventing and remedying any alleged anticompetitive developments that may occur in the CMRS marketplace. The Department of Justice (DOJ) and the Federal Trade Commission (FTC), as the primary federal antitrust enforcement agencies, are best equipped to protect competition and investigate any significant competitive harms that critics suggest may flow from elimination of these rules. The Commission's Section 310(d) analysis of wireless license transfers provides an additional means for the Commission to review transactions that may pose competitive issues, should the Commission believe that it needs to supplement the enforcement responsibilities of DOJ and the FTC.⁵

Leap Wireless International, Telephone and Data Systems, Inc. and WorldCom, Inc. oppose any modification of the Commission's spectrum cap rules, in significant part based on the surmise that these rules are needed to safeguard the CMRS marketplace from harmful consolidation.⁶ Yet, these commenters do not submit any credible evidence whatsoever that such consolidation *will in fact* materialize, never mind whether such con-

⁴ See AT&T Wireless Comments (Attachment: "An Economic Evaluation of the Federal Communications Commission's Commercial Mobile Radio Services' Spectrum Cap," Bruce M. Owens and Mark W. Frankena); Cingular Wireless Comments (Attachment: "White Paper on Elimination of the Spectrum Cap," Strategic Policy Research, Inc.); CTIA Comments (Attachment: "Are Spectrum Limits Needed to Preserve Competition?," Professor Marius Schwartz and Dr. John M. Gale"); Verizon Wireless Comments (Attachment: Declaration of Professor Robert H. Gertner and Dr. Allan L. Shampine);

⁵ See CTIA Comments at 45-46; Verizon Wireless Comments at 14.

⁶ See Leap Wireless Comments at 10-13; Telephone and Data Systems Comments at 6; WorldCom Comments at 6-7.

consolidation will in fact harm competition.⁷ Without such evidence, VoiceStream and Western Wireless submit that the Commission cannot justify continued imposition of the spectrum cap under the standard articulated in Section 11 of the Communications Act: that these rules are necessary, *today*, based on current competitive circumstances in the CMRS marketplace. Moreover, none of these parties makes any convincing argument that the antitrust agencies are not equipped to protect against any truly harmful competitive developments in the national and regional CMRS markets that might arise should the cap be eliminated.

Further, Leap Wireless liberally asserts throughout its comments that the Commission should not modify or eliminate its spectrum cap rules because non-CDMA carriers can avail themselves of the perceived greater spectral efficiencies of CDMA equipment of the type Leap uses, thus obviating the need for more spectrum.⁸ Whatever the accuracy of these claims are from a technical standpoint, it is utterly nonsensical as a matter of policy that the Commission should fashion its spectrum cap rules based on its understanding of what technological decisions would be in the best interests of CMRS operators. Such a view would violate the longstanding Commission policy of technological neutrality in the crafting and enforcing of its CMRS rules and policies. Even fellow CDMA operator Sprint PCS recognizes that, whatever the claimed advantages are in spectral efficiency among the various 2G and 3G air interfaces, “such disparities are not a

⁷ See Cingular Wireless Comments at 31-32 (“inquiry is not whether *any* consolidation will occur in the absence of the cap, but whether that consolidation will be *harmful*” (emphasis in original)).

⁸ Leap Wireless Comments at 15-19; 24-25; 27-28; attached Declaration of Professor Peter Cramton at 20-21; attached Declaration of Mark Kelley, Chief Technical Officer, Leap Wireless.

matter for Commission concern because each carrier made a business decision to choose one approach over another.”⁹

For the foregoing reasons, VoiceStream and Western Wireless wholeheartedly join with other mobile operators of all stripes in calling for the repeal of the Commission’s spectrum cap and cellular cross interest rules.

Respectfully submitted,

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⁹ Sprint PCS Comments at p. 9.