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

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	WT Docket No. 01-14
Spectrum Aggregation Limits for Commercial	)	
Mobile Radio Services	)	

REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T") hereby replies to the comments filed in response to the Commission's Notice in the above-captioned proceeding.[1/] In particular, AT&T replies to the comments of Leap Wireless International, Inc. ("Leap"), who argues that the Commission should not raise or remove the spectrum cap, because the CMRS market is not yet as competitive as it "could be," and because carriers would not need more spectrum if they used "efficient" equipment.[2/] To support these arguments, Leap claims that AT&T and other cellular carriers could easily obtain more spectrum by converting their networks entirely to digital, instead of reserving capacity for analog service. Leap also asserts that AT&T reduced prices for its innovative "Digital One Rate" service only because a fifth competitor into the marketplace. Neither of these arguments has merit.

[1/] 2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 01-14 (rel. Jan. 23, 2001) ("Notice").

[2/] Leap Comments at 2-3.

I. THE COMMISSION'S RULES REQUIRE AT&T TO RETAIN ANALOG SPECTRUM

Leap's argument that cellular carriers could easily obtain more spectrum by converting their entire networks to digital capability[3/] ignores the Commission's current requirement that cellular licensees retain analog capacity for subscriber use. This requirement derives from the FCC's original cellular rules,[4/] which included technical requirements addressing compatibility standards for cellular systems. Those rules, now codified at sections 22.901(d) and 22.933, 47 C.F.R. §§ 22.901(d), 22.933, require compliance with Office of Engineering and Technology Bulletin No. 53, "Cellular System Mobile Station-Land Station Compatibility Specification," (April 1981 ed.),[5/] which in turn requires cellular systems to possess the capability of receiving and transmitting analog signals. In 1993, the Commission declined to repeal this requirement.[6/]

Although the analog rule does not require that a carrier maintain any particular level of analog capability, the rule clearly prevents a carrier from converting to a completely digital system. Leap's disingenuous suggestion that AT&T convert additional spectrum to digital would put AT&T in violation of the FCC's current rules. Its further suggestion as to which digital standard AT&T should adopt -- that developed by Leap's affiliate Qualcomm[7/] -- is simply a self-serving attempt to convert the Commission's biennial review into a marketing forum.

[3/] Leap Comments at 17-18.

[4/] Inquiry into the Use of Certain Frequency Bands for Cellular Communications Systems; and Amendment of Rules Relative to Cellular Communications Systems, FCC 81-161, 46 Fed. Reg. 27655 (May 21, 1981).

[5/] The bulletin was originally contained in Appendix D to the final rule.

[6/] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd. 7700, 7747 ¶ 111 (1993).

II. AT&T's OFFERING OF DIGITAL ONE RATE DEMONSTRATES THAT THE MARKET WOULD BE COMPETITIVE WITHOUT REGARD TO THE EXISTENCE OF A SPECTRUM CAP

Leap's claim that AT&T did not reduce its price for Digital One Rate until a fifth competitor began offering a nationwide one-rate plan[8/] provides no support for retaining the spectrum cap. All that this "proves" is that on one occasion, AT&T lowered its rates at the same time a fifth competitor entered the market. Leap does not establish that there is anything unique about having five competitors in the market -- as opposed to three or four -- that prompted this result or that might spur further innovations.

To the contrary, the most remarkable thing about the evidence provided by Leap and Dr. Peter Cramton is that AT&T was the first to introduce an innovative and highly competitive new pricing plan at a time when, according to Professor Cramton, there were no other national wireless competitors.[9/] In fact, AT&T's introduction of Digital One Rate was a response to the growing competition in the wireless marketplace.[10/] The subsequent introduction of one-rate plans by Verizon, Sprint PCS, and other carriers was likewise a competitive response to AT&T

[7/] Leap Comments at 17-18 (suggesting that AT&T convert to "the most efficient equipment now available (CDMA 95 A/E VRC)").

[8/] Leap Comments at 11 & Declaration of Peter Cramton ¶¶ 29-32.

[9/] Leap Comments at 14 ("AT&T was the first to offer this plan in May 1998"). Professor Cramton evidently does not count a wireless company as being in competition unless it offers a national one-rate plan. Cramton Decl. at ¶ 29.

[10/] The Commission has long recognized the trend toward increased competition in the wireless marketplace. See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fifth Report, 15 FCC Rcd 17660 at ¶ (2000); Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report, 12 FCC Rcd 11266 (1997). AT&T and others demonstrated in their

and not, as Dr. Cramton characterizes it, their "entry" into a market they were in all along. AT&T's 2000 reductions were a further response to price cuts by these competitors,[11/] and would likely have occurred whether or not SBC initiated its own one-rate plan.

Moreover, even within his own framework, Dr. Cramton apparently misinterprets the evidence. As he observes,[12/] AT&T and other providers reduced the minimum monthly commitment substantially during 1998-2000. Such a reduction in the minimum commitment is a form of price reduction. It is not true that AT&T's price remained constant until the "fifth" supplier arrived.

More fundamentally, Dr. Cramton makes the unsupportable leap from the general principle that "more competitors is better" to the conclusion that the proper way to encourage competition in the sale of a service is to impose arbitrary constraints on one of the inputs (*i.e.*, spectrum) needed to provide that service. Although Leap argues that such constraints prompt efficient use of inputs, the limitations are much more likely to require providers to turn to substitute inputs that are more expensive or of lower-quality, or to force providers to give up economies of scale and scope that might otherwise have been realized, both of which would result in higher costs for consumers.[13/] Worse, a binding spectrum cap means that wireless competitors who develop a better service or lower prices will be unable to increase their output and market share. This undercuts the incentives that competition is intended to provide.

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initial comments, however, this growth is the result of factors other than the spectrum cap. See, e.g., Comments of AT&T Wireless, Inc. at 5-6.

[11/] See, e.g., Verizon Opens for Business with New Simplified Nationwide Pricing (April 4, 2000) http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=37562>.

[12/] Cramton Decl. at ¶ 30.

Indeed, Leap's entire argument is premised on the theory that any technology that produces a given level of communications capacity using less spectrum is superior to one that uses more spectrum. But this is clearly unsound policy because the results of such a policy must be to increase costs and prices to consumers. It would be nearly impossible, moreover, for the Commission to attempt to predict the "ideal" amount of spectrum that each licensee would need to ensure the cost minimizing ratio of spectrum to other inputs and the most efficient scale of operations. This is why we rely on markets to make such decisions. It is simply not sensible economic policy to try to create more competitors by rationing inputs. The Commission should reject the "central planning" approach Leap advocates, and abolish the spectrum cap.

[13/] For example, the ability of U.S. carriers to enjoy the economies of scale achievable by adopting the preeminent worldwide technology standard, UMTS, may be impaired by retention of the cap.

CONCLUSION

For the foregoing reasons, and as set forth in AT&T's initial comments, the Commission should eliminate the spectrum cap and attribution rules.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Douglas I. Brandon/mm

Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

Howard J. Symons
Thomas G. Krattenmaker
Tara M. Corvo
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

May 14, 2001

CERTIFICATE OF SERVICE

I, Margo B. Adams, hereby certify that on this 14th day of May, 2001, I caused copies of the foregoing "Reply Comments of AT&T Wireless Services, Inc." to be sent by hand delivery to the following:

Peter A. Tenhula
Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-A204F
Washington, D.C. 20554

Adam Krinsky
Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Bryan Tramont
Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mark Schneider
Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Thomas Sugrue
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room C252
Washington, D.C. 20554

James D. Schlichting
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C254
Washington, D.C. 20554

Kathleen O'Brien-Ham
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C255
Washington, D.C. 20554

Michael J. Rowan
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4A-131
Washington, D.C. 20554

James H. Barker
William S. Carnell
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

ITS
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Margo B. Adams