



CTIA

Building The Wireless Future

Cellular Telecommunications Industry Association

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 14, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

**Re: Ex Parte Presentation
CC Docket No. 01-14**

Dear Ms. Salas:

On June 13, 2001, the Cellular Telecommunications & Internet Association ("CTIA") represented by Michael Altschul, Senior Vice President for Policy and Administration and General Counsel, Diane Cornell, Vice President for Regulatory Policy, and Chris Guttman-McCabe, Director for Regulatory Policy, along with Marius Schwartz, Georgetown University and CTIA Consultant, met with Jeffrey Steinberg, Deputy Chief, Paul Murray, Michael Rowan, Susan Singer, Lauren Kravetz Patrich, and Wayne Leighton from the FCC's Commercial Wireless Division, Don Stockdale, Office of Plans and Policy, and Heidi Kroll, Auctions Division. The parties discussed issues related to the spectrum cap. In particular, the parties discussed the attached presentation.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Christopher Guttman-McCabe

Attachment(s)

No. of Copies rec'd 0+1
List A B C D E





CELLULAR TELECOMMUNICATIONS AND INTERNET ASSOCIATION

SPECTRUM CAP PRESENTATION
to the
Federal Communications Commission
June 13, 2001



OVERVIEW

- THE CMRS INDUSTRY NO LONGER REQUIRES A UNIQUE MECHANISM TO PROTECT COMPETITION.
- ANTITRUST REVIEW PROVIDES A MORE ACCURATE COMPETITIVE ANALYSIS THAN THE SPECTRUM CAP.
- THE SPECTRUM CAP DOES NOT RESULT IN SAVINGS OF RESOURCES OR ADMINISTRATIVE COSTS.
- THE SPECTRUM CAP CAUSES AFFIRMATIVE HARM.



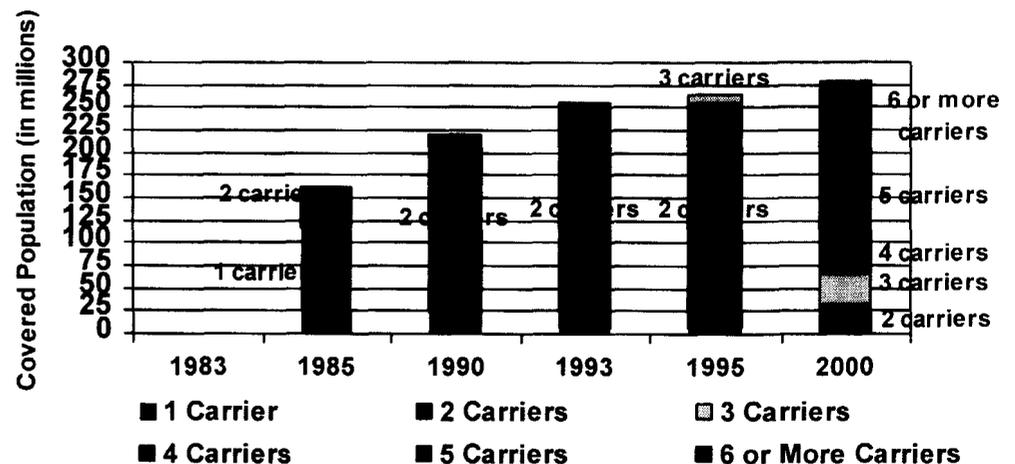
THE CMRS INDUSTRY NO LONGER REQUIRES A UNIQUE MECHANISM TO PROTECT COMPETITION

- The spectrum cap was designed initially to ensure that CMRS spectrum would be licensed to more firms than the two cellular incumbents.
- The CMRS industry is no longer a nascent industry. New entrants have constructed systems and provided services for several years.
- If industry-specific rules no longer are justified by their original purpose, the FCC only should maintain those rules if they serve a necessary function.



- Competition in the wireless industry is well established:

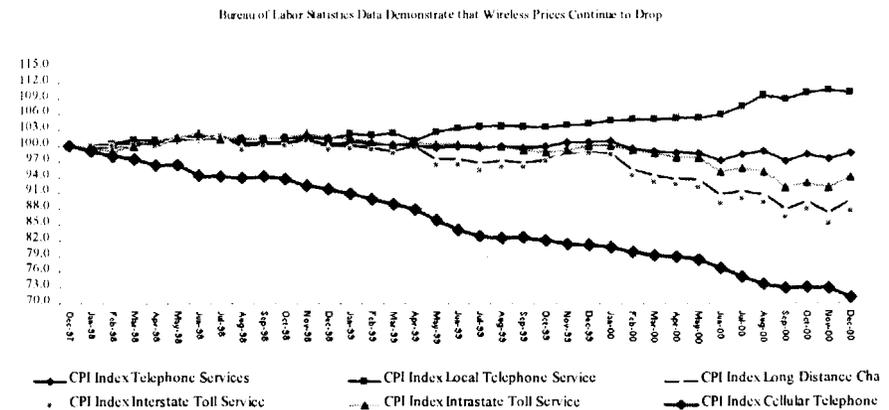
- Today, 265 million Americans can choose from between 3 and 8 wireless service providers.
- More than 202 million Americans can choose from among 5 providers.
- More than 92 million Americans can choose from among 6 providers.





- Wireless prices have fallen dramatically:

- Average monthly wireless bills have fallen by more than 50% in the past decade.
- Consumers in areas where there are 3 or fewer carriers typically still benefit from low prices in nationwide plans.





ANTITRUST REVIEW PROVIDES A MORE ACCURATE COMPETITIVE ANALYSIS THAN THE SPECTRUM CAP

- DOJ merger review process was designed to evaluate all potentially harmful consolidations.
- The wireless industry is no different than any other industry that is subject to antitrust review of a merger, not industry-specific caps.
- Mergers should not be pre-judged by an arbitrary cap – they may be pro-competitive, anticompetitive, or competitively neutral.



- A comprehensive competitive analysis of a merger includes review of:
 - Ease of market entry;
 - Competitors' ability to expand output;
 - Technology;
 - Innovation;
 - Footprint of merging companies;
 - Geographic location;
 - Brand name;
 - Revenues;
 - Etc.



- Reliance on spectrum cap oversimplifies the merger review process.
- The amount of spectrum licensed to a carrier in a market is too crude a measure of market power.
- Raising the cap is not a solution – it perpetuates the “belt and suspenders” model.



THE SPECTRUM CAP DOES NOT RESULT IN SAVINGS OF RESOURCES OR ADMINISTRATIVE COSTS

- The spectrum cap review is duplicative – a competitive analysis is performed by the FCC through its Section 310(d) procedures and the DOJ through its merger review process.
- The spectrum cap is not such a bright line - intricate questions still arise regarding application of the spectrum cap (e.g., overlapping attributable interest review).
- Case-by-case reviews are required if a carrier files a waiver.

THE SPECTRUM CAP CAUSES AFFIRMATIVE HARM



- The cap impairs carriers' ability to plan for and introduce innovative service offerings.
- The cap places artificial constraints on firms' size that can cause substantial losses of economies of scale or scope.
- The waiver process does not provide an effective "escape valve" from the spectrum cap.
 - Carriers are reluctant to file waivers that require the release of proprietary business information.
 - Carriers must be assured that they will have access to additional spectrum if they are going to make substantial capital expenditures. Waivers are not guaranteed.
- The cap harms the U.S. wireless industry's international competitiveness.

U.S. CARRIERS ARE MORE SPECTRUM-CONSTRAINED THAN THEIR FOREIGN COUNTERPARTS



| <i>Global Wireless Frequency Allocations</i> | | | | | |
|--|-----------|---------|---------|---------|---------|
| | USA | UK | France | Germany | Japan |
| <i>Wireless Spectrum Allocation</i> | 189 MHz | 365 MHz | 306 MHz | 234 MHz | 263 MHz |
| <i>Population</i> | 281 | 59 | 82 | 127 | 57 |
| <i>Wireless Subscribers (2000)</i> | 110.5 | 40 | 51 | 58 | 41 |
| <i>Penetration</i> | 39% | 68% | 63% | 46% | 72% |
| <i># of National Carriers Per Country</i> | 6 | 5 | 6 | 3 | 6 |
| <i>Average Frequency By Carrier</i> | 32 | 73 | 51 | 78 | 44 |
| <i>Carrier 1</i> | 33-45 MHz | 82 MHz | 61 MHz | 86 MHz | 62 MHz |
| <i>Carrier 2</i> | 35-45-MHz | 77 MHz | 61 MHz | 98 MHz | 62 MHz |
| <i>Carrier 3</i> | 25-35 MHz | 85 MHz | 70 MHz | 50 MHz | 49 MHz |
| <i>Carrier 4</i> | 25-35 MHz | 85 MHz | 65 MHz | N/A | 29 MHz |
| <i>Carrier 5</i> | 25-35 MHz | 35 MHz | 25 MHz | N/A | 30 MHz |
| <i>Carrier 6</i> | 19 MHz | N/A | 25 MHz | N/A | 30 MHz |



CONCLUSION

- It would be more efficient for the Commission and industry if the FCC eliminated the cap and relied on antitrust review and FCC Section 310(d) prior approval procedures.
- Raising the cap is not a solution.
- Consumers would benefit from more service offerings and lower prices if the cap were eliminated.