CMRS SPECTRUM CAPS

WorldCom, Inc.

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INTRODUCTION AND OVERVIEW

? WorldCom Wireless: over 2 million customers; only wireless reseller selling service on a nationwide basis.

? The public interest is well served by maintaining the CMRS spectrum cap.

? The FCC's waiver process provides appropriate relief for carriers that require additional spectrum in specific markets.

? DOJ antitrust review is not adequate to protect the public interest.

? Any new spectrum made available for CMRS services must be subject to a proportional spectrum cap.

THE PUBLIC INTEREST IS WELL SERVED BY MAINTAINING THE CMRS SPECTRUM CAP

? Spectrum caps have promoted an increasingly competitive CMRS marketplace.

- CMRS competition is not irreversible.
- Lifting or removing the spectrum cap will result in consolidation.
- Such consolidation will likely involve carriers with a national presence.
- The result will be the elimination of one or more competitors in hundreds of geographic markets.
- Consolidation will reduce pricing pressures and will reduce the incentive to offer innovative services.

? Spectrum caps are minimally intrusive and allow the FCC to maintain a "hands-off" approach to regulating the CMRS industry.

ECONOMIC ARGUMENTS DO NOT SUPPORT ELIMINATION OF THE CAP

? The spectrum cap does not impede carriers from attaining economies of scope.

- Even if economies of scope could be attained, the FCC must determine if they outweigh the anti-competitive effects.

? CMRS market is unique. The key input -- spectrum -- is perfectly inelastic.

- No matter how much prices go up, the supply of spectrum will not change.

? Even assuming that carriers are capacity constrained, allowing two such carriers to merge does not solve the problem.

- Result: removal of a competitor; continued capacity shortage.

THE FCC'S WAIVER PROCESS PROVIDES APPROPRIATE RELIEF

? Carriers have provided no empirical evidence to support their assertions regarding spectrum exhaustion.

? There are few markets where carriers are even at the spectrum cap levels.

? To date, no market-specific waivers have been requested.

? The case-by-case waiver review process better serves the public interest than wholesale elimination of the spectrum cap.

- The fact that one carrier might need additional spectrum to meet anticipated demand in a handful of markets does not justify eliminating the spectrum cap for all carriers in all markets.

? The FCC should expeditiously grant bona fide waiver requests.

DOJ ANTITRUST REVIEW IS NOT ADEQUATE TO PROTECT THE PUBLIC INTEREST

? DOJ does not review spectrum acquired at auction or through spectrum swaps.

? DOJ review of mergers does not encompass public interest considerations critical to CMRS service.

? Congress gave FCC, the expert agency, a special role in regulating CMRS markets: "to protect the public interest in the use of spectrum" by "promoting economic opportunity and competition" and "by avoiding excessive concentration of licenses."

- FCC role: to promote competition.
- DOJ role: limited to stopping mergers that would "substantially lessen competition".

ANY NEW SPECTRUM ALLOCATED TO CMRS MSUT BE SUBJECT TO A PROPORTIONAL SPECTRUM CAP

? Current rule : 45 MHz cap (25% of available spectrum).

? Assures a minimum of 4 competitors.

- NPRM: "if mobile voice markets were to stabilize as three-firm oligopolies, recently observed price competition could be reduced or eliminated."

? Proposed rule for new CMRS spectrum:

- 25% limit for old plus new spectrum.
- Maintain 45 MHz (25% limit) for old spectrum so as to ensure that as new spectrum is made available, and the cap is adjusted, incumbent carriers do not simply buy other incumbent carriers.
- Goal: to encourage incumbents to bid on, develop and build independent networks for advanced services.