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319th Street, NW
Washington, DC 20036
Direct Dial 202-887-2248

October 11, 2001

BY HAND DELIVERY

Ms. Magalie Roman Salas
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RECEIVED

OCT 11 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Notice of Ex Parte Communication*
WT Docket No. 01-14

EX PARTE OR LATE FILED

Dear Ms. Salas:

On October 10, 2001, Robert S. Koppel and Chuck Goldfarb of WorldCom, Inc. met with Bryan Tramont, Senior Legal Advisor to Commissioner Abernathy.

WorldCom reiterated its support for maintaining the spectrum caps, and distributed and discussed the enclosed presentation.

Respectfully submitted,

Robert S. Koppel

Robert S. Koppel
Vice President
Wireless Regulatory Affairs

Enclosure

cc: Bryan Tramont

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CMRS SPECTRUM CAPS

WorldCom, Inc.

October 2001



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.
- The burden of proof to change the current rules is on the proponents of raising or eliminating spectrum caps.
 - Section 11: the FCC “shall determine whether the [relevant] regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service.”
 - Core inquiry is the public interest.
 - Mere existence of competition is not sufficient to justify repeal. Competition is necessary but not sufficient to justify repeal.
 - If cap is needed to maintain competition, it is still in the public interest.
 - FCC must affirmatively determine that the rule “is no longer in the public interest.”
 - Spectrum Caps Are Very Different Than National Television Ownership Rules.

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.
 - Critical inquiry: the public interest, not the interest of private parties.
- 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.

DOJ ANTITRUST REVIEW IS NOT ADEQUATE TO PROTECT THE PUBLIC INTEREST

- DOJ does not review spectrum acquired at auction.
- 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”.

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.

ANY NEW SPECTRUM ALLOCATED TO CMRS MUST 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.