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October 31, 2001

BY HANDMagalie Roman Salas, Secretary
Federal Communications Commission
445- 12th Street, S.W., TW-A325
Washington, DC 20554Re: ***Ex Parte Presentation***
CMRS Spectrum Cap Biennial Review
CC Docket No. 01-14

Dear Ms. Salas:

On Tuesday, October 30, 2001, Charla M. Rath, Director-Spectrum & Public Policy, Verizon Wireless; Michael Samsock, Associate Director-Regulatory Matters, Verizon Wireless; and the undersigned, met with Peter A. Tenhula, Senior Legal Advisor to Chairman Michael K. Powell. The parties discussed issues related to the above-captioned proceeding as outlined in the attached document. In addressing the issues, we also referred to Verizon Wireless' Comments and Reply Comments filed in the docket.

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 regarding this matter, please do not hesitate to call.

Sincerely,

WILKINSON BARKER KNAUER, LLP

BY: Kathryn A. Zachem

Attachments

cc: Peter A. Tenhula

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Summary

- MARKET IS COMPETITIVE
- SPECTRUM AGGREGATION LIMITS ARE NO LONGER "NECESSARY IN THE PUBLIC INTEREST"
- COMMISSION SHOULD ELIMINATE SPECTRUM CAP AND CELLULAR CROSS INTEREST RULE
- MECHANISMS EXIST TO PREVENT ANTICOMPETITIVE CONSOLIDATION

Section 11 Of The Act Mandates Elimination Of Spectrum Aggregation Limits

- COMMISSION "SHALL DETERMINE WHETHER ANY SUCH REGULATION IS NO LONGER IN THE PUBLIC INTEREST AS A RESULT OF MEANINGFUL ECONOMIC COMPETITION BETWEEN PROVIDERS OF SUCH SERVICE"
 - Determination is mandated by Congress
 - Public interest defined by Congress
 - Requires analysis of current competitive conditions
- IF COMMISSION FINDS COMPETITION-CONGRESS MANDATES REPEAL OR MODIFICATION
- EVIDENCE SUPPORTS TOTAL REPEAL

Section 332 Of The Act Requires Complete Elimination Of Spectrum Aggregation Limits

- SECTION 332 (OBRA) ESTABLISHED A DEREGULATORY FRAMEWORK THAT RELIES ON COMPETITION RATHER THAN GOVERNMENT INTRUSION TO ACHIEVE PUBLIC INTEREST GOALS
- FCC DETERMINED "AS A PRINCIPLE OBJECTIVE THE GOAL OF ENSURING THAT UNWARRANTED REGULATORY BURDENS ARE NOT IMPOSED UPON ANY CMRS PROVIDERS" (Second CMRS Report)
- PARTIAL REPEAL IGNORES SECTION 332 REASONING

Cellular Cross Interest Rule Creates Regulatory Imparity

- ELIMINATION OF THE RULE WILL CREATE REGULATORY PARITY AMONG CMRS SERVICES
- PCS AND SMR ARE NOT SUBJECT TO 'CROSS INTEREST' RESTRICTIONS
- FORCES CELLULAR INCUMBENTS TO BUY PCS SPECTRUM
 - Distorts market forces that would otherwise value all CMRS spectrum equally

Mechanisms Exist To Prevent Anticompetitive Consolidation

➤ **DOJ REVIEW IS SUFFICIENT**

- Process designed to evaluate all potentially harmful consolidations not just CMRS mergers
- Does not prejudge a proposed merger

➤ **FCC EXERCISES REVIEW PURSUANT TO SECTION 310(d)**