

**Before the
Federal Communications Commission
Washington, D.C.**

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

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION
IN SUPPORT OF PETITIONS SEEKING RECONSIDERATION**

The Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its Comments in Support of the Petitions filed in the above-captioned proceeding.² Petitioners urge the Commission to reconsider and reverse its decision to retain 47 C.F.R. § 22.942, the so-called "cellular cross-interest rule," where two cellular licenses overlap in a cellular Rural Service Area ("RSA"). CTIA agrees with Petitioners that the Commission should immediately eliminate the rule for RSAs as it has done for overlaps in Metropolitan Statistical

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See Petitions for Reconsideration of Action in Rulemaking Proceeding, *Public Notice*, Report No. 2540 (rel. March 15, 2002)(referring to Petition for Reconsideration filed by Dobson Communications Corporation, Western Wireless Corporation, and Rural Cellular Corporation, and the Petition for Reconsideration filed by Cingular Wireless LLC (jointly "Petitioners").

Areas (“MSAs”).³ In lieu of a rigid rule, CTIA urges the Commission to consider each transaction under the same case-by-case analysis it will conduct for all other CMRS license transfers.

The Commission adopted the cellular cross-interest rule long ago in a far away world where there could be no more than two wireless carriers in any given geographic market.⁴ In the *Report and Order*,⁵ the Commission recognized that the cellular duopoly no longer exists and that CMRS markets are sufficiently competitive to warrant removal of any direct restriction on cellular cross-interests in MSAs, and to support elimination of the spectrum cap for all markets as of January 1, 2003.⁶ In fact, the only absolute prohibition on the ownership of CMRS spectrum that will exist after January 2003 is the cellular cross-interest rule that the Commission retained for RSAs.⁷ CTIA agrees with the Petitioners that the Commission’s decision to retain

³ In the alternative, Petitioners request the Commission to sunset the rule contemporaneous with the sunset date established in 47 C.F.R. § 20.6, the CMRS “spectrum cap” rule.

⁴ The current rule that was re-codified in 1999 was originally adopted in the FCC’s First Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket Nos. 90-6, 85-388, *Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, FCC 91-306 (rel. Oct. 18, 1991) at ¶¶ 103-106. That ruling was prompted by the observation in the Docket 90-6 Notice of Proposed Rulemaking, 5 FCC Rcd. 1044, 1055, at ¶67 (1990), that “inherent in the concept of a wireline set-aside was the concept that the licensee on one frequency block in a market would not own an interest in the other frequency block licensee in the same market,” which in turn referred back to the original cellular rules. *See, Report & Order*, 86 FCC 2d. at 491-92 (1981), and the March 1982 *MO&O on Reconsideration*, 89 FCC 2d at 69-77.

⁵ *Report and Order, In the Matter of 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services*, WT Docket No. 01-14, FCC 01-328 (rel. Dec. 18, 2001), *summarized*, 67 Fed. Reg. 1626 (Jan. 14, 2002) (“*Report and Order*”).

⁶ *See id.* at ¶ 7.

⁷ The Commission promised, however, to consider waivers of the rule in circumstances where “it can be shown that an RSA exhibits market conditions under which a

the cross-ownership rule in RSA markets should be reconsidered, and that the Commission should eliminate the cellular cross-interest rule in all markets — RSAs as well as MSAs.

In seeking comment on whether to retain its spectrum aggregation limits, including the cellular cross-interest rule, the Commission’s *Notice of Proposed Rulemaking* asked “how should we define the relevant geographic market, *especially in light of the trend toward nationwide footprints and affiliations?*”⁸ The *Report and Order*, however, never answers this question. Given today’s trend towards national and regional calling areas and plans, individual RSAs cannot be assumed to be separate markets from adjacent MSAs. The cellular RSAs are much more granular than the Rand McNally MTAs and BTAs used for licensing the broadband PCS services. As a result, PCS licenses nearly always incorporate in a single geographic market multiple cellular MSAs and RSAs. Thus, an examination of competition only on an individual RSA basis skews the competitive analysis in a way that does not reflect the relevant geographic market. Moreover, CMRS services are offered today on a national and regional level. As a result, from a customer’s point of view, RSAs are not distinct from MSAs; since cellular providers have combined adjacent MSA and RSA licenses to provide a contiguous service (and marketing) area across a region.

The Commission concluded that the cellular cross-ownership rule “is no longer necessary in urban markets, given the presence of numerous competitive choices for consumers in such markets,” and eliminated the rule in MSAs.⁹ In contrast, the Commission found that: “it would

specific cellular cross-interest would not create a significant likelihood of substantial competitive harm.” *Id.* at ¶ 90.

⁸ 16 F.C.C.R. 2763, 2274 (2001) (“*Notice of Proposed Rulemaking*”) (emphasis added).

⁹ *Id.* at ¶ 84.

not be appropriate at this time to eliminate the . . . rule in rural markets.”¹⁰ As the Petitioners point out, the Commission cited no evidence demonstrating a direct correlation between the number of facilities-based carriers in a geographic market, the impact and quality of the CMRS competition in the market, and whether that market is characterized as an MSA or an RSA. In fact, the *Report and Order* highlights that many RSAs exhibit market conditions involving numerous competitors. The Commission’s analysis also fails to consider that regional and nationwide affiliations among CMRS carriers allows for similarly priced services to be available in RSAs that are available in the neighboring MSAs as well. Moreover, the Commission’s analysis fails to take into consideration that nationwide or regional rates and marketing plans bring the same benefits of competition enjoyed by customers living in urban markets to customers living in rural license areas. As Petitioners note, “even in a hypothetical worst-case scenario where a nationwide or regional cellular carrier has all 50 MHz of cellular spectrum and there are no PCS or SMR providers yet operating in the RSA, prices will be constrained in that market by the regional or national plans of the carrier in that market.” Finally, the rule should be reconsidered because it would prohibit investment and consolidation transactions involving regionalized markets by treating the RSA portions of a regional market different from the MSA without any factual or policy basis.

¹⁰ *Id.* at ¶ 88.

The Commission's failure to recognize that cellular RSA markets cannot be considered as separate from the adjacent MSAs combined into a single service and market area, and without considering the competitive presence of PCS MTA and BTA licensees serving the same market, requires reconsideration. Given the structure of the CMRS market, a competitive analysis on a case-by-case basis will best accommodate actual service areas and marketing practices in a given CMRS market, and thus best insure that dynamism and increased competition will remain the hallmark of the U.S. wireless industry. For the foregoing reasons, CTIA respectfully urges the Commission to grant the Petitions.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
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