



PUBLIC NOTICE

Federal Communications Commission
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DA 00-318
February 18, 2000

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON AT&T WIRELESS SERVICES, INC., BELL SOUTH CORPORATION AND BELL ATLANTIC MOBILE, INC. PETITIONS REGARDING CMRS SPECTRUM CAP LIMITS

Comment Date: March 3, 2000

Reply Date: March 10, 2000

AT&T Wireless Services, Inc. ("AT&T Wireless") and BellSouth Corporation ("BellSouth") have filed separate petitions requesting a waiver¹ of the Commercial Mobile Radio Service ("CMRS") spectrum cap limits set forth in Section 20.6 of the Commission's rules.² AT&T Wireless and BellSouth request expedited consideration of their requests. In addition, Bell Atlantic Mobile, Inc. ("Bell Atlantic") has filed a petition requesting limited forbearance³ from Section 20.6. Section 20.6 limits the amount of spectrum a single broadband Personal Communications Service ("PCS"), cellular and Specialized Mobile Radio ("SMR") licensee may hold to 45 MHz within the same geographic area and 55 MHz within a Rural Service Area. AT&T Wireless, BellSouth and Bell Atlantic hold CMRS authorizations that are subject to the spectrum cap limits in Section 20.6.

AT&T Wireless requests that the Commission waive the spectrum cap limits for the C and F block spectrum scheduled for auction July 26, 2000, to permit AT&T Wireless's participation in the auction.⁴ The company states that the demand for its services has increased significantly and, without additional PCS spectrum, it will encounter difficulty in rolling out third-generation ("3G") wireless applications and advanced broadband services. AT&T Wireless contends that the spectrum cap limits preclude it from adding C and F block licenses to its existing spectrum holdings in many markets. It asserts that retaining the spectrum cap limits will result in substantial market inefficiencies in the wireless market because carriers will be prevented from obtaining sufficient spectrum to realize economies of scale and scope. The company urges the Commission to waive the spectrum cap limits for the C and F block reauction so that it can establish a "national footprint" for offering 3G and advanced services as well as continue to meet the demand for existing services. In its petition,

¹ AT&T Wireless Services, Inc., Petition For Waiver And Expedited Action, filed February 15, 2000; BellSouth Corporation, Petition For Waiver And Expedited Action, filed February 17, 2000. BellSouth's petition also requests a waiver of the Commission's eligibility requirements under Section 24.709 of the Commission's rules to permit BellSouth to participate in the July 26, 2000 C and F block auction. This request will be considered in connection with the *Public Notices* released by the Wireless Telecommunications Bureau seeking comment on a request to waive the eligibility requirements for participation in the upcoming C and F block auction. See "Wireless Telecommunications Bureau Seeks Comment on SBC Communications Inc.'s Request for Waiver of the Eligibility Requirements for Participation in the Upcoming PCS C and F Block Auction," *Public Notice*, DA 00-145 (rel. January 31, 2000); "Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.'s Petition Regarding PCS C and F Block Spectrum," *Public Notice*, DA 00-191 (rel. February 3, 2000); and "Extension of Filing Deadline For Comments To the Petitions Filed by SBC Communications, Inc. and Nextel Communications, Inc. Regarding PCS C and F Block Rules," *Public Notice*, DA 00-271 (rel. February 11, 2000).

² 47 C.F.R. § 20.6.

³ Bell Atlantic Mobile, Inc., Petition For Limited Forbearance, filed February 17, 2000.

⁴ AT&T Wireless Petition at 2.

BellSouth states that it suffers capacity problems in some of its most competitive markets as a result of the spectrum cap limits and otherwise reiterates AT&T Wireless's arguments supporting a waiver of the spectrum cap limits.⁵

Bell Atlantic requests that the Commission exercise limited forbearance, under Section 10 of the Communications Act,⁶ by refraining from applying the CMRS spectrum cap limits to the C and F block licenses resulting from the scheduled auction.⁷ Bell Atlantic does not seek forbearance from applying the CMRS spectrum cap limits to spectrum aggregation in the secondary markets. Section 10 of the Communications Act requires the Commission to forbear from applying any regulation or provision of the Communications Act if the Commission determines that enforcement is not necessary: (1) to ensure that telecommunications carrier or service charges, practices, classifications or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) to protect consumers; and (3) where forbearance is consistent with the public interest.⁸ The company asserts that its limited forbearance request should be granted because the competitive nature of the CMRS market makes enforcement of the spectrum cap limits not necessary to guard against unreasonable rates or to protect consumers. According to Bell Atlantic, the public interest would be served because forbearance would promote the Commission's auction policies and generate other benefits. As an alternative to forbearance, the company requests a waiver of Section 20.6 of the Commission's rules for the C and F block licenses to be auctioned.⁹

As noted, we released *Public Notices* seeking comment on the requests made by SBC Communications Inc. and Nextel Communications, Inc. for a waiver of or expedited rulemaking concerning the Commission's eligibility requirements for PCS C and F block spectrum.¹⁰ Comments submitted in response to those *Public Notices* may, to the extent relevant, be incorporated by reference in comments submitted in response to this *Public Notice*.

Commenters should address the sufficiency of the showings made by AT&T Wireless, BellSouth and Bell Atlantic in light of the requirements of 47 U.S.C. § 160, 47 C.F.R. § 1.3 and any other public interest considerations. All comments should reference the DA number of this Public Notice (DA 00-318). Comments should be filed with the Office of the Secretary, Federal Communications Commission, TW B204, 445 12th St. S.W. Washington, DC 20554. Comments also should be provided to Steven Weingarten, Chief, Commercial Wireless Division, Room # 4-C224, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St. S.W. Washington, DC 20554.

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 C.F.R. §§ 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The AT&T Wireless, BellSouth and Bell Atlantic petitions are available for public inspection and copying in the Reference Center, Room CY A257, 445 12th St., S.W., Washington, DC 20554. Copies of the petitions are also available from ITS at 1231 20th St. N.W., Washington, DC 20036, or by calling (202) 857-3800.

For further information, contact Dan Connors of the Commercial Wireless Division at (202) 418-2109.

By the Chief, Wireless Telecommunications Bureau

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⁵ BellSouth Petition at 2-4.

⁶ 47 U.S.C. § 160.

⁷ Bell Atlantic Petition at 1.

⁸ 47 U.S.C. § 160(a).

⁹ Bell Atlantic Petition at 13-15.

¹⁰ See *Public Notices* DA 00-145, DA 00-191 and DA 00-271.

