

STATEMENT OF COMMISSIONER
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June 13, 2002

RE: Implementation of Section 6002(b) of the Omnibus budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services.

I support today's Report because we have made progress in improving the quality of the data we rely on; because we state that our data is still incomplete; and because the Commission has committed to a wide-ranging Notice of Inquiry to gather more adequate data before the next CMRS Competition Report.

CMRS is a real success story. This Report shows how, in many areas, there is real competition, declining prices, reduced roaming charges, and innovative service offerings. Consumers are benefiting from this competition everyday. As cable and fixed telephone rates increase, we can all see what happens for consumers when many strong competitors exist – prices decline.

However, I want to point out two dark clouds on the horizon of this sunny sky. First, our Report shows that this competition is not uniform across the country. Rural consumers have far less choice than urban consumers. In 50% of the country, consumers have a choice of two or fewer wireless companies. The majorities or close to majorities of Alaska, Arizona, Colorado, Kentucky, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, South Dakota, Vermont, and West Virginia are served by two or fewer carriers. Such areas are, of course, far less populated than more urban states. But they are no less important for that.

So I am concerned that our Report continues to define an entire county as being served by a carrier if any part of the county is served. This means we count an entire county as served even though only a highway that runs through it is actually served. And we find competition in a county even where two apparent competitors do not venture into each other's territory to actually compete. Finding more granular data is difficult. But, just as in the broadband context of Section 706, when we have insufficient data, we should not rush to judgment and assume competition without proof. I'm glad that the Report notes that we lack "data specific to rural markets." The Commission sought additional data in a forum on data collection earlier this year. Unfortunately, most of the data collected was anecdotal. This is not enough. While we can make a judgement on competition in urban areas, better data is needed to give us clear answers on competition throughout the country. The NOI has the potential to give us what we need.

The second dark cloud is that this Report does not mean, nor should it be read to imply, that the competition we celebrate is safe from threats. We should not be tempted to see this report as license to declare the wireless industry uniformly competitive or invulnerable to serious competitive problems. Mergers, some of them far-reaching, are

altogether likely in the wireless industry. The competition we have seen develop could yet be lost if we are not vigilant.

I would also like to point out that nothing in this Report changes the Commission's previous finding that the CMRS market is already characterized by "moderate to high concentration levels."¹ Going further, Leap Wireless, in another proceeding, offering economic studies that state that the average Herfindahl-Hirshman Indices (HHIs) for even the top 25 wireless markets – which are more competitive than smaller markets – are "well above the level considered to be 'highly concentrated' by antitrust authorities."² The Commission has previously stated that "[w]e find that the limited amount of spectrum suitable for CMRS available today creates a significant barrier to entry, at least in MSAs."³ Is a highly concentrated market consistent with "a high level of competition?"⁴ What does the presence of a "significant barrier to entry" mean for the continuance of a high level of competition? If the industry consolidates significantly more, what happens to the current levels of competition we cite today? We need to explore this issue further.

I also must note that in discussing "churn" in this Report we are less than clear about the fact that our churn data is insufficient and our findings inconclusive. We have not found that current churn rates suggest either increasing or decreasing competition.

I want to conclude by commending the staff who put this Report together. It's a daunting task, and they did it well. We all have lots more work ahead of us, I'm afraid, but I'm confident that we can continue to improve our understanding of this market with such a high-quality team. And, I hope, with widespread input from all interested stakeholders – and they should be many.

¹ *Spectrum Cap Order* at ¶ 33. It is important to note that these concentration levels are present with the spectrum aggregation limits intact. The majority does not explore the consequences for lifting the limits on HHI, as I believe it was required to do. Additionally, the decreases in HHI-measured concentration that the majority relies upon, *id.* at 32, occurred while the limits were in place.

² Leap Reply Comments in Spectrum Cap Proceeding at p. 28.

³ Spectrum Cap Order at ¶ 40.

⁴ *Report* at p. 19