

**STATEMENT OF COMMISSIONER**  
**MICHAEL J. COPPS**  
**Dissenting**

November 7, 2001

*RE: 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services (WT Docket No. 01-14) (Rel. December 10, 2001).*

This is a somewhat lengthy but deeply felt response to the action this Commission is about to take. The development of the wireless industry is one of the true success stories of the telecommunications industry and good government policy. The spectrum cap, almost every wireless industry leader has told me, played an important role in making this happen. If the cap is to be repealed, there must be a comprehensive finding of the need for repeal and an analysis of the conditions that require such action and the public interest benefits to be derived therefrom. In almost every market in the country, companies have not reached the cap. In those areas where spectrum scarcity might develop over the next few years, surely the Commission could use waivers or lift current limits and do so without in the process stifling competition, encouraging industry consolidation and short-changing hard-pressed American consumers. Let's not kid ourselves -- this is, for some, more about corporate mergers than it is about anything else. Just look at what the analysts are talking about as the specter of spectrum cap renewal approaches: their almost exclusive focus is on evaluating the candidates for corporate takeovers and handicapping the winners and losers in the spectrum bazaar we are about to open.

Today's Commission approach is "Ready, Fire, Aim." We have not adequately analyzed spectrum exhaustion scenarios in the short or near-term. We have not adequately evaluated the prospects for economic concentration and the potential for wireless monopolies. We have not performed the extensive public interest evaluation required by statute and expected by Congress and which would include impacts upon small business, rural consumers, ownership diversity, efficient use of the spectrum and the encouragement of new technologies. Instead we simply remove the cap. And while we are encouraged to think of this as a measured action -- raising the cap now and repealing it completely in 2003 -- today's action is, in reality, tantamount to immediate repeal. This is because it takes some time for the players to jockey into position to reap the spectral harvest.

Spectrum is a publicly owned resource. It is therefore not surprising that Congress gave the Commission very specific responsibilities related to spectrum. In both the Budget Act and the Telecommunications Act of 1996, Congress instructed the Commission to promote competition, the efficient and intensive use of spectrum, diverse control of spectrum by a wide variety of entities, and to create simple rules and certainty in the marketplace.

The Commission responded to these responsibilities, in part, through the spectrum cap. The cap prevents concentration of spectrum that threatens competition, gives

companies an incentive to maximize their spectral efficiency, and works to promote diversity of control, serving as an easy and transparent method of doing Congress's will. The Commission repeatedly has found the cap to be in the public interest. Yet today the Commission eliminates the cap.

The majority properly does not rely on any argument of spectrum exhaustion. There is no record evidence that companies have even reached the current spectrum cap in all but a few markets. I believe that increasing or altering the cap rather than eliminating it could alleviate future needs. Instead, the majority conducts its public interest analysis by examining only whether the cap is necessary to promote competition. I believe that statutory directives, previous Commission action, and the public interest require us to determine whether the cap supports not only competition, but also efficiency, diversity, simplicity, and certainty in the market. Because I believe that the cap is necessary in the public interest to support these Congressionally mandated goals, and especially because I am troubled by the prospect of dangerous concentration through mergers, I support continuation of the cap.

I would have been open to addressing the cap on a market-by-market basis in a manner that could have addressed the particular challenges of rural America as well as the particular circumstances of other markets. I also would have been open to exploring increasing the cap to a level that would have met our statutory responsibilities while providing more flexibility to wireless companies. But the stark choice presented to me is whether to eliminate the cap or to keep the cap. I must therefore respectfully dissent because I believe that eliminating the cap is contrary to the public interest.

### **The Commission Must Find “Meaningful Competition” and Conduct a Public Interest Inquiry To Fulfill Its Biennial Review Responsibilities**

One important purpose of the Telecommunications Act of 1996 is to facilitate the elimination of unnecessary regulation. To this end, Congress instructed the Commission to review its rules on a biennial basis and “determine whether any . . . regulation [of a provider of telecommunications service] is no longer necessary in the public interest as the result of meaningful economic competition between providers of [that] service.”<sup>1</sup> This created a two-step process for the Commission when we review a regulation under this provision. First we must determine if there is “meaningful competition” in the relevant market. Then we must determine whether the existence of “meaningful competition” means that the regulation in question is “no longer necessary in the public interest.”

It seems that if there is not “meaningful competition” our inquiry is concluded. Congress, however, does not define “meaningful competition” for the Commission. The term “meaningful” is different from other adjectives used to modify competition elsewhere in the law and in our regulations. The majority here does not define “meaningful competition” before determining that “meaningful competition” is present in the CMRS market.

---

<sup>1</sup> 47 U.S.C. § 161(a)(2).

Even if we get past the initial determination of the existence of “meaningful competition,” Congress directs the Commission to eliminate a regulation only if it finds that such elimination serves the “public interest.” Congress did not limit this public interest inquiry in any way. The 1996 Act certainly does not say that for Biennial Review purposes “public interest” only means “promotes competition.” The Act also nowhere even hints that “public interest” only refers to the policies originally referred to in creating the underlying regulation, even though the majority sees this in the “plain meaning” of the statute.<sup>2</sup> “Public interest” here is left unmodified and therefore must be interpreted to mean the traditional Commission public interest standard. To the extent that the majority has analyzed the spectrum cap using a different interpretation of our public interest responsibility, I believe that it has acted contrary to Congressional direction.

Our Biennial Review responsibility in this proceeding, therefore, is first to determine whether there is “meaningful competition” in the CMRS market. If we find such competition, we must ask ourselves whether eliminating the spectrum cap is in the public interest, taking into account that the Commission heretofore has consistently and repeatedly found that the spectrum cap serves the public interest.

### **The Commission Has Not Adequately Analyzed the Nature of Competition in the CMRS Market**

I do not believe that the Commission has gathered data of adequate type, quality, or granularity in its effort to fulfill its statutory responsibility to analyze “meaningful competition” in the CMRS market. This is not the fault of Commission staff, who worked hard with the informational resources they had. It is, rather, that the Commission did not have access to the information needed to fulfill our Biennial Review responsibilities. The wireless industry, as noted above, is a great success story. CMRS providers give customers a wide variety of services and technologies. Careful study may well have demonstrated the presence of the kind of “meaningful competition” that Congress requires – certainly we see large numbers of competitors in large urban markets, and there are industry reports of declining prices in these large urban markets. However, even if we can point to strong anecdotal evidence of competition in selected major markets, the Commission is still obligated to seek concrete, nationwide, independent data on the record and to use this data to explore the issue with rigor and precision before taking action.

The majority argues that the presence of a level of competition that supports eliminating the cap in all markets can be inferred from evidence such as (1) an increased number of CMRS subscribers, corporate revenue, and industry employees; (2) the number of companies offering service in some locations; and (3) decreasing prices.

While more complete data and analysis of these and other topics could be the basis for a decision that I could support, I believe that the record evidence relied upon by

---

<sup>2</sup> Majority at ¶ 25.

the majority is in some cases insufficient and that this evidence has at times only a tenuous relationship to “meaningful competition.” For example, the majority does not explore the relationship between increasing numbers of customers, corporate revenue, and industry employees and competition except to say that consumers have benefited from “increased output.”<sup>3</sup> Increasing demand does not necessarily mean strong competition.

Additionally, while the majority points to large numbers of competing companies in some markets, it also admits that the CMRS market is characterized by “moderate to high concentration levels.”<sup>4</sup> Commenters go further, offering economic studies that state that the average Herfindahl-Hirshman Indices (HHIs) for even the top 25 wireless markets are “well above the level considered to be ‘highly concentrated’ by antitrust authorities.”<sup>5</sup> The majority also explains 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.”<sup>6</sup> Is a highly concentrated market consistent with “meaningful competition?” What does the presence of a “significant barrier to entry” mean for the continuance of “meaningful competition?” If spectrum is aggregated after the cap is eliminated will this barrier to entry mean that “meaningful competition” will disappear? The majority does not explore these questions adequately.

Critically, the majority states that “consumers in rural areas appear to have fewer choices in terms of providers, pricing plans, and service offerings than consumers in MSAs [Metropolitan Statistical Areas].”<sup>7</sup> According to the majority, “in over half of RSA [Rural Service Area] counties, two or fewer licensed mobile telephony carriers are currently providing service . . . [b]ecause these numbers include carriers that may be offering service in only a small portion of a county, they may overstate the amount of actual facilities-based competition, especially in RSAs.”<sup>8</sup> Is there “meaningful competition” in these counties? The majority does not seem to have explored this question in relation to the first step of the Biennial Review standard (although it raises the issue in relation to the cellular cross interest rule). Without addressing these important questions, the Commission has not fulfilled its Congressionally mandated responsibilities.

Instead of exploring the state of competition in rural areas adequately, the majority relies on the assertion that “about ninety-one percent of U.S. residents lived in a county that was served, at least in part, by three or more different mobile telephony providers.”<sup>9</sup> The data that this artfully drafted sentence relies on, however, demonstrate

---

<sup>3</sup> *Id.* at ¶ 35.

<sup>4</sup> *Id.* 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.

<sup>5</sup> Leap Reply Comments at p. 28.

<sup>6</sup> Majority at ¶ 40.

<sup>7</sup> *Id.* at ¶ 34.

<sup>8</sup> *Id.* at ¶ 34.

<sup>9</sup> *Id.* at ¶ 31.

that it should not be the basis for overturning previous Commission action by removing the aggregation limits. In response to the release of these data in the *CMRS Report*, the Rural Telecommunications Group revealed that:

“[T]he FCC trumpeted the news that 91 percent of the U.S. population has access to three or more mobile telephony operators (cellular, broadband PCS and/or digital SMR). The full Report paints a far more sober picture. The FCC explains that its analysis overstates the total coverage in terms of both geographic areas and populations covered. The FCC noted that it counted a county as ‘covered’ if a mobile provider was offering service in any portion of the county. Even where it concluded that multiple providers served a county, it did not mean they were offering service to the same portion of the county. Finally, the Report noted that the FCC included the entire population and square mileage of a county as ‘covered’ if a wireless provider offered service in any portion of the county. This incredibly inflated view of mobile coverage in the U.S. cannot form the basis for future public policy, especially that affects Rural America.”<sup>10</sup>

The Commission should not base its decision to eliminate a long-standing rule, created in order to fulfil the statutory instructions of Congress, on evidence of this sort. Such reliance invites legal challenge.

Finally, the majority relies on evidence of decreasing prices in the CMRS market,<sup>11</sup> citing the Commission’s *Sixth Annual CMRS Competition Report*.<sup>12</sup> However, in that Report, the Commission states that “[i]t is difficult to identify sources of information that track mobile telephone prices in a comprehensive manner.”<sup>13</sup> The Report indicates that “[b]ecause [the studies that the Commission could identify] use different methodologies and market samples, their findings vary and are comparable only in the broadest terms.”<sup>14</sup> Also, critically, the *Report* indicates that “[d]ata are not currently available for smaller markets.”<sup>15</sup> I am hesitant to rely on evidence of this sort.

The Commission could conduct a detailed study of competition in the CMRS market. This would require issuing a Notice of Inquiry requesting comparable, geographically specific data on a wide range of topics, followed by detailed economic analysis of this information. If such a study had been performed we might not have legitimate disagreements about whether competition is strong and ubiquitous enough to support a nationwide elimination of the cap. The result could be that “meaningful competition” exists in both urban and rural CMRS markets. But I do not have access to

---

<sup>10</sup> Press Release of Rural Telecommunications Group (July 19, 2001). Note that the Rural Telecommunications Group issued a correction to this press release that did not change the quoted passage.

<sup>11</sup> *Id.* at ¶ 35.

<sup>12</sup> In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Sixth Report (2001).

<sup>13</sup> *Id.* at 27 (2001).

<sup>14</sup> *Id.* at 28 (2001).

<sup>15</sup> *Id.* at 28 (2001).

adequate record evidence on this issue, and I cannot support eliminating the spectrum cap on the basis of an insufficient record.

### **Eliminating the Spectrum Cap Is Not In The Public Interest**

The majority, having concluded that “meaningful competition” exists, next argues that eliminating the spectrum cap is in the public interest. “[I]n making the determination whether a rule remains ‘necessary’ in the public interest once meaningful competition exists,” the majority states, “the Commission must consider whether the concerns that led to the rule or the rule’s original purpose may be achieved without the rule or with a modified rule.”<sup>16</sup> The majority states that “[t]he primary public interest purpose underlying the original adoption” of spectrum aggregation limits was the promotion of competition in the CMRS market.<sup>17</sup>

As discussed above, Congress did not limit the Commission’s public interest responsibilities in the Telecommunications Act to the original purposes for which the rules were promulgated. If Congress had wanted to do so, it clearly could have by stating that the Commission must “determine whether any such regulation is no longer necessary *for the original purposes for which the regulation was promulgated* as the result of meaningful economic competition between providers of [a given] service.” But it did not, instead choosing to require the Commission to consider the broader “public interest.”

In performing the public interest inquiry, it is of course useful to consider the original purposes of the spectrum cap. The purpose underlying the spectrum aggregation limits was not merely to promote competition in the CMRS market, despite the majority’s almost complete focus on this single purpose. In creating the spectrum cap, the Commission explicitly stated that it intended to fulfill its requirements under Section 309(j) of the Act, and the Budget Act.<sup>18</sup>

As discussed above, spectrum is a publicly owned resource. Because of this, Congress gave the Commission very specific instruction related to spectrum. Section 309(j) states that: “[T]he Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

- “[T]he development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

---

<sup>16</sup> Majority at ¶ 25.

<sup>17</sup> *Id.* at ¶ 26.

<sup>18</sup> *See*, In the matter of Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and Commercial Mobile Radio Service Spectrum Cap, Report and Order, 11 FCC Rcd. 7824, 7874 (1996) (“*CMRS Spectrum Cap Report and Order*”); In the matter of Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd. 7988, 8104 (1994) (“*CMRS Third Report and Order*”).

- “[P]romoting economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;
- “[E]fficient and intensive use of the electromagnetic spectrum.”<sup>19</sup>

In addition, Congress stated that “[i]n prescribing regulations pursuant to [the above sections], the Commission shall . . . prescribe . . . bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunities for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services”<sup>20</sup> In an earlier provision, Congress also stated that “the Commission shall consider, consistent with section 1 of this Act, whether [actions to manage the spectrum made available to private mobile services] will (1) promote the safety of life and property; (2) improve the efficiency of spectrum and reduce the regulatory burdens of spectrum users . . . ; [or] (3) encourage competition and provide services to the largest feasible number of users . . .”<sup>21</sup>

The Commission responded to these responsibilities, in part, through the spectrum cap. In the *CMRS Third Report and Order*, the Commission stated that “[w]e are adopting this cap as a minimally intrusive means of ensuring that the mobile communications marketplace remains competitive and retains incentives for efficiency and innovation.”<sup>22</sup> Rules limiting aggregation, the Commission stated, “seek to promote diversity and competition in mobile services, by recognizing the possibility that mobile service licensees might exert undue market power or inhibit market entry by other service providers if permitted to aggregate large amounts of spectrum.”<sup>23</sup>

The Commission specifically explained that the purposes of the cap extended beyond promoting competition by stating that “[t]he lack of a spectrum cap could undermine other goals of the Budget Act, such as the avoidance of excessive concentration of licenses and the dissemination of licenses among a wide variety of applicants.”<sup>24</sup> In addition, the Commission stated that “we think that setting a cap

---

<sup>19</sup> 47 U.S.C. § 309(j)(3).

<sup>20</sup> *Id.* at § 309(j)(4).

<sup>21</sup> *Id.* at § 332(a). It is worth noting that §332(c)(1)(C) states that “promot[ing] competition” may be the basis of a public interest finding only if the Commission is acting under §332(c)(1)(A)(iii) in assigning common carrier duties. This does not extend to public interest analysis related to §332(a).

<sup>22</sup> *CMRS Third Report and Order* at 8100.

<sup>23</sup> *Id.* The Commission also found that “If firms were to aggregate sufficient amounts of spectrum it is possible that they would unilaterally or in combination exclude efficient competitors, reduce the quantity or service available to the public, and increase prices to the detriment of consumers. We believe that the imposition of a cap on the amount of spectrum a single entity can control in an area will limit the ability to increase prices artificially.” *Id.*

<sup>24</sup> *Id.* at 8104.

further the public interest by promoting competition in CMRS services, allowing review of CMRS acquisitions in an administratively simple manner, and lending certainty to the marketplace.”<sup>25</sup>

The Commission explained the multifold reasons for the spectrum cap in the *CMRS Spectrum Cap Report and Order* as well, stating that “[o]ur 45 MHz spectrum cap also furthers the goal of diversity of ownership that we are mandated to promote under Section 309(j). Section 309(j) directs us, in specifying eligibility for licenses and permits, to avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants. The statute further states that in prescribing regulations, the Commission must, *inter alia*, prescribe area designations and bandwidth assignments that promote economic opportunity for a wide variety of applicants.”<sup>26</sup>

As described by Congress and the Commission, therefore, the purposes of the spectrum cap include: (1) promoting competition; (2) promoting efficient and intensive use of the publicly owned spectrum; (3) promoting innovation; (4) promoting diversity of ownership and the dissemination of licenses among a wide variety of applicants; (5) allowing review of CMRS acquisitions in an administratively simple manner; and (6) lending certainty to the marketplace. If the Commission has not acted to promote each of these purposes in its public interest review, along with other relevant public interest factors, it has not fulfilled Congress’s instructions and its Biennial Review responsibilities. Assertions regarding the primacy of one factor, sentiment on the unimportance of other factors that were specifically enumerated by Congress and relied upon by the Commission, or broad-brush claims about the ability of other Commission policies and rules to achieve these mandated purposes, do not mask this legal insufficiency.

I believe that the spectrum cap is still in the public interest, given the information we have before us. First, the cap promotes competition. In meeting with the CMRS industry over the past few months, I have repeatedly asked whether the spectrum cap promoted competition in the wireless industry. The answer was almost always yes. The Commission explained the economic rationale behind the cap in the *CMRS Spectrum Cap Report and Order*. As we explained there, the cap promotes competition by preventing anti-competitive horizontal concentration. Some concentration can create efficiencies and economies that are good for competition and for consumers. But, “at some point . . . horizontal concentration starts to work against those goals because it results in fewer competitors, less innovation and experimentation, higher prices and lower quality, and these disadvantages outweigh any advantages in terms of economies and efficiency.”<sup>27</sup>

Congress recognized that the CMRS market is particularly susceptible to dangerous concentration by specifically instructing the Commission to protect against concentration in its rules. The “highly concentrated” nature of the market as indicated

---

<sup>25</sup> *Id.* at 8105.

<sup>26</sup> *CMRS Spectrum Cap Report and Order* at 7874.

<sup>27</sup> *Id.* at 7869.

by Herfindahl-Hirshman Indices may be evidence that Congress was correct in its apprehension. The Commission has determined in the past that there are several factors that create a significant risk that the concentration indicated here by HHI is not misleading. It identified “significant barriers to entry,” such as limited spectrum availability, and the cost of obtaining licenses, and noted the inherent advantage of incumbents over new entrants. In sum, the Commission concluded that there was “little potential for new entrants to discipline the behavior of the incumbents in the absence of the spectrum cap.” I believe that the basic nature of the CMRS market has not changed and that barriers to entry persist. In the absence of solid economic proof that this is not the case (as discussed above), I believe that the spectrum cap is in the public interest.

It is interesting to note that in anticipation of the cap being lifted financial and industry experts are reporting on a large set of potential mergers, predicting significant consolidation and labeling smaller competitors as “munch bait” if the cap is eliminated. This should give us pause.

The majority recognizes the presence of barriers to entry, but argues that a case-by-case review of mergers will protect competition. In the absence of public guidelines that the Commission would use in analyzing mergers, however, I cannot determine whether this would be the case or not. The Commission could have developed these guidelines before issuing this Order, but chose not to do so. The Commission could even have committed to publishing guidelines before the date when the cap is eliminated in 2003, but it chose not to do so.

It is important to note that Congress passed the Telecommunication Act and the Budget Act knowing that the Commission’s and the Department of Justice’s merger review processes existed. The fact that it found it necessary to require the Commission to create additional protections beyond these review processes must be read as a Congressional determination that these existing protections were not sufficient. Additionally, Congress specifically gave the Commission – not the Department of Justice – the responsibility to protect the interests outlined above. If the Commission relies on the DOJ review process or evaluation criteria alone, it will fail to meet its statutory responsibilities and will fail to recognize Congress’s determination that DOJ review is not adequate. We should not substitute our judgment for that of Congress.

Congress also mandated that the Commission promote the efficient and intensive use of publicly owned spectrum. Wireless companies have an incentive to invest in spectrally efficient protocols and technologies when the spectrum cap is in place. This is because they find greater value in achieving efficiency from their spectrum assets, and cannot merely continue to employ spectrally inefficient technologies if buying more spectrum is the less expensive option. Even if this does not result in efficiency from an individual company’s micro perspective, Congress specifically found that it was important to promote overall spectrum efficiency, and we are not positioned to question Congressional judgment on this decision.

The cap also serves the public interest by promoting innovation, encouraging diversity of ownership and the dissemination of licenses among a wide variety of applicants, allowing review of CMRS acquisitions in an administratively simple manner, and lending certainty to the marketplace, as Congress demanded. Even if the majority believes that eliminating the cap and relying on a case-by-case review of mergers promotes competition, it has not explained how it will address these other values.

Congress thought that the CMRS market was particularly susceptible to concentration, inefficient use of spectrum, and insufficient diversity of ownership. Knowing that the Commission's and DOJ's merger review processes were in place, it chose to instruct the Commission to do more. The Commission did this with the spectrum cap, and found that the cap was in the public interest several times, most recently in the last Biennial Review.<sup>28</sup> The cap is still in the public interest, and it should be maintained.

### **Conclusion**

The wireless industry has been tremendously successful. I believe that this is due, in part, to the spectrum cap. Before we eliminate the cap, I believe that the Commission should undertake an intensive study of the CMRS marketplace so that we can determine where "meaningful competition" is present and where it is absent. Armed with this information, we could choose a method of fulfilling our statutory mandates that would be best suited to the marketplace. With what we know today, however, I must conclude that eliminating the cap is not in the public interest and leaves our ability to fulfill Congressional instructions in doubt.

The Commission, however, is deciding today to eliminate the spectrum cap. I hope that we will be vigilant as we go forward to meet the responsibilities that Congress gave us. Without the spectrum cap this will have to be done through the less effective and more burdensome method of case-by-case review. I believe that each review must not only examine competitive implications, but also the implications of a merger for the promotion of spectral efficiency and diversity of spectrum control so that a wide variety of entities have access to spectrum. I believe that we need to establish merger guidelines that will allow us to do this before the spectrum cap is eliminated. In their absence, I want all applicants to know that I will be reviewing their applications using the approach I have discussed herein.

---

<sup>28</sup> In the last Biennial Review, the Commission again found that the cap was necessary to fulfill the instructions of Congress. "In re-evaluating the rule in the CMRS Spectrum Cap Report and order, the Commission set out the economic arguments why a 45-MHz aggregation limit strikes an appropriate balance between the concern about undue market concentration and the benefits of spectrum aggregation. No commentator has persuaded us that this economic analysis is not still valid." In the matter of 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Report and Order, 15 FCC Rcd 9219, 9254-55 (1999). "We are also concerned that raising the cap to a higher level . . . could lead to unacceptable concentration of these markets." In the matter of 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Report and Order, 15 FCC Rcd 9219, 9256 (1999).

Finally, I hope that we will conduct a proceeding to gather more information on the CMRS market. With adequate data our able FCC economists and attorneys, who have already worked hard on this issue, can help us address our statutory responsibilities.