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**ORIGINAL FILE** **PACIFIC \* TELESIS**  
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November 5, 1992

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Federal Communications Commission  
Office of the Secretary

**Donna R. Searcy**  
**Secretary**  
**Federal Communications Commission**  
**Mail Stop 1170**  
**1919 M Street, N.W., Room 222**  
**Washington, D.C. 20554**

Dear Ms Searcy:

Re: *CC Docket No. 92-115 - Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of its "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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will, therefore, limit their discussion to address issues of particular concern to the Pacific Companies.

1. Section 22.509 -- Procedure for mutually exclusive applications.

The Commission proposes that all mutually exclusive Public Mobile Service applications be processed on a "first-come, first-served" basis. Many commentors recognized that the proposed rule change creates more problems than it intends to solve and consequently do not endorse the rule.<sup>3</sup> If, however, the Commission adopts the "first-come, first-served" rule, the negative consequences recognized by commentors can be minimized by adopting the suggestions made by BellSouth and others to allow existing co-channel licensees to file a mutually exclusive application within thirty days following the public notice of an impending application.<sup>4</sup> This suggestion would reduce the period for filing mutually exclusive applications from sixty to thirty days from the date of public notice.

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<sup>3</sup> Comments of Metrocall of Delaware, Inc., dated October 5, 1992 ("Metrocall"), pp. 7-9; Comments, Joyce and Jacobs, dated October 5, 1992, pp. 2-3; Comments of Southwestern Bell, Corporation, dated October 5, 1992, ("Southwestern Bell"), pp. 13-14; Comments of ALLTEL Mobile Communications, Inc., dated October 5, 1992, p.2.

<sup>4</sup> Comments of BellSouth, dated October 5, 1992, ("BellSouth"), p. 3; Comments of McCaw Cellular Communications, Inc., dated October 5, 1992, ("McCaw") pp. 26, 28; Comments in Response to Notice of Proposed Rulemaking, PacTel Paging, Arch Communications Group, AACS Communications, Inc., et.al., p. 24; Arthur K. Peters, dated October 5, 1992, pp. 3-4.

2. Sections 22.132 -- Grants of applications.

Section 22.132(c) would permit the Commission to grant applications in part and/or subject to conditions other than those normally applied to authorizations of the same type. Virtually all respondents to this proposal identified the flaw in this proposal, e.g., that no license should be perpetually conditional. The status of licenses would be uncertain<sup>5</sup> which increases the risk to licensees and diminishes the prospects for investments.<sup>6</sup> Two workable alternatives are widely suggested: First, that the conditional status of the license expire at some interval of time following the commencement of operation. Shorter time periods of six months to two years have been suggested.<sup>7</sup> Second, instead of using a conditional license as proposed, the Commission should exercise its authority under Section 316 of the Communications Act to require

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<sup>5</sup> BellSouth, pp. 4-5; Comments of SNET Paging, Inc., dated October 5, 1992, ("SNET"), pp. 11-12.

<sup>6</sup> Southwestern Bell, p. 14.

<sup>7</sup> Metrocall, pp. 9-10 (maximum of 180 days from commencement of service to public or from public notice of filing of Form 489); SNET, pp. 11-12 (one year from date service commences in the absence of a formal complaint of interference prior to that date); Comments of the Cellular Telecommunications Industry Association, dated October 5, 1992 ("CTIA"), p. 5.

modification of the interfering system.<sup>8</sup> The Pacific Companies support either of these alternatives. Moreover, the Pacific Companies reiterate their suggestion that the parties should be permitted to work out the issue of interference before the Commission is required to act.

3. Section 22.142(b) -- Commencement of service.

In their Comments, the Pacific Companies supported the Commission's proposal that stations must begin providing service to the public no later than the date of required commencement of service specified on the authorization.<sup>9</sup> Telocator's proposes the definition of "commencement of service" to entail the construction of functioning equipment that could be used to provide service upon request. At a minimum, Telocator sees this to include a transmitter, antenna, transmission line and a terminal that is connected to a transmitter and the public switched network. The system must be able to transmit a message within a reasonable time upon request from the Commission.<sup>10</sup> Telocator is on the right track in that this definition would at least require a financial commitment for a station. However, the

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<sup>8</sup> Section 316 of the Communications Act permits the Commission to modify a station license if such action will promote the public interest, convenience and necessity. 47 U.S.C. Section 316. Modification of an interfering system would be in the public interest.

<sup>9</sup> Comments of Pacific Bell and Nevada Bell, dated October 5, 1992 ("Pacific's Comments"), p.5.

<sup>10</sup> Comments of Telocator, dated October 5, 1992, p. 17.

Pacific Companies continue to be concerned that this level of requirement will not foreclose the abuse of warehousing unneeded frequencies with a skeleton system. In the absence of a definitive requirement for a system to really provide service, the Commission's regulations will only minimize potential abuse. The definition proposed by Page America requiring that a station be fully constructed, operational and being used to provide paging services to customers more closely approaches the level of commitment that may be necessary to curtail warehousing.<sup>11</sup>

4. Section 22.129 -- Agreements to dismiss applications, amendments or petitions to deny.

The Pacific Companies heartily endorse the Commission's provisions to limit the consideration for the settlement of mutual exclusivity disputes to the legitimate and prudent expenses reasonably incurred by a party in its application or settlement. Failure to do otherwise could provide incentives that promote abuse of application and protest procedures. Further, the Pacific Companies join with SMR Systems Inc., in encouraging the Commission to extend this principle to the settlement of any adverse pleading, not merely a petition to deny.<sup>12</sup>

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<sup>11</sup> Comments of Page America Group, Inc., dated October 5, 1992, ("Page America"), pp. 2-3.

<sup>12</sup> Comments of SMR Systems, Inc., ("SSI"), pp. 3-4.

In addition, the Pacific Companies support Bell Atlantic proposal that the mandatory settlement conference be limited to the resolution of specific issues within the FCC's purview that would benefit from an oral conference and should not include matters such as private contractual disputes.<sup>13</sup> On the other hand, U S West's proposal that a Commission attorney participate in all settlement conferences may have the undesirable result of delaying the settlement process, given the increasingly limited resources available to the Commission.<sup>14</sup>

5. Sections 22.537, 22.567: Replacement of Carey Method/Technical Channel assignment criteria.

Pacific Bell supports the efforts of the Commission to improve the means by which co-channel interference is calculated. However, several commentors express concern that the proposed formulas do not reasonably approximate the Carey contours in those cases involving sites less than 30 meters with a high radiated power.<sup>15</sup> The Commission must insure that any alternative to the current Carey formula provide methodologies that are more accurate and easier to use while also protecting the territory of incumbent licensees.

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<sup>13</sup> Comments of Bell Atlantic, dated October 5, 1992, p. 11.

<sup>14</sup> Comments of U S West, dated October 5, 1992, Appendix 1, p. 18.

<sup>15</sup> See Comments of Comp Comm, Inc., dated October 2, 1992. Bell Atlantic, p. 16; Comments of the United States Telephone Association, dated October 5, 1992, p. 5.

6. Sections 22.539; 22.569 -- Elimination of traffic loading studies/additional channel policies.

The Commission's intent by this revision is to free the industry from unnecessarily burdensome regulations, a goal enthusiastically supported by the Pacific Companies. However, the Pacific Companies are not persuaded that the elimination of traffic loading studies and the proposed related limitation to only two channels is prudent. Moreover, the proliferation of competitive telecommunications services, a reason offered by the Commission to support the elimination of traffic studies, may indeed foster, rather than discourage, spectrum inefficiency by heightening the concern about frequency availability in the future.

There is no doubt that the data necessary to compile an accurate loading study requires effort. But, that same loading data is necessary for responsible system management to be able to evaluate the quality of service provided to customers. For that reason, loading data should be available and could be used as evidence of the need for an additional channel. In the absence of such data, the need for an additional channel (and the attendant public interest required for the Commission's grant) is merely speculative.

The Pacific Companies particularly urge the Commission to permit the use of a loading study to support the grant of an initial application or an application to increase an existing system when two or more channels are requested. As described by Pacific's Comments, the ability to add two or more channels for

initial authorization or additional growth is particularly necessary in the establishment or growth of a BETRS system.<sup>16</sup>

Conclusion.

By this proceeding, the Commission has initiated a significant opportunity to streamline the regulation of the public mobile services industry. The Commission should implement its proposed revisions as revised by the suggestions above. These effect of the revisions will be to foster greater spectrum efficiency and growth in the mobile communications industry.

Respectfully submitted,

PACIFIC BELL  
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Date: November 5, 1992

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<sup>16</sup> Pacific's Comments, p. 8.

CERTIFICATE OF SERVICE

I, Alex Kositsky, certify that the following is true and correct:

I am a citizen of the United States, State of California and over eighteen years of age.

My business address is 140 New Montgomery Street, San Francisco, CA 94105.

On November 5, 1992 I served the attached "Reply Comments of Pacific Bell and Nevada Bell" by placing true copies thereof in envelopes addressed to the parties in the attached list, which envelopes, with postage thereon fully prepaid, I then sealed and deposited in a mailbox regularly maintained by the United States Government in the City and County of San Francisco, State of California.

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By: \_\_\_\_\_

*Alex Kositsky*

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