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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL FILE

In the Matter of Amendment of the Commission's Rules To Establish New Personal Communications Services	Gen. Docket No. 90-314 ET Docket No. 92-100

COMMENTS OF
CLEAR CREEK MUTUAL TELEPHONE COMPANY, MOLLALLA TELEPHONE COMPANY, MONITOR COOPERATIVE TELEPHONE COMPANY, MONROE TELEPHONE COMPANY, MT. ANGEL TELECOMMUNICATIONS, INC., PIONEER TELEPHONE COOPERATIVE, SCIO MUTUAL TELEPHONE ASSOCIATION AND YELM TELEPHONE COMPANY

CLEAR CREEK MUTUAL TELEPHONE COMPANY, MOLLALLA TELEPHONE COMPANY, MONITOR COOPERATIVE TELEPHONE COMPANY, MONROE TELEPHONE COMPANY, MT. ANGEL TELECOMMUNICATIONS, INC., PIONEER TELEPHONE COOPERATIVE, SCIO MUTUAL TELEPHONE ASSOCIATION AND YELM TELEPHONE COMPANY

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Dated: November 9, 1992

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SUMMARY

The small, rural independent telephone companies ("Rural Telcos") submitting these comments support the Commission's efforts to develop the regulatory scheme that will permit rapid implementation of advanced wireless personal communications services in the United States. However, the Rural Telcos strongly urge the Commission to ensure that the licensing, operational, and other PCS requirements adopted in this proceeding promote, rather than inhibit, the provision of PCS in rural America. While the Commission proposes in the Notice a flexible, comprehensive licensing scheme for PCS in densely populated areas nationwide, the public interest requires that it consider the special circumstances of small rural telephone companies and their customers in developing its PCS rules. PCS is expected to prove particularly valuable in rural communities where the costs of landline services are high and cellular services have been slow to develop.

The proposed PCS rules, if adopted without modification, could effectively deny rural subscribers the full benefits of affordable PCS. Accordingly, the Rural Telcos strongly recommend that the Commission make the following modifications to its proposed PCS rules to promote PCS services in rural areas:

- Establish smaller PCS license areas for rural PCS
- Grant rural PCS licenses at the request of rural LECs serving areas with population of 10,000 or less
- Refrain from handicapping LECs from providing PCS in rural areas and/or specifically exempt rural telcos serving areas of 10,000 or less from any restrictions generally imposed on LECs

- Impose minimal regulation on PCS providers
- Permit cooperative rural telephone companies to elect private land mobile status for their PCS offerings

Incorporating these modest revisions into the Commission's PCS rules will substantially further the important public interest goal of assuring that subscribers in rural America, as well as those in urban areas, have the opportunity to share in the significant benefits expected from the introduction of PCS.

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Clear Creek Mutual Telephone Company, Mollalla Telephone Company, Monitor Cooperative Telephone Company, Monroe Telephone Company, Mt. Angel Telecommunications, Inc., Pioneer Telephone Cooperative, Scio Mutual Telephone Association and Yelm Telephone Company, (collectively referred to herein as the "Rural Telcos") hereby respond to the Commission's Notice in the above-captioned proceeding.[1] The Rural Telcos support the Commission's efforts to authorize personal communications services ("PCS") in the United States, but urge the Commission to ensure that the PCS policies adopted in this proceeding promote, rather than inhibit, the provision of PCS in rural areas.

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[1] Notice of Proposed Rulemaking and Tentative Decision, FCC 92-333 (released August 14, 1992).

INTRODUCTION AND BACKGROUND

The Rural Telcos submitting these comments are all small independent telephone companies located in rural areas of Oregon and Washington. Four of the independent telephone companies are organized as subscriber-owned cooperatives. Their operations range in size from 700 to 11,500 access lines. The Rural Telcos provide high-quality, yet affordable local telecommunications services to residential and commercial customers in Oregon and Washington. Although their service areas include a variety of geographic terrain -- from hilly coastal areas to flat farmland or forests -- they all serve sparsely populated areas consisting of numerous smaller communities. Most of the Rural Telcos have been providing telecommunications service in their areas for over 40 years and some for as long as 86 years.

The Rural Telcos have consistently strived to offer to their rural subscribers technologically advanced, reasonably priced telecommunications service, including conventional wireless services. Consistent with this objective, all of the Rural Telcos have closely monitored the development of advanced personal communications services and support the introduction of PCS in the United States in the near future. If feasible under the rules adopted in this proceeding, the Rural Telcos hope to deliver PCS to subscribers in their service areas.

In this proceeding, the Commission sets forth its vision of PCS in the United States and a comprehensive, yet flexible, regulatory framework for the licensing and operation of PCS systems. The Notice reflects the Commission's commitment to authorizing PCS under terms that will encourage innovation in wireless services and engender competition

in the PCS and related markets. Underlying this policy is the Commission's public interest goal to foster the widespread introduction of advanced PCS to all segments of the American population at reasonable rates. Although the Rural Telcos share the Commission's broad objectives in this proceeding, they strongly believe that the Commission must be careful to consider the impact that the newly adopted PCS rules will have on rural subscribers. To that end, the Rural Telcos identify certain portions of the Commission's proposed rules that, if adopted, could effectively deny rural subscribers the full benefits of affordable PCS. Accordingly, the Rural Telcos propose certain alternative rule provisions that should be included in the licensing and operational requirements for PCS established in this proceeding.

I. The Commission Must Ensure that the Regulatory Scheme Established For PCS Promotes Rapid Deployment of PCS in Rural Areas

The Rural Telcos applaud the Commission's efforts to foster the development and rapid introduction of innovative, advanced wireless technologies in the United States. Based on many years of providing telecommunications service, the Rural Telcos believe that PCS holds the promise to bring significant public interest benefits to many American consumers. PCS will potentially provide flexible, high quality wireless services that will substantially enhance efficiency, productivity, and convenience both in businesses and in the home. The Rural Telcos also recognize that PCS may prove particularly valuable in rural communities where the costs of serving sparsely populated areas by landline are

high (and sometimes prohibitive) and in specialized applications for, among other purposes, serving the needs of the elderly, public safety and health services.[2]

In light of the significant benefits that will be made available through PCS technology, the Rural Telcos' principal concern in this proceeding is ensuring the availability and affordability of wireless services outside of urban areas. In particular, the Rural Telcos believe that the Commission should be careful not to instill in the burgeoning PCS market certain inherent disincentives that have stymied the growth of rural cellular services. Cellular services have been slow to develop in rural areas and, today, prices remain out of the reach of most rural customers. Consequently, the Rural Telcos continue to search for methods of delivering affordable, wireless services to rural communities within their service territories.

With that in mind, the Rural Telcos are concerned that certain aspects of the Commission's proposal in this proceeding could adversely affect the development of universal wireless service in rural America. The public interest thus requires that the deployment of PCS in rural areas be given special consideration.[3] Specifically, the

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[2] See Notice at ¶ 26.

[3] Indeed, the Communications Act of 1934, as amended, directs the Commission to regulate communications "so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . ." 47 U.S.C. § 151. The Commission has long recognized that its public interest mandate under the Act requires it to give full consideration of the impact of its telecommunications policies on a broad range of subscribers, including rural customers. See, e.g., Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, Recommendation to Congress, and

(continued...)

Commission must ensure that the PCS rules formulated in this proceeding, when applied in sparsely populated areas, do not inhibit and, in fact, promote the introduction of PCS in rural America.

II. The Commission Should Adopt Smaller PCS License Areas for Rural PCS

The Rural Telcos favor establishing smaller service areas for PCS licensees providing service in rural America. It is the experience of the Rural Telcos that the Metropolitan Statistical Areas ("MSA")/Rural Service Area ("RSA") scheme used to license cellular service has impeded the development of cellular services in rural communities because the rural MSA/RSA areas are financially less attractive to the larger cellular providers. Accordingly, the Rural Telcos are concerned that the relatively large service areas proposed in the Notice may similarly inhibit the development of PCS in sparsely populated areas. While large service areas such as the Basic Trading Areas proposed as one option in the Notice may be appropriate to serve more populated, urban parts of America, such a service area plan may not promote rapid availability of affordable wireless services in rural areas.

The Rural Telcos are willing to invest the financial and other resources necessary to accelerate the deployment of wireless services within their service areas. However, they may be precluded from doing so if the PCS service areas established in this

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[3/](...continued)
Second Further Notice of Proposed Rulemaking, CC Docket No. 87-266, FCC 92-266. ¶¶ 144-154 (released August 14, 1992) (proposing to encourage greater rural service by increasing population threshold in rural exemption to cross-ownership restrictions).

proceeding encompass territories significantly larger than the rural telephone companies' service areas. Accordingly, the Rural Telcos propose that, in addition to the plan that the Commission adopts generally for PCS service areas nationwide, PCS licenses should be made available expressly for rural areas with populations of 10,000 or less. These rural area licenses should be granted upon request of the local telephone company providing service in the rural area. (As discussed in Section III below, rural local exchange carriers ("LECs") are unlikely to engage in anticompetitive behavior by offering PCS in their service territories.) Establishing a smaller license area for rural PCS will provide a meaningful opportunity for rural independent telephone companies to bring PCS services to their subscribers.

III. The Commission's PCS Eligibility Rules Should Not Handicap Local Exchange Carriers From Providing PCS in Rural Areas

The Commission raises concerns in its Notice that if LECs are permitted to provide PCS in their wireline service territories, they may have an incentive to "discriminate against competitors requesting interconnection as well as to cross-subsidize PCS provision from expenditures ostensibly made to serve rate regulated wireline customers." Notice at ¶ 72. The Rural Telcos submit that concerns regarding anti-competitive behavior and the adverse effect on competition that would result in the wireless market are not directly relevant to the provision of PCS by small rural LECs in their rural service territories.

LECs have far greater incentive to engage in harmful anticompetitive behavior if they serve densely populated areas where potential revenues are greatest. There is a

relatively low risk that a small rural telco offering PCS in its territory will have significant incentive or opportunity to discriminate in interconnection in order to gain an unfair advantage over a PCS competitor serving the same area. Similarly, it is less likely that a rural telco will engage in anticompetitive cross-subsidization given that many rural LECs are member cooperatives directly owned and operated by subscribers.

In sharp contrast to more populated areas, the main concern in rural areas is that wireless services be made available and affordable. The Commission will significantly reduce the likelihood of that happening in rural areas if it adopts rules which preclude the equal participation of small, rural telephone companies -- the providers that possess the resources, expertise, established commitment to service, and desire to serve rural areas.

The Commission proposes to award less spectrum to LECs providing PCS in their wireline territories in order to address the perceived potential for anticompetitive behavior. Notice at ¶¶ 77-78. However, there is no need to handicap rural LECs based on spectrum scarcity. Research in the utilization of spectrum in rural areas of Oregon and Washington indicates that adequate spectrum is available to support vigorous competition in the rural wireless market. Accordingly, the Rural Telcos urge the Commission not to preclude or adopt limitations, including a spectrum cap, on LEC provision of PCS in rural service territories. If the Commission does limit the manner and extent to which LECs may provide PCS in their service territories, the Rural Telcos request that rural LECs serving populations of 10,000 or less be expressly exempt from such limitations. This approach will serve the important public interest in developing rural communications while addressing the need to ensure a fair and competitive playing field in PCS.

IV. PCS Licensing Through Lotteries or Competitive Bidding Will Not Promote Wireless Services in Rural Areas

Neither the lottery nor competitive bidding method proposed in the Notice to award PCS licenses will serve the public interest of encouraging "universal wireless service" in rural areas. Experience with cellular lotteries shows that the incentive for speculation encourages a large number of applicants, most of which lack the resources, expertise and service philosophy necessary to invest in wireless services in rural areas. Further, the flood of applications and license transfers that is prompted by lotteries causes delays and increases the cost of providing service, making the rural service market even less attractive to the provider that actually attempts to offer wireless service.

In the Notice, the Commission stated that its objectives in this proceeding are to optimize and balance four goals: universality, speed of deployment, diversity of services and competitive delivery. Notice, at ¶ 6. The lottery process does not further the Commission's public interest goals development of the U.S. PCS market. The U.S. PCS market will be most effectively developed if the Commission adopts a licensing scheme that recognizes the comparative merit of the experience, qualifications, and plans for future service offerings of prospective providers.

Competitive bidding is similarly unlikely to encourage affordable PCS service in rural areas.[4] Competitive bidding, by definition, favors applicants with deep pockets who have a strong incentive to seek to recoup their investment by increasing subscriber rates

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[4] As a threshold matter, the Commission should not attempt to implement a competitive bidding scheme for PCS at this time since the Commission is not currently authorized by Congress to award licenses by competitive bidding. See Notice at ¶ 82.

Competitive bidding would lead to PCS licenses being awarded to larger companies that already possess, or that can raise, significant capital to acquire PCS licenses. Only a few companies that already maintain a dominant position in the market will be in a position to win a bidding war. Under this scheme, rural telephone companies would likely be foreclosed from participating in PCS based solely on the size of their financial reserves. This licensing mechanism is particularly onerous for rural customers who already face development costs significantly higher than urban areas.

Further, the Rural Telcos believe that it is not in the public interest to syphon scarce resources from rural areas to generate marginal revenues for the public treasury. This policy would be in direct contradiction to more than thirty years of the Commission's telecommunications policy aimed at promoting, rather than handicapping, rural telecommunications.

The Rural Telcos are aware of the practical difficulties and administrative burdens faced by the Commission in implementing a fair and expeditious nationwide PCS licensing mechanism. Regardless of which licensing mechanism the Commission selects for urban areas, however, the Rural Telcos request that PCS licenses be granted to small telephone companies for rural areas with populations of 10,000 or less. Such licenses should be awarded on the request of the small rural LEC serving the area. This licensing scheme for small rural telephone companies will help to ensure that wireless services will be introduced in rural areas of America at reasonable rates without adversely affecting competition or innovation in the PCS market.

V. PCS Should be Subject to Minimal Regulation and Cooperative Rural Telephone Companies Should Have the Option to Provide PCS to Members as a Private Land Mobile Radio Service

The Rural Telcos support the Commission's tentative conclusion that PCS should be subject to minimal regulation. See Notice at ¶ 94. PCS licensees operating as common carriers should be granted nondominant carrier status. PCS will face competition from other PCS providers and a variety of other wireless services, and, as envisioned by the Commission, there will be no captive PCS customers compelled to take service from a monopoly provider. Competition, rather than regulation, will control PCS market entry and rates. The Rural Telcos also believe that state and local regulation of PCS should be preempted at least to the same extent that preemption applies for cellular services.

The Commission also asks in the Notice whether PCS should be classified as a common carrier or private land mobile service offering. Notice at ¶ 95. Regardless of whether the Commission elects to authorize PCS generally as a common carrier offering, cooperative rural LECs should be given the option to provide PCS service to their members as a private land mobile radio service. As defined by the Act, a private land mobile service denotes a mobile service provided by a regularly interacting group of radio facilities for "private one-way or two-way land mobile radio communications by eligible users over designated areas of operation." 47 U.S.C. § 153(gg). The Commission further defines a licensee in the private land mobile service as a licensee that does not resell interconnected telephone service for profit. Notice, at ¶ 95. Granting private land mobile service status to PCS providers would authorize them to offer service indiscriminately to

eligible users on a commercial basis, exempt them from the alien ownership restrictions of Section 310(b), 47 U.S.C. § 310(b), eliminate federal rate regulation, and preempt state and local entry and rate regulation. The private land mobile service rules thus allow providers to offer service with significantly greater flexibility and fewer costs.

By definition, the PCS offering of a cooperative rural LEC would meet the Commission's test for private land mobile services because such services would not constitute resale of interconnected telephone services for a profit. Eligible users would only be the cooperative's members who are also the owners of the cooperative. Cooperative telephone companies therefore should be permitted to elect private land mobile carrier status for their PCS offerings so that they may provide PCS to its members under the more flexible, reduced regulatory requirements that correspond to that status. This option will encourage rural telephone companies to offer PCS services in rural areas and will not adversely affect other providers or users or impair the full development of the PCS market.

CONCLUSION

The Rural Telcos urge the Commission to consider the special circumstances of small rural telephone companies and their customers in formulating PCS licensing and operating rules in this proceeding. In particular, the Rural Telcos request that the Commission make the following modifications to its proposed PCS rules to promote PCS services in rural areas:

- establish smaller PCS license areas for rural PCS

- grant rural PCS licenses at the request of rural LECs serving areas of 10,000 or less
- refrain from handicapping LECs from providing PCS in rural areas and/or exempt rural telcos serving areas of 10,000 or less from any restrictions imposed on LECs
- impose minimal regulation on PCS providers
- permit cooperative rural telephone companies to elect private land mobile status for their PCS offerings

For the reasons discussed above, these modest modifications will significantly advance the public interest in promoting widespread and affordable advanced telecommunications services in rural America.

Respectfully submitted,

CLEAR CREEK MUTUAL TELEPHONE COMPANY, MOLLALLA TELEPHONE COMPANY, MONITOR COOPERATIVE TELEPHONE COMPANY, MONROE TELEPHONE COMPANY, MT. ANGEL TELECOMMUNICATIONS, INC., PIONEER TELEPHONE COOPERATIVE, SCIO MUTUAL TELEPHONE ASSOCIATION AND YELM TELEPHONE COMPANY

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