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November 9, 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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,
)
) RM-7140, RM-7175, RM-7617,
) RM-7618, RM-7760, RM-7782,
) RM-7860, RM-7977, RM-7978,
) RM-7979, RM-7980

Dear Ms. Searcy:

Enclosed herewith for filing are the original and six copies of Cincinnati Bell Telephone's Comments in the above-referenced matter.

Also provided herewith is a duplicate copy of this letter and the enclosures. Please date stamp and return this as acknowledgement of its receipt.

Sincerely,

Attachment

0 of 6

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Before the
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Washington, DC 20554

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COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

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Dated: November 9, 1992

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SUMMARY

Cincinnati Bell Telephone Company ("CBT") supports the Commission's conclusion that local exchange carriers ("LECs") should be permitted to provide PCS in their own LEC service areas on an equal footing with other PCS providers. Such LEC participation will ensure more rapid, efficient and economical interconnection of PCS to the local exchange network, interoperability, enhanced development of PCS technology and increased competition.

CBT demonstrates why the "ownership standard" in Section 22.921(b) of the Commission's Rules would be inappropriately restrictive if applied to same-area interests in PCS and cellular licenses. CBT and many other minority partners in cellular partnerships should not be penalized for participating in a licensing structure encouraged by the Commission itself many years ago. CBT instead urges the Commission, in the event it adopts an exclusionary standard, to base it upon actual control and participation in the affairs of the cellular licensee.

CBT supports the award of the same amount of spectrum to any PCS licensee, and urges the Commission to award four 10MHz pairs for narrowband PCS in each market, with an additional pair for unlicensed operation, and additional spectrum for unstructured wideband PCS. CBT

also supports use of service areas used to allocate cellular spectrum (MSAs and RSAs) as the appropriate service areas for PCS.

Regarding licensing, CBT encourages the use of lotteries, coupled with strict application requirements, specific standards for construction and operation of systems, and limits on trafficking in permits and licenses.

Finally, CBT believes that, in general, PCS should be viewed as a common carrier service. However, CBT urges the Commission to consider treating different aspects of PCS in different ways (including no regulation whatsoever for some aspects), as long as all parties providing like services are subject to like regulation of those services.

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COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company ("CBT"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-captioned matter, released August 14, 1992.^{1/}

I. Overview

Since personal communications services ("PCS") is an evolving concept, actions taken by the Commission in this proceeding on eligibility, spectrum allocation and assignment, technical parameters and other issues relative to PCS will inevitably shape the type, quality and price of PCS services offered to customers. CBT commends the Commission's desire " . . . to ensure that all mobile services are provided with the highest quality at low-cost, reasonable rates to the greatest number of customers"^{2/} CBT is well positioned to

^{1/} Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676 (1992) ("NPRM").

^{2/} NPRM at ¶ 6.

participate in providing inexpensive, high-quality, high-function PCS services to the consumer.

PCS consumers require affordable, light-weight, high-quality portable radio terminals.^{3/} Low power is necessary to achieve high quality at reasonable cost. When such low-power pocket units become available to the public, service demand will generate traffic volumes that will require either a large amount of spectrum or a large number of low-power, high-capacity PCS micro-cells.^{4/} While such a micro-cell system uses spectrum most efficiently,^{5/} it requires significant two-way network switching capability, interconnection and interoperability. These capabilities are more efficiently provided by existing infrastructure providers such as local exchange carriers ("LECs"). In turn, these requirements lead to the conclusion that at least some portions of PCS will best be regulated on a common carrier basis.

As more fully discussed below, as an independent local exchange carrier, CBT is in a position to provide

^{3/} Notice of Inquiry, 5 FCC Rcd 3995 at ¶ 3.

^{4/} NOI at Note 1.

^{5/} Technical studies suggest that 20mw handsets with 30-foot port antenna heights would use spectrum thirty to one hundred times more efficiently than the power and antenna height limits suggested in the NPRM.

PCS on a fully competitive basis in its own LEC service area.

II. Local Exchange Carrier Participation in PCS.

In its NPRM, the Commission requests comment on LEC participation in providing PCS.^{6/} CBT supports the Commission's conclusion that LECs should be permitted to provide PCS, particularly in their own LEC service areas. LEC participation will foster each of the Commission's goals: universality, speed of deployment, diversity of services, and competitive delivery.

LEC participation will ensure more efficient and economical interconnection of PCS with the local exchange network. CBT anticipates that full interconnection among all PCS providers will be required by the Commission; in other words, CBT anticipates that PCS providers will enjoy interconnection privileges with LECS, and that PCS providers will be required to provide, in turn, the same level of access to LECs.

Interconnection assumes interoperability, and interoperability is the key to universal deployment of PCS. To the extent that many PCS participants can share the burden of providing access, PCS will grow more quickly and more efficiently. Thus, infrastructure providers such as LECs are crucial to the deployment of

^{6/} NPRM at ¶¶ 71-80.

spectrally-efficient PCS. While some might argue that a mandate for interconnection, with a LEC functioning solely as a sort of "super" switch, is all that is required, such a position ignores technical realities. LEC participation in PCS will enable a better understanding of PCS provider needs and more efficient resolution of the technical issues surrounding interconnection. It only stands to reason that a LEC will better understand these issues if it is facing them itself. This will be especially true as PCS evolves.

Throughout industry, successful development occurs where entities understand and have experience with the total picture. For example, oil companies that sell the bulk of their gasoline through independently-owned stations still own "company stores" to enable them to better understand the entire business. LECs have been striving to gain that type of knowledge regarding PCS. As the Commission well knows, many LECs, including CBT, have been and will continue testing PCS technology under authority of experimental licenses. The aggregate expenditure of LECs to date to develop and analyze this technology has been significant, indicating both high interest and high levels of commitment to PCS. Moreover, if LECs are providing PCS, there are built-in economic incentives to expand the network and develop technology in a PCS-friendly manner. With LEC participation, PCS will be delivered to the public in a more pervasive and

expeditious manner because LECs have an existing two-way switched infrastructure that readily can be used to help all PCS providers bring PCS to the public.

Some might argue that PCS should be developed as a separate, independent communications network. Such development would be time-consuming and economically wasteful. Further, the market demands ubiquity. Those wishing to compete face enormous pressure to offer ubiquitous coverage immediately. This time pressure would force a provider building an overlay network to choose a system that supports fewer users at lower quality using macro-cellular deployment, thus sacrificing the long-term potential for a high-quality, low-cost service which the Commission envisions for the mass market. Deployment of low-power PCS cells will be relatively quick and comparatively inexpensive; development and maintenance of a support infrastructure is long-term and highly expensive. For this reason, CBT believes that LEC participation in PCS is required to provide the type of PCS service which the Commission envisions within any reasonable time frame.

LECs undoubtedly will provide many of the technological advances required to ensure evolution of PCS in the public interest. Historically, LECs have demonstrated the ability and willingness to invest the expertise and capital necessary to bring cost-effective, innovative and state of the art services to the public.

At this time, no one knows what services will come under the broad umbrella of PCS; however, CBT is committed to deployment of PCS in its service area whenever PCS is the economically superior choice or when there is sufficient customer demand for such a service.

Finally, the exclusion of otherwise qualified LECs would have negative effects on the competitiveness of the market. To arbitrarily exclude a potential (and logical) competitor necessarily reduces the benefits to the public of competition. LECs have a reservoir of expertise in providing telecommunications services to the general public; it would not serve the public's interest to deny the public access to that experience. In short, LEC participation will enhance the competitive delivery of PCS.

As an alternative to its proposal to permit LECs to participate in providing PCS on an equal footing with other potential participants, the Commission seeks comment on whether LECs should be limited to less spectrum than other participants.^{7/} The Commission invites comments as to whether permitting LECs to provide PCS within their service areas would create incentives for the LECs to discriminate against competitors regarding interconnection and to cross-subsidize from rate regulated services.

^{7/} NPRM at ¶ 77.

CBT supports the Commission proposal to permit LECs to participate on an equal footing with other potential participants. Limiting the amount of spectrum assigned to a LEC would impact the type of service a LEC would provide and the radio access technology it would deploy. Thus, the modifications and enhancements a LEC would create to support its own service may not serve other PCS providers as well as it would the LEC. For a LEC to design and deploy the most useful access services for other PCS providers, LECs should have the spectrum and rules similar to those of other providers. Moreover, to the extent the Commission has concerns about discrimination and cross-subsidization, such concerns can be allayed through the use of non-structural regulatory safeguards mandating interconnection and prohibiting cross-subsidization. Anti-competitive concerns which can be eliminated by establishing regulatory safeguards should not foreclose participation, especially where that participation benefits both the public and the competitors. There simply is no supportable reason why LECs should not be permitted to participate in the provision of PCS on an equal footing and with the same amount of spectrum as other potential participants. Thus, CBT does not believe that the Commission's alternative proposal to provide

limited PCS spectrum for LEC use^{8/} will serve the long-term public interest.

As the Commission has recognized, PCS is a complementary service to the local exchange service, with the potential to evolve into a competitive service. In such a case, LECs should have the opportunity, including the grant of sufficient spectrum, to provide the advanced PCS that will be offered by competitors. The public would certainly not be served by barring LECs from competing at all, or only competing on an arbitrarily limited basis.

III. Cellular Carrier Participation in PCS.

In its NPRM, the Commission requests comment on cellular carrier participation in PCS.^{9/} The Commission's proposal is to permit cellular carriers to hold PCS spectrum in areas where they currently do not hold cellular spectrum. The Commission also invites comments on whether to permit cellular carriers and their controlling companies to hold PCS spectrum in the same markets that they also hold cellular spectrum. Because in some contexts PCS and cellular may be viewed as competitive services (especially given the Commission's recent liberalization of cellular regulations), the Commission expresses concern that to permit a cellular

^{8/} NPRM at ¶¶ 77-80.

^{9/} NPRM at ¶¶ 63-70.

carrier to hold a participating non-~~de~~ de minimis interest in PCS spectrum, or vice versa, would limit the number of competitors offering mobile services. The Commission observes that it may therefore not be in the public interest to permit either cellular or PCS carriers to hold a controlling interest in more than one license in the same area.

In the event the Commission adopts an exclusionary ownership standard, CBT submits that the standard in Section 22.921(b) of the Rules proposed by the Commission to limit same-area interests in PCS and cellular licenses is inappropriately restrictive. The true issue the Commission should consider is the amount of participation and control a minority owner actually has in a cellular license. Section 22.921(b) provides that no party can have any ownership interest of more than one percent in more than one cellular application.^{10/} CBT disagrees with the Commission's proposal to apply the standard in 22.921(b) to PCS licenses. The catalyst for the promulgation of 22.921(b) was the abuse of the Commission's Rules by cellular license application "mills." The Commission adopted the standard in an attempt to discourage applicants from buying a "lottery ticket" from application mills, and entering into

^{10/} NPRM at n.46.

settlement agreements, whereby the applicant (and hundreds of others) would have cumulative chances to win the lottery.^{11/} Although CBT realizes that application mills may attempt to operate in PCS licensing, CBT submits that the Commission's attempt to discourage the application mills and the multitude of sham applicants by promulgating 22.921(b) was unavailing.^{12/} Furthermore, if the same standard were to be adopted for PCS licenses, bona fide and otherwise qualified applicants, such as CBT, would be precluded from participating in the provision of either cellular or PCS.

In initial cellular licensing, the Commission set aside one of the two cellular spectrum blocks for carriers that had a wireline presence in the market. As a result, in many markets (including Cincinnati), both AT&T and other independent wireline telephone companies with a presence in the market applied for the set-aside block. The Commission issued orders urging such wireline carriers to settle mutually exclusive applications rather than

11/ Amendment of the Commission's Rules To Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, 58 RR2d 677 (1985).

12/ CBT supports other efforts to discourage or eliminate application mill applicants, but only to the extent that bona fide applicants are not prohibited from providing PCS as a result.

proceeding to hearing.^{13/} As a result, AT&T offered to settle with many independent telephone companies, including CBT, wherein AT&T would obtain a majority ownership and sole controlling general partnership interest in the eventual licensee of the market, and would also operate the market in conjunction with other markets on a regional basis. CBT entered into an agreement to settle its mutual exclusive application with AT&T's, and entered into a partnership agreement with AT&T (subsequent to divestiture, Ameritech). Like many other independent telephone companies, CBT holds a minority limited partnership interest in the partnership^{14/} and is effectively prohibited, by the terms of the partnership agreement, from participating in the business decisions of the partnership. If the ownership standards proposed by the Commission were adopted, CBT and other independent telephone companies holding only a minority interest would be precluded from providing PCS in their cellular markets, even though they have no control over, nor even input into, providing cellular in those markets. For that

13/ An Inquiry Into The Use Of The Bands 825-845 MHz and 870-890 MHz For Cellular Communications Systems; And Amendment Of Parts 2 and 22 Of The Commission's Rules Relative To Cellular Communications Systems, 89 FCC2d 58 (1982)(Memorandum Opinion And Order On Reconsideration); 86 FCC2d 469 (1981) (Report And Order).

14/ CBT's interest is held through an affiliated company.

matter, CBT and most other limited partners participating in such agreements do not have access to cellular spectrum to offer any radio-based service to their customers.^{15/} CBT and other independent telephone companies should not now be penalized with a prohibition from providing PCS because they previously entered into agreements at the urging of the Commission to facilitate the provision of cellular in the most expeditious and technically feasible manner.^{16/}

CBT proposes any ownership standard be based on actual control and participation in the affairs of the licensee. CBT submits that the minimal benefit, if any, gained by the Commission's proposal to adopt the Section 22.921(b) standard would be outweighed by the detriment to entities in the position of CBT which find themselves in that position because they followed the Commission's request more than a decade ago, before PCS was even a

^{15/} Some might argue that such minority limited partners could divest their interests upon receipt of a PCS license. However, because such interests carry no control or participation in the affairs of the respective partnerships, it is unlikely that such interests could easily be divested.

^{16/} To a large extent, the partnership structure was dictated by technical requirements and the need to provide large coverage areas. Low-power PCS systems do not have the same technical characteristics.

theoretical concept. Furthermore, the public will be harmed by the unnecessary elimination of bona fide and otherwise qualified applicants. In addition, CBT's alternative proposal is consistent with Commission distinctions among ownership interests. For example, in broadcast licensing, the Commission does not consider non-participating, non-controlling^{17/} ownership interests when considering the integration of ownership and management comparative factors.^{18/} Accordingly, if the Commission establishes an exclusionary ownership standard, CBT urges the Commission to adopt the alternative proposal presented by CBT.

^{17/} There exists an exhaustive body of precedent concerning non-participating, non-controlling ownership interests.

^{18/} E.g., Lorain Community Broadcasting Co., 13 FCC2d 106 (Rev. Bd. 1968), aff'd, 18 FCC2d 686 (1969), aff'd, sub nom., Allied Broadcasting, Inc., 435 F.2d 68 (1970).

IV. Spectrum Allocation Issues.

The Commission requests comment on the number of PCS providers it should license.^{19/} CBT supports the Commission's goal of enabling participation in PCS by the maximum number of providers. CBT further supports the Commission's proposal to award each licensee enough spectrum to provide state of the art service. CBT also supports awarding each licensee the same amount of spectrum.

CBT believes that these goals can be met by having five 10MHz pairs (offset by 80Mhz) for narrowband PCS, using 1850-1900 MHz for the lower band and 1930-1980 MHz for the upper band. The 80 MHz offset matches that specified in Section 94.65(b)(1 & 2) of the Commission's Rules for private operational fixed microwave service. As the Commission notes,^{20/} as an existing point-to-point microwave user is displaced, a frequency pair with 80 MHz spacing would be vacated.

This would allow four licensed providers in each market, with one pair for unlicensed operation. Customer acceptance of PCS depends upon the ability to use terminals in many locations, including home and office. Thus, synergy and compatibility among public PCS, home

^{19/} NPRM at ¶ 34.

^{20/} NPRM at ¶ 39.

cordless and wireless office systems are imperative. The 1910-1930 band suggested for all unlicensed PCS applications would not facilitate the multi-modality necessary for the success of PCS. The 1910-1930 MHz band would be earmarked for unstructured wideband PCS, while the 1900-1910 MHz and 1980-1990 MHz segment could be used as a sixth pair for unlicensed operation, shared between narrowband and wideband users. This plan envisions that a PCS licensee, blocked from spectrum access by incumbent point-to-point microwave in a portion of its territory, could operate in some portion of the 40 MHz allocated for unlicensed operation until the interference conflict is resolved. This should accommodate the need for additional spectrum to facilitate sharing,^{21/} while at the same time serving the Commission's desire to maximize the number of providers.^{22/} Such an allocation plan would provide a high degree of competition, facilitate efficient spectrum use and permit enhanced interoperability.

The Commission also requests comment on the service areas for PCS.^{23/} CBT proposes the service areas used to allocate cellular spectrum (MSAs and RSAs) be used for PCS as well. Although the Commission has expressed a

^{21/} NPRM at ¶ 35.

^{22/} NPRM at ¶¶ 34 and 36.

^{23/} NPRM at ¶¶ 56-62.

desire to avoid replicating the cellular experience, that experience was not determined by this factor. CBT believes that using cellular-like service areas will provide an opportunity for more local participation and faster deployment, both of which will result in increased competition. In addition, most parties presently expressing an interest in providing PCS are familiar with MSAs and RSAs, as is the Commission itself. Finally, using similar areas will avoid potentially troublesome and time-consuming questions arising from overlap of PCS and cellular service. Thus, in light of the Commission's goals of universality, speed of deployment, diversity of services and competitive delivery, CBT supports the award of licenses on the basis of cellular areas.

V. Licensing Issues.

The Commission requests comment concerning the licensing mechanism to be used in awarding PCS licenses.^{24/} CBT agrees with the Commission that comparative hearings are time-consuming. CBT, however, disagrees with the Commission's analysis that competitive bidding is "superior or equivalent to lotteries and comparative hearings in all respects."^{25/} CBT believes that comparative hearings would yield the best qualified

^{24/} NPRM at ¶¶ 82-93.

^{25/} NPRM at Appendix D.

applicants. At the same time, CBT appreciates the Commission's concern regarding the potential slowness and cost of such hearings.

While recognizing that any licensing mechanism will have some difficulties for both the Commission and applicants, on balance CBT supports the use of lotteries as the method to award licenses. However, CBT believes that the Commission should use its experience in previous lotteries to craft a system that will discourage speculators and application mills, without eliminating the bona fide applicants that would be forced out of the market if competitive bidding were employed.

CBT urges the Commission to adopt lotteries as the method used to award licenses, and to adopt and enforce strict application requirements, specific standards for construction and operation of systems, and limits on trafficking in permits and licenses. CBT supports the application requirement of detailed and independent engineering plans, which should include all aspects of construction and operation of the facilities. CBT proposes that the Commission also require a permittee to construct facilities in a manner substantially similar to its proposal (for example, 75 percent of construction must be exactly as proposed). CBT supports the application requirement of detailed and independent business plans and a financial commitment such as cash on hand or irrevocable letters of credit. CBT proposes that permittees be

required to follow through with business plans and financial arrangements.

CBT also supports limits on settlement payments, effectively not permitting dismissing applicants to make a quick profit. CBT proposes the adoption of limitations similar to those in place in broadcast licensing.^{26/} Such limitations will discourage lottery applicants seeking only settlement payoffs.

CBT also supports strict construction and operation requirements and deadlines. CBT proposes construction deadlines, such as, solely by way of example, (1) 25 percent of a market must be served within one year; (2) 50 percent of a market must be served within 5 years; and (3) at least 80 percent of a market must be served within 10 years and must be continued to be served thereafter. CBT also supports requirements regarding capacity to be established by industry standard. CBT proposes forfeiture

^{26/} Section 73.3525 of the Commission's Rules deals comprehensively with agreements for removing application conflicts in broadcast licensing. In general, it provides that both parties to such an agreement file a joint request with the Commission seeking approval of the agreement, along with other procedural steps. In addition to providing the Commission a copy of the agreement, among other things the parties must explain why the agreement is in the public interest, certify that the original application was not filed for the purpose of reaching or carrying out such an agreement, and certify that neither the withdrawing applicant nor its principals has received any consideration for the agreement in excess of legitimate and prudent expenses.

of the entire license or permit if construction schedules are not met and the loss of the renewal expectancy if a waiver of forfeiture is obtained. Finally, CBT supports the imposition of prohibitions on the trafficking in permits or licenses prior to meeting the 5 year deadline. Alternatively, such performance requirements could be attached to the license itself, with a lessening of restrictions on trafficking, so that licenses could be transferred quickly into the hands of qualified parties ready to construct a PCS system in conformity with the license.

CBT believes that the adoption and subsequent strict enforcement of such guidelines will discourage sham applicants and speculators. The Commission's experience in cellular and 800 MHz SMR lotteries have established that postcard type lotteries, where application mills are able to sell the same application to multitudes, are not in the public interest. However, the adoption of competitive bidding would exclude every party except those with the deepest pockets, effectively excluding small businesses and minorities. CBT believes that the adoption and enforcement of guidelines similar to those proposed by CBT will provide a workable solution in the best interest of the public.

VI. Regulatory Framework.

The Commission also has requested comment on the regulatory structure for PCS.^{27/} In general, CBT supports regulation of PCS as a common carrier service. In its position as an independent LEC, CBT recognizes that there are both benefits and disadvantages to either common carrier or private service status. The Commission's goals of universality and competitive delivery will best be served by making PCS a common carrier service. Moreover, technical quality issues are best resolved in a common carrier context.

As an alternative, CBT urges the Commission to consider regulating different aspects of PCS in different ways. For example, provisioning of radio ports and other equipment for PCS need not be regulated at all, assuming that technical standards are developed which would minimize interference. Making this aspect of PCS unlicensed would greatly stimulate competition, since there would be no regulatory barriers to participation. At the same time, interconnection, which is so critical to PCS, virtually requires regulation on a common carrier basis.

Regardless of the regulatory framework created, all parties providing like services must be subject to like

^{27/} NPRM at ¶ 95.