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

ORIGINAL
FILE

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

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

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SUMMARY

The Commission should utilize small geographic areas to license personal communications services ("PCS"). Small areas best reflect the expected evolution of PCS system configurations and will best assure that multiple and diverse providers emerge as competitors in the PCS market. NTCA is opposed to large licensing areas like the Rand McNally Basic Trading Areas ("BTAs") and all the other Commission proposals, especially the one to create a nationwide licensing area.

The licensing of the large areas the Commission proposes would disadvantage rural areas by creating a scheme that would impose prohibitive transactional costs on small LECs interested in and most fit to deploy PCS in their telephone service areas. The Commission should give serious consideration to using geographic service areas identical to the 734 metropolitan and rural service areas ("MSAs and RSAs") used in the cellular service as a better option for reducing licensing areas.

The Commission should also provide for a "set aside" block of frequencies that is available for LECs operating in RSAs and to LECs having 50,000 subscribers or less in MSAs. This "set aside" will promote the public interest by allowing LECs that have already invested and proven a commitment to providing state of the art telecommunications to rural America, the opportunity to develop their networks using wireless loops wherever they are more economical than wireline connections. Additionally, rural LECs need a "set aside" to assure that they will have access to

sufficient spectrum to integrate PCS systems in heretofore unserved isolated locations with their landline or other wireless systems.

It would be unfair and unwise policy for the Commission to exclude the industry that has up until now provided the bulk and backbone of telecommunications services in the United States and which has consistently invested in the plant and technology required to meet the Communications Act universal service mandate. A LEC "set aside" will speed the universal deployment and development of uniformity in PCS technologies.

NTCA supports licensing five providers for any given geographic area because it believes that many providers will assure robust competition. The licensing of multiple operators in nationwide, regional or local areas should foster a market environment in which cellular and PCS licensees compete with a variety of telecommunications services.

NTCA supports the Commission's tentative conclusion that PCS should be classified as common carriage but recommends that the Commission seek amendment of the Communications Act to prohibit State and local government entry and rate regulation of PCS services. This will enable PCS providers and LECs, in particular, to provide the service on a level playing field with other entities that now provide services that are a substitute for LEC provided services and that will compete directly with PCS.

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COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Notice of Proposed Rule Making and Tentative Decision released August 14, 1992, ("NPRM") in this docket. NTCA is a national association of approximately 480 small and rural LECs providing telecommunications services to interexchange carriers ("IXCs") and subscribers across rural America.

I. THE COMMISSION SHOULD ADOPT LICENSING RULES THAT ACCOMMODATE THE NEED FOR PCS SERVICES IN RURAL AREAS.

- A. None of the licensing options proposed narrows service areas sufficiently to accommodate the needs of rural subscribers.

The Commission tentatively concludes that personal communications services ("PCS") areas should be larger than those initially licensed in cellular. NTCA disagrees with this tentative conclusion which it believes conflicts with the Commission's objective of bringing PCS to the market quickly. The creation of large geographic service areas such as the 487 "Basic Trading Areas" from Rand McNally Commercial Atlas and Marketing Guide, ("BTAs") (the Commission proposed option which results in the smallest areas) may benefit more densely populated and attractive urban areas initially but would not speed

deployment of PCS across the United States or promote the application of PCS technology to a wide range of applications, including those useful in rural areas as well as the less attractive urban areas.

NTCA is also opposed to large licensing areas like the BTAs because it believes this scheme would eliminate most small LECs from participating in the provision of PCS to their service areas.

NTCA believes the Commission should utilize small geographic licensing areas that reflect the expected evolution of PCS system configurations. The Commission itself recognizes that PCS systems will probably involve smaller configurations with characteristics unlike cellular. It states that most PCS experiments it has authorized employ small cell configurations utilizing low power base stations with close to the ground antennas (in 300 feet range) and low power mobile units with a maximum power of 2 watts (EIRP). ¶ 115. The Commission raises the issue that there may be health hazards associated with portable units and states that IEEE C95.1-1991 could reduce the maximum acceptable power level for portables. ¶ 132, n.99.¹ Although these characteristics and concerns may make much smaller geographic licensing areas feasible and necessary, NTCA supports

¹ IEEE standard C95.1-1991 does not recognize frequency ranges beyond 1500 MHz in its section on Exclusions and Relaxation Limits for Partial Body Exposure but appears to indicate that .42 W at 1500 MHz would not exceed maximum safety levels to humans in an uncontrolled environment. See, section 6.10 of standard.

the use of the geographic service areas identical to the 734 metropolitan and rural service areas ("MSAs and RSAs") used in the cellular service. In Section B below, NTCA explains how the Commission could utilize RSAs and MSAs in granting "set aside" licenses to LECs that serve rural areas.

Although the Commission correctly points out that the cellular industry has consolidated into larger operating service areas than the initially licensed 734 areas, NTCA urges the Commission to take note of its view of PCS technology and its applications as "a family of mobile and portable services." ¶¶ 20 and 21. Thus, PCS development will likely differ from cellular which emerged as a vehicular mobile service that has been most economical to provide in heavily traveled corridors that include the principal interstate highways and heavily traveled arteries of major metropolitan areas. While cellular consolidation was driven by the fact that greater economies of scale and scope were obtained in these larger cellular operations, PCS development and deployment is unlikely to fit the cellular pattern because the service is intended for personal rather than vehicular mobility and the technology envisions use of far less expensive microcells capable of serving small areas on a stand-alone basis or of interconnecting to the public switched network to complete calls beyond small cells.

- B. The Commission should establish a LEC "set aside" for rural areas.

NTCA believes the public interest will be best served if a block of spectrum is "set aside" to permit small LECs to provide

PCS services in their service areas. NTCA proposes that a specific block of frequencies at 2 GHz be "set aside" for each LEC in RSAs where the LEC provides telephone service. In addition, NTCA proposes that this block be "set aside" for each LEC with 50,000 subscribers or less in MSAs where LECs of that size provide telephone service.

The Commission's proposal to limit LEC participation in PCS spectrum to 10 MHz, (less than the amount proposed for other licensees,) is inadequate.² The proposal gives a LEC a handicap in a contest for spectrum to provide a PCS system integrated with its wireline system but is not a "set aside" as the NPRM makes clear. NPRM at ¶ 78. Other applicants are eligible for the spectrum.

NTCA urges the Commission not to handicap LECs by limiting their access to a 10 MHz block to provide PCS systems integrated with their wireline system.³ LECs will obviously be unable to

² Section 99.13 of the rules proposed in the Appendix to the NPRM conflicts with the Commission's proposal. It states, "No wireline common carrier is eligible to be licensed in this Part to provide PCS in the same geographic area in which it provides local exchange telephone service." Since this text conflicts with the NPRM proposals, it seems to have been inadvertently included in the Appendix, nonetheless, for the record, NTCA is opposed to the proposed rule. The § 99.13 text also states, "No Cellular Radio Service licensee is eligible to be licensed in this Part to provide PCS in the same geographic area in which it or any affiliate provides cellular service." NTCA is also opposed to promulgation of this rule which would make NTCA members with very small and non-controlling minority interests in cellular ineligible to provide PCS in their telephone service areas.

³ NTCA does not support a limit of 10 MHz, but it believes the Commission should at least make this 10 MHz block a "set aside" if it ultimately adopts this proposal and limits LEC

integrate wireline and PCS systems if they have "chances" but no licenses to provide PCS in their service areas. Small LECs are in a position to maximize efficiencies by integrating their wireline service with wireless service. In addition, the small LECs that serve rural and sparsely populated areas have a strong incentive to utilize PCS technology both to reduce the costs of providing wireline service and to maintain state of the art services, a tradition well established in the small EC industry. As the Commission has recognized, LECs may naturally desire to develop their networks using wireless loops wherever they are more economical than wireline connections. NPRM at ¶ 73.

Wireless loops may be especially economical in rural areas that require longer than average loops. In addition, the public will benefit from the facilitation of uniform standards development which LEC involvement will further. LECs already in the business of providing quality telephone service have demonstrated their commitment to uniform standards for equipment and protocols that make the network run efficiently. LEC involvement in PCS will speed its universal deployment and the development of uniformity in PCS technologies. In that connection, NTCA believes that LECs should also be eligible to compete for licenses outside their

participation in PCS in this way. A "set aside" would be consistent with the Commission's purpose of setting aside the 10 MHz block to encourage LECs to integrate their PCS systems with their wireline systems. Since others that do not provide wireline services would obviously not come under the category of entities the Commission wants to "encourage" to integrate their systems, opening this block to others as is suggested in the NPRM, defeats the purpose of establishing the 10 MHz allocation.

telephone service areas. In any event, the complete disqualification of LECs, aside from being unfair to the industry, would be a mistake in that it would artificially put the burden of spurring technology and service development on regulators instead of the industry that has a natural interest in the success of the service.

The Commission should assure that its action in this docket does not preclude LECs operating in rural and sparsely populated areas from utilizing economical wireless alternatives to expensive loops. Rural LECs need a "set aside" to assure that they will have access to sufficient spectrum to integrate PCS systems in heretofore unserved isolated locations with their landline or other wireless systems. A "set aside" takes account of the fact that rural LECs, unlike potential national, regional or even local non-LEC potential providers, are situated in the areas they serve and have a history of meeting the public need for telecommunications services in the communities where they operate.

Rural LECs also have an interest in expanding service throughout their areas in order to maximize efficiencies. It would be unfortunate if the Commission's decision in this docket precluded LECs from providing service to unserved or newly developed areas that would be the last places to receive PCS service from a national provider but the first to get it from a LEC that can efficiently serve these areas with PCS systems integrated with existing wireline and more expensive wireless

systems such as Basic Exchange Telecommunications Radio Services (BETRS).

One of the concerns the Commission raises is whether small companies will be in a position to meet financial feasibility requirements needed to apply for licenses for BTAs. For NTCA, an additional concern related to this size area is magnitude in relationship to the size and telephone service area of its member ECs. In Montana, for example, the Billings BTA is served by nine telephone companies, five of which are NTCA members (four cooperatives and one commercial company) ranging in size from 730 subscribers to 5,574 subscribers. The Commission's NPRM suggests that any one of the ECs in this example will be able to provide PCS to its service area by purchasing a license from a national or regional awardee in secondary markets. NPRM ¶ 78. While that may be so, this supposition undercuts the Commission's objective of eliminating unproductive transaction costs in the licensing process. NTCA agrees that transaction costs are unproductive and believes the public would be better served if the Commission allows rural ECs to obtain initial licenses to serve their telephone service areas instead of having to shop for licenses from awardees with no history of providing telephone service to these less attractive areas.

The Commission has also said that diversity may be an important benefit during initial implementation of PCS when the market is still being defined. The Commission can fulfill its goals of promoting diversity in ownership and diversity of

technical and service innovation by allowing rural ECs to obtain licenses to provide PCS in their existing service areas. As stated above, these ECs are better suited than large consortia, nationwide or regional providers to respond to the unique needs of the rural consumer for the mobile and portable communications the Commission will authorize. They have a record of meeting the public demand for adequate and affordable telecommunications services and a record of success doing business in rural areas. That record should not be ignored in the interest of a purportedly simplified licensing scheme that may achieve administrative efficiencies at the expense of rural and sparsely populated areas and the consuming public in those areas.

The licensing of existing service areas to small ECs operating in rural areas should not give the Commission concern that competition will be stifled in these areas in view of the Commission's intention to license multiple operators in nationwide, regional or local areas and foster a market environment in which cellular and PCS licensees compete with a variety of telecommunications services. NPRM ¶ 70. NTCA supports the Commission's goal of fostering competition and believes that the award of five licenses for any given area will foster that goal. If the Commission licenses multiple providers it has no reason to fear that the licensing of small LECs will deprive rural areas of alternatives to wireline service and the consumer benefits that result from the availability of competitive services and new technologies.

II. NTCA SUPPORTS THE COMMISSION'S EFFORTS TO USE SIMPLIFIED PROCEDURES TO FACILITATE QUICK DEPLOYMENT OF PCS.

NTCA also believes that the Commission's interest in setting up a licensing process that is administratively efficient can be accommodated by a "set aside." A "set aside" for LEC service areas would require no more than the usual applicant certification of financial and other eligibility requirements. The Commission would not have to process multiple applications for this "set aside" or conduct a lottery.

In this connection NTCA supports the Commission's proposal to use a "postcard lottery" for multiple applicant lotteries. It also believes postcard applications should be used for the LEC "set aside" blocks. The Commission proposes to allow applicants in the "postcard lottery" to provide eligibility information within 30 days. In the case of LEC "set asides," NTCA suggests that LECs be required to certify eligibility in a "postcard" format based on their provision of service to an area. Like other applicants in the "postcard lottery," LECs should then be required to demonstrate technical and financial eligibility within 30 days of a grant.

NTCA also supports the Commission's proposal to grant licenses of 10 years and to allow for a renewal expectancy similar to that allowed for licensees in the cellular service.

The Commission asks for comments on the range of approaches it might use if Congress authorizes competitive bidding. NTCA is opposed to auctioning of the spectrum and urges the Commission not to address rules to apply to spectrum sales unless and until legislation is passed on this subject.

III. LECs SHOULD BE ALLOWED TO PROVIDE PCS SERVICES UNDER CONDITIONS THAT ALLOW THEM TO RESPOND QUICKLY TO CUSTOMER DEMANDS AND MARKET FORCES.

NTCA agrees with the Commission's tentative conclusion that PCS should be subject to minimal regulation. NTCA members are small companies with small staffs. These companies have a record of providing efficient service and meeting the needs and demands of their subscribers. Because the companies are small, each new layer of regulation imposes additional burdens on them and presents the potential of increased costs or reduced efficiencies. The Commission believes that PCS would be highly competitive as common carriage and it tentatively concludes it would treat carriers as non-dominant and not subject to tariff regulation at the federal level. It also requests comments on whether PCS should be classified as private land mobile radio service.

NTCA supports classification of PCS services as common carriage but requests that the Commission seek amendment of the Communications Act to level the playing field between common carrier LEC PCS providers and private carriers that provide or will be capable of providing services that directly compete with LEC common carrier provided PCS. At present, under Section 332(c)(3) of the Communications Act ("ACT") (47 U.S.C. § 332(c)(3)), no State or local government has the authority to regulate entry or the rates for the services of private land mobile radio services licensees even if those services are a proven substitute for services offered by common carriers.

NTCA believes PCS services should be classified as common carrier services because that classification will facilitate the resale of interconnected services and facilities and as a result better utilize the network. However, it is also concerned that its members will be forced to operate on an unlevel playing field unless the Act is amended to give common carriers the same exemptions from state and local government regulation that private carriers enjoy. Accordingly, NTCA recommends that the Commission seek amendment of the Act to clarify that no State or local government may impose any rate or entry regulation upon any provider of PCS services.

IV. THE COMMISSION SHOULD LIBERALIZE ITS CELLULAR SERVICE RULES TO ALLOW CELLULAR FIRMS TO UTILIZE THEIR FREQUENCIES FOR PCS.

The Commission requests comments on whether it should further liberalize its rules to allow cellular firms to make better use of their existing frequencies. NTCA supports liberalization of Commission rules for this purpose. It also supports revision of 47 C.F.R. § 22.930 to state explicitly that cellular licensees may provide PCS-type services, such as wireless PBX, data transmission and telepoint services. In NTCA's view, this liberalization should give the Commission greater comfort and assurance that a LEC "set aside" for rural areas and small LECs operating in rural areas will not thwart competition. As stated above, LECs in these areas often have little or no control over cellular frequencies.

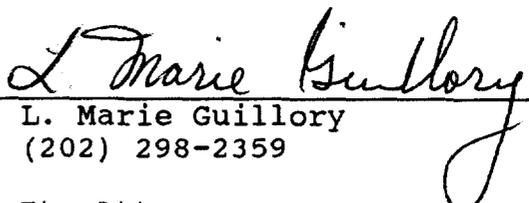
V. CONCLUSION

For the above stated reasons, NTCA urges the Commission to provide for a "set aside" block of frequencies that is available to LECs operating in RSAs and to LECs having 50,000 subscribers or less in MSAs. NTCA also supports licensing five providers for any given geographic area and requests that the Commission consider smaller licensing areas such as the 734 RSAs and MSAs. NTCA recommends that the Commission seek amendment of the Communications Act to prohibit State and local government entry and rate regulation of PCS services. Finally, NTCA supports liberalization of the cellular service rules in the interest of fostering the development of PCS services and promoting policies which assure that a "set aside" for rural areas will neither thwart the emergence of multiple providers nor frustrate the Commission's interest in reducing federal regulatory burdens.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rita H. Bolden certify that a copy of the foregoing Comments in GEN Docket No. 90-314 and ET Docket No. 92-100 of the National Telephone Cooperative Association was served on this 9th day of November 1992, by first-class, U.S. Mail, postage prepaid, to the following persons listed below:

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