> commercial relationships with PCS licensees lacking sufficient network presence throughout the service area.[36/]

The OPP Paper confirms Comcast's conclusions that cable is an enabling technology for competitive PCS.

Some commenters -- notably those with local exchange carrier interests -- who would prefer to provide PCS and associated transport on an exclusive basis raise fantastical cable eligibility and interconnection policy concerns.[37/] They seek to deter cable operators from developing the transport capability of cable television plant. These attacks on cable are self-serving attempts to distract the Commission from PCS issues of LEC eligibility and interconnection.[38/]

36/ OPP Paper at 36.

37/ See Comments of GTE at 22-24; Comments of US West, Inc. at 30-31; Southwestern Bell Corporation at 17 n.24; NYNEX at 16-17. US West, Inc. cites Comcast's September 1992 phone call, see infra at 11-12, as partial support for the statement that "[t]here is no more local exchange monopoly." Comments of US West, Inc. at 31. While Comcast's call demonstrates the possibilities of offering new services through the use of new technologies, in many states, Comcast and others cannot lawfully offer local exchange and certain other intrastate communications services in competition to LEC monopolies. See infra Section II A.

38/ GTE also argues that the Commission should have solicited information on whether cable television's entry into PCS would violate the cable television/telephone company cross-ownership ban. See Comments of GTE at 22-24. This argument is baseless and renews the endless LEC efforts to prevent competition through manipulation of the telephone-cable television cross-ownership restriction. See

(continued...)

Even the most cursory review of LEC telephone operations demonstrates why LECs' PCS eligibility must be limited to protect the public interest. In particular, the regional BOCs serve geographically vast monopoly markets. Bell Atlantic, for example, serves New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, Virginia and West Virginia. In contrast, in a single metropolitan area such as Philadelphia, there are ten separate cable operators.

Another reason why LECs' PCS eligibility must be limited is the essential nature of local telephone service provided by LECs. As Comcast observed in its comments, because the LECs have inherited the monopoly local exchange, they:

> [H]ave ubiquitous in-place facilities, access to all telephone customers, proprietary information regarding network usage of these customers and control over the distribution and assignment of telephone numbers. . .[39/]

In contrast, cable television operators do not share the benefits of a government granted telecommunications franchise. As noted in the OPP Paper, many cable systems will require modification, such as installation of a fiber

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38/ (...continued)
In re Teleport Communications, FCC 92-360, File No. 13135-CF-TC-(3)-92, Memorandum Opinion and Order (released September 4, 1992).

39/ Comments of Comcast at 15.

backbone, to provide PCS.[40/] Additionally, cable operators still must develop the necessary interfaces to permit two way communications on cable's two-way capable, but generally one-way implemented, tree and branch delivery systems. These differences between telephone and cable operators justify the differences in regulation of existing services and the regulation of future services.

III. SPECTRUM ASSIGNMENT AND INTERSYSTEM OPERABILITY

A. Authorization of four PCS providers in each service area and assignment of 20 MHz of PCS spectrum to each provider will promote competition, innovation and spectrum efficiency.

Comcast proposes authorizing four PCS providers per LATA, assigning 20 MHz to each provider and creating a spectrum reserve with additional PCS spectrum.[41/] The licensing of four providers per LATA will permit more entities with genuine and demonstrated interest in PCS to develop services and will significantly increase the chance that communities throughout the nation will have access to

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40/ See OPP Paper at 35.

41/ The spectrum reserve would be used by PCS licensees whose spectrum allocations are congested due to the presence of incumbent microwave paths, and for growth and new services. See Comments of Comcast at 20. Comcast encourages the Commission to allow such licensees to petition for access to additional spectrum from this reserve, with the stipulation that the licensee return the spectrum to the reserve once the incumbent microwave user(s) vacate the spectrum. Id.

PCS.[42/] Spectrum blocks of 20 MHz will permit PCS licensees to deploy their services, and the spectrum reserve will allow licensees to expand their systems over time.

Licensing more than three PCS providers received broad support in the comments. As the Cellular Telecommunications Industry Association noted in reference to the comments filed in this rulemaking, "those parties advocating four or more licenses [per market] constituted almost twice the number of those advocating any other combination."[43/] This consensus should guide the Commission in its formulation of a PCS licensing scheme.

Many commenters, including firms as diverse as AT&T, Telmarc Telecommunications, Inc., Vanguard Cellular Systems, Inc., BellSouth, Southwestern Bell Corporation, McCaw Cellular Communications, Inc., Alltel Corporation and Bell Atlantic Personal Communications, Inc. support the assignment of 20 MHz of spectrum to each PCS provider.[44/] In it comments, McCaw exposes some of the faulty assumptions

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42/ See also Comments of US West, Inc. at 9-11 (research indicates that four providers would be the appropriate number of PCS licensees).

43/ Cellular Telecommunications Industry Association's "Summary of Comments" filed with the Commission on November 9, 1992 at 5.

44/ The OPP Paper suggests that the best spectrum assignment option would be to assign 20 MHz licenses, but allow licensees to acquire additional spectrum up to a 40 MHz limit. See OPP Paper at 55. Comcast supports this position. See Comments of Comcast at 21 n.29.

that underlie overly broad projections regarding each PCS licensee's spectrum needs.[45/]

McCaw correctly states that "spectrum allocations of more than 20 MHz--especially where multiple applications will be provided for--appear grossly inefficient."[46/] By assigning each PCS provider 20 MHz of PCS spectrum, the Commission will encourage the most efficient use of spectrum.[47/]

Comcast also notes that a significant number of commenters, including US West, Inc., Telmarc Telecommunications, Inc., Southwestern Bell Corporation, Alltel Corporation, Cox Enterprises, Inc. and Viacom International Inc., support the establishment of some form of a PCS spectrum reserve. These commenters view establishing a spectrum reserve as a way to guarantee a degree of flexibility to PCS licensees that are constrained by incumbent microwave users or that merit additional PCS spectrum for expansion of their existing systems. Once effective competition exists, in-market LECs and LEC-affiliated cellular operators also should be permitted to

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45/ See Comments of McCaw Cellular Communications, Inc. at 7.

46/ Comments of McCaw Cellular Communications, Inc. at 8.

47/ A minority of PCS commenters advocate licensing two providers per market and/or assigning each provider 40 MHz to 60 MHz of PCS spectrum.

access this additional spectrum on the same terms as other eligible PCS providers.

In light of the widespread industry support for the assignment of 20 MHz blocks to each PCS provider, the authorization of four or more providers to a market and the creation of a spectrum reserve, the Commission should adopt these polices.

B. Intersystem operability will allow PCS licensees the flexibility necessary to coordinate their systems.

The Commission also can encourage spectrum efficiency by allowing PCS providers to interoperate with other PCS and cellular licensees. In its comments, Comcast proposes that PCS licensees be permitted to interoperate with up to 40 MHz of spectrum as one way in which licensees may coordinate their systems.[48/] Examples of PCS/cellular intersystem operability might include agreements to engage in joint-selling and operate joint facilities, the operation of "dual mode" phones and agreements to share intelligent network functionality to permit call delivery to a single phone number.

Further, joint ventures and interoperability between cable and PCS should be encouraged. As the OPP paper states, the joint operation of cellular and/or cable with PCS systems offers particularly attractive arrangements in

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48/ See Comments of Comcast at 21 n.29; OPP Paper at 55.

terms of costs and efficiencies.[49/] The marriage of cable companies' experience in transport services, shared network maintenance, administrative and billing functions with non-wireline cellular companies' switching, transport and cell sites to deliver PCS in an efficient and inexpensive manner makes Comcast an ideal PCS provider.[50/] In its PCS experimentation and its pioneer preference filings, Comcast has shown that its proposed PCS infrastructure will utilize cellular subsystems, shared cable television fiber and coaxial cable transport to PCS radio nodes used to create PCS picocells and microcells.[51/] Such interoperation will benefit the consumer by reducing the cost of PCS and creating seamless, ubiquitous PCS services.

IV. LATA-SIZED SERVICE AREAS STRIKE THE APPROPRIATE BALANCE BETWEEN FRAGMENTATION AND CONSOLIDATION OF PCS MARKETS AND WILL PROMOTE COMPETITION WITHIN THE LOCAL LOOP

Comcast recommends that the Commission model PCS service areas on the 194 LATAs because these areas are the appropriate size to promote diversity of services and to allow PCS licensees ultimately to provide significant competition to the LEC local loop. Because PCS traffic will

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49/ See OPP Paper at 57-58.

50/ See OPP Paper at 32-43.

51/ See Request for Award of Pioneer Preference filed by Comcast on May 4, 1992 at 13.

be a part of existing telecommunications traffic patterns based on concentration and dissemination of traffic between access tandems and interexchange carrier points of presence, PCS license areas should approximate these traffic patterns. Operation within these same boundaries will facilitate the economic development of PCS as a service. Another advocate of LATA-sized PCS markets, AT&T, notes in its comments that "licensing LATA-bounded service areas would minimize the need for future potentially costly network rearrangements to facilitate application of customer choice requirements to wireless service providers."[52/]

LATA-sized markets are large enough to promote competition with the LECs and small enough to encourage diversity and innovation. LATA-sized PCS service areas strike the appropriate balance between the undue fragmentation of services that would result if PCS service areas were modelled on the 734 MSAs and RSAs or the 487 BTAs, and the undue concentration of services that would result if the 49 MTAs were used as PCS service areas.[53/]

The administration of the 734 MSA and RSA cellular markets has proved to be costly for the Commission and the industry. The mobile market zone within which a subscriber

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52/ See Comments of American Telephone and Telegraph Company at 12 (footnote omitted).

53/ See Comments of Cablevision Systems Corporation at 12.

may receive service easily (i.e., a consumer's "home" market) is of critical importance. If the Commission models the PCS service areas on the MSAs and RSAs, there will be rapid consolidation, as occurred in the cellular context.[54/] To the extent the Commission can lessen administrative and industry expense by appropriately enlarging a consumer's "home" market, overall regulatory oversight and market operation will be more efficient. Moreover, if the Commission licenses PCS service areas based on the MSAs and RSAs, many RSAs will not develop sufficiently due to operators' inability to make such markets profitable.

PCS licenses based on the 49 Major Trading Areas ("MTAs"), on the other hand, would be equally problematic and inefficient for different reasons. Comcast notes that only a handful of commenters supported the MTA licensing option, a market size that has no relation whatever to telecommunications. MTA-sized service areas would greatly limit the number of participants in PCS, thus decreasing the diversity of PCS providers and PCS services. The reduced number of competitors and the size of the MTAs may result in services not being provided to many rural areas, smaller cities and less affluent regions. The Commission must reject the MSA/RSA and the MTA licensing options as the excesses on either side of the scale.

54/ See Notice, 7 FCC Rcd at 5699.

V. PCS PROVIDERS SHOULD BE PERMITTED TO OPT FOR PRIVATE OR COMMON CARRIAGE BASED ON THE NATURE OF THEIR SERVICE OFFERINGS

Once PCS service providers and their service offerings are identified, the Commission should allow a licensee to choose whether it will provide services on a common carrier or private carrier basis, assuming the licensee's selection is consistent with the standards enunciated in NARUC v. F.C.C.[55/] Given the variety of services expected to be offered in the PCS family of services, the Commission's best course is to postpone the classification of PCS services.

Comcast shares Viacom's determination that it is too early to decide the issue of regulatory classification because: "it is unclear at this time whether the courts will require PCS licensees, as non-dominant common carriers, to file tariffs"; the "impact state and local regulation would have on PCS as a common carrier" is not known at this time; and "because private carriers may not sell interconnected telephone service for profit . . . ., any consideration of private carrier status for PCS must include an evaluation of the nature of the PCS customer base and whether it will be sufficient to support PCS as a seller of interconnected

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55/ See National Ass'n of Regulatory Utility Comm'rs v. F.C.C., 525 F.2d 630 (D.C. Cir. 1976) cert. denied 425 U.S. 992 (1976).

service on a non-profit, cost-sharing basis."[56/] Because these issues entail numerous variables and unknowns, Comcast supports Viacom's suggestion that "the best way to accommodate these differences is to allow applicants to select private or common carrier status for each service they propose at the time they file their applications, and to preempt state regulation to the maximum extent possible."[57/] Finally, if PCS licensees elect to provide their services on a common carrier basis, minimal economic regulation at the federal level and preemption of state policies as necessary will ensure that PCS develops free of unnecessary regulatory burdens.[58/]

56/ See Comments of Viacom International, Inc. at 21-22.

57/ Id. See also Comments of Adelphia Communications Corporation and Newchannels Corporation at 7-10.

58/ Commenters favoring minimal regulation of PCS include Viacom International, Inc. and Time Warner Telecommunications.

VI. CONCLUSION

Comcast urges the Commission to incorporate the foregoing proposals into the PCS regulatory structure. Adoption of these proposals will continue the Commission's pro-competitive policies by introducing meaningful competition to the local exchange company monopoly.

Respectfully submitted,

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January 8, 1993

CERTIFICATE OF SERVICE

I, Michelle A. Avinger, hereby certify that today on this 8th day of January, 1993, I caused a copy of the REPLY COMMENTS OF COMCAST PCS COMMUNICATIONS, INC. to be served by hand delivery to the following:

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