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PACIFIC TELESIS
Group-Washington

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March 16, 1993

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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

Dear Ms. Searcy:

Re: *CC Docket No. 93-2*

On behalf of **Pacific Telesis Group** please find enclosed an original and six copies of its "*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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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services	)	CC Docket No. 93-2

COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group ("Telesis"), on behalf of its wireline and cellular subsidiaries, respectfully submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") in this docket.[1] The NPRM proposes several revisions to existing licensing and reporting procedures for Part 21 licenses, including point-to-point microwave service ("PPMS").

Telesis endorses the Commission's intentions in this proceeding. Permitting pre-authorization construction will allow PPMS applicants to respond more efficiently to increasing demands for rapid delivery of service. Reducing redundant reporting requirements, by eliminating or consolidating forms, will promote greater efficiency and eliminate unnecessary regulation (NPRM, para. 21).

[1] Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services, CC Docket No. 93-2, Notice of Proposed Rulemaking, released February 9, 1993.

I. Pre-Authorization Construction Is In The Public Interest.

The Commission proposes to permit PPMS applicants to begin construction of proposed facilities after filing FCC Form 494 but prior to receiving authorization. Applications eligible for pre-authorization construction must be routine and raise no special issues. The full notice and response steps of the current frequency coordination procedures must be completed before an applicant may file Form 494. Applicants will also assume the risk that their applications might not be granted or that the Commission may order the proposed facilities altered, relocated or dismantled (Id., paras. 4, 5, and 6). Operation of constructed facilities, however, may not begin prior to grant of authorization (Id., para. 10).

Telesis supports this revision. Point-to-point microwave service continues to be important for carriers in providing service. With the increasing diversity and growth of telecommunications services, carriers must be able to respond quickly to market demands. Permitting pre-authorization construction will enable carriers to prepare facilities to provide necessary services. Maintaining the requirement for prior frequency coordination will assure the effective use of radio spectrum. These procedures have served the industry well in the past and have provided the necessary safeguards for PPMS operators to ensure that they can operate without risk to their significant system investments from future operators.

Pre-authorization construction should also be permitted for license modifications as well as for initial applications. The policy reasons that led the Commission to propose pre-authorization construction for initial licenses are equally applicable to modifications of licenses.

II. The Commission Should Permit A Temporary Fixed License To Be Converted Into A Permanent Authorization After Public Notice.

The Commission tentatively concludes that the minimal procedures established by the rules for authorization to construct and operate facilities at temporary-fixed locations should not be used, as suggested in the petition by McCaw Cellular Communications, to obtain permanent authorization for PPMS facilities (NPRM, para. 11).

Current Commission rules permit PPMS applicants to construct and operate facilities for temporary use (when facilities will be used for a period of less than 6 months) prior to authorization by the Commission but after prior frequency coordination (NPRM, para. 11). The McCaw Petition suggests that the authorization for temporary use could be "converted" upon notice and review by the Commission to a permanent authorization. McCaw's intent is to improve the expeditious delivery of service to customers by this suggestion, and Telesis supports this goal.

Telesis disagrees with the Commission's comments about the importance of the public notice requirement to the integrity and fairness of the microwave licensing process. Because the

rules require that frequency coordination take place before filing an application, the public notice itself serves primarily as a recording tool rather than a notification of desired licensing. For these reasons, Telesis does not believe that the notice period should prevent operation of systems which otherwise have met application requirements.

While we recognize that a public notice period of 30 days is statutorily required,[2] we support rule changes which more fully address the concerns which prompted McCaw's petition. The Commission is correct to some extent, in that permitting pre-authorization construction addresses McCaw's concern--the expeditious delivery of service. However, that change in the rules will not address the concern completely. Pre-authorization construction will permit carriers to get started sooner by readying their facilities. But a carrier cannot begin to operate those facilities until the Commission has granted an authorization. Thus, further action will be required to permit a carrier to deliver services quickly.

One way to speed the authorization which carriers need in order to deliver services would be to permit an authorization to become effective within a reasonable period (e.g., 45 days after the appearance of the application on public notice) unless the Commission denied the grant or began an investigation. This could relieve the Commission of some of the burden of administering its many applications. Also, PPMS applicants

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[2] 47 C.F.R. §309(f).

continue to experience significant delays in receiving Commission authorization, due in large part to the lengthy time period (often months) between submitting an application and having it go on public notice. It would greatly expedite the process if the Commission would commit to publishing the application in the week following its receipt.

The McCaw Petition proposed another change to speed carriers' delivery of services to consumers. The Commission currently permits the use of temporary licenses for a "quick start." That is, using the expedited process for the temporary license (frequency coordination and 5 day notice to the Commission), a carrier can construct a facility and operate it using a temporary license, albeit for a limited time. McCaw's petition essentially seeks to continue the use of that temporarily authorized facility on a permanent basis. If the Commission required an application for a permanent license to be filed 90 days prior to the expiration of the temporary license (or extensions thereof), there should be sufficient time for the application to be put on public notice and for the orderly (but timely) processing of the permanent application before the temporary license expired. Thus, the carrier could continue to operate the facility with its temporary authorization during the pendency of the permanent application. If unforeseen delay prevents the Commission's disposition of the application prior to the expiration of the temporary license, the Commission could use its authority under Section 309(f) of the Act to continue to extend the temporary license until the application was resolved.

In this manner, the carrier could operate as permitted by its temporary license and the requirements of Section 309(f) for public notice would be satisfied.

III. Eliminating FCC Form 494A Is Consistent With The Commission's Regulatory Reform Program.

The Commission proposes to eliminate the requirement that a PPMS applicant notify the Commission of the completion of construction or modification of facilities and the date of expected commencement of operations.[3] A PPMS applicant would be able to begin operating following grant of a conditional license or other authorization without further notice to the Commission. Telesis agrees that post-construction notice to the Commission should be eliminated. The point-to-point microwave service is one of the few services for which the Commission requires post-construction notice.

The NPRM, para. 17, expressed concerns that the public might not know which facilities have actually been constructed, or that applicants might warehouse frequencies if notice of construction completion is not provided. But these concerns have not been problems for other services where post-construction notice is not required. There is nothing unique about the point-to-point microwave service or PPMS applicants that would increase the likelihood that these problems would occur.

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[3] NPRM, para. 16. This information is provided by FCC Form 494A.

Moreover, the Commission could monitor for these concerns by questionnaire or random checks on applicants. Eliminating Form 494A would provide significant relief from the administrative burden for both the Commission and carriers; this relief outweighs speculative concerns which can be addressed in less burdensome ways.

The Commission also proposes to reduce the construction period for PPMS conditional licensees from 18 to 6 months. A shortened construction period is not in the public interest. Although the Commission is correct that most construction is completed within a few months of an authorization, limiting the construction period to 6 months would not provide carriers with the flexibility needed, for example, to obtain final approval for construction on government property or to meet difficult situations encountered due to weather or equipment delivery problems. In many suburban and urban environments, microwave applicants must obtain state, county, and local permits, following time-consuming proceedings at review boards and planning commissions. In rural areas, where applicants are often required to file Environmental Impact Reports, such as on Federal Bureau of Land Management or U.S. Forestry lands, long delays in processing can result. These delays can easily extend beyond six months, yet be totally outside of an applicant's control.

Because the Commission has often indicated that carriers carry a heavy burden when requesting construction period extensions, the construction period should be set to give greater flexibility than a 6 month limit would provide. Also, a

construction period as short as 6 months is likely to lead to increased requests by carriers for extensions of the construction period, which would increase the Commission's administrative burden.

IV. Eliminating A Separate Form For Carriers to Report Their Qualification Is Administratively Efficient.

The Commission proposes to eliminate the requirement that Part 21 applicants use FCC Form 430 to report licensee qualifications. Instead, applicants would report qualification information on the Form 494 or in a letter to the Commission if there have been no changes in prior information (NPRM, para. 18). Telesis generally endorses any change that reduces carriers' administrative burdens. However, the Commission must have timely information about an applicant's qualification to be licensed for specific radio services. Requiring qualification information with each application for new or modified microwave radio station license under Part 21 (Form 494) would provide the Commission with that information.

On the other hand, having to include qualifying information on every Form 494 would also result in repetitive, unnecessary reporting for applicants who submit many applications for point-to-point microwave licenses. The current Form 430 needs only to be filed annually and updated when a significant change occurs. That may be less burdensome than reporting information on each Form 494. The Commission mentions that a letter explaining that there have been no changes in the required information may be provided. Such a letter may provide the

balance between necessary reporting and unnecessary redundancy, but, further details are needed about how and when the letter should be provided.

The changes proposed on Form 494, Item 15, place an unnecessary burden on the applicant to provide an exhibit in response to a negative indication that no environmental assessment is required under the Commission's environment rules. Telesis strongly recommends that this item be retained in its original form, i.e., that an exhibit only be attached to applications requiring environmental assessments.

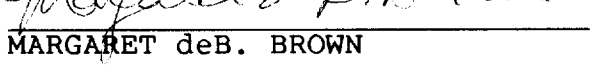
V. Consolidating Applications For Transfer Of Control Is Consistent With Sound Administrative Practice.

The Commission proposes to consolidate and streamline reporting requirements by combining the Application for Consent to Assign Radio Station Construction Authorization or License (Form 702) with an Application for Consent to Transfer Control (Form 704). Telesis supports eliminating duplicative reporting requirements and simplifying the reporting procedure for transfers of control. Telesis also supports extending the period for consummating assignments or transfers to 60 days from the current 45 days after Commission authorizations. The time

extension will provide carriers with additional flexibility to accomplish the assignment or transfer of control.

Respectfully submitted,

PACIFIC TELESIS GROUP



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