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MAR 16 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Office of the Secretary
Federal Communications Commission
Washington D.C. 20554

Dear Sirs:

Please accept this letter in support of nearly all of the proposed actions to be taken by the FCC in regard to the 28 GHz NPRM CC Docket No. 92-297/RM-7872 & 7722. However, as to the dispositions of the 28 GHz wavier requests, I believe that the most equitable and expeditious deployment of the new technology would be by the granting of as many wavier requests as possible.

Potential Challenges to the Denial of Waiver Requests:

The FCC agency's Enabling Act of 1933 allows the FCC to establish its own procedural rules. The agency establishes its rules, makes them public and then must abide by them. Challenges to agency decisions are usually upheld if the agency did not comply with its own procedural rules in reaching its decision.

The FCC is now on record as using the argument that 971 applications may present a *de facto* reallocation argument. This argument seems to be inconsistent with the waiver request procedures in that it was within the FCC's prerogative to cut-off the acceptance of applications at some point prior to which the "flood" of applications became a factor. Since such a flood of applications was a concern; i.e. Hye Crest Mgt. grant of waver request, the FCC should have monitored the incoming applications.

My waiver requests, submitted in accordance with the established rules for waiver requests and should be granted or denied on its own merits. The applications were submitted under the rules for waiver requests, placed on public notice and unchallenged over the 60 day objection period The fact that 971 (actually much less*) other similar requests have been received by the commission has no relevance to the disposition of any individual application.

The FCC, it seems, has the option of granting as many applications as it feels comfortable will not be challenged under the *de facto* reallocation argument.

** Note that Niagra Falls, among others, is listed 5 times and counted 5 times to make up the 971 applications reported to be on file.*

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Solution:

May I respectfully offer some alternatives in an order of preference which provides a continuously diminishing number of wavier requests to be approved:

1) Lump all the applications into the appropriate market area designation and select from the multiple applicants for given areas by lottery, honoring the 60 day window and allowing the applications to be for the newly designated area definitions. Which is 395 wavier requests approved of the proposed 978 A & B licenses to be granted. (395/978)

2) Only consider applications that are on Public Notice and lottery under the same plan. Only 164 markets have applications on Public Notice. Only 108 of the 164 have both two or more applications on notice. (108 X 2 for both A & B plus 56 single fillings = 272) (272/978)

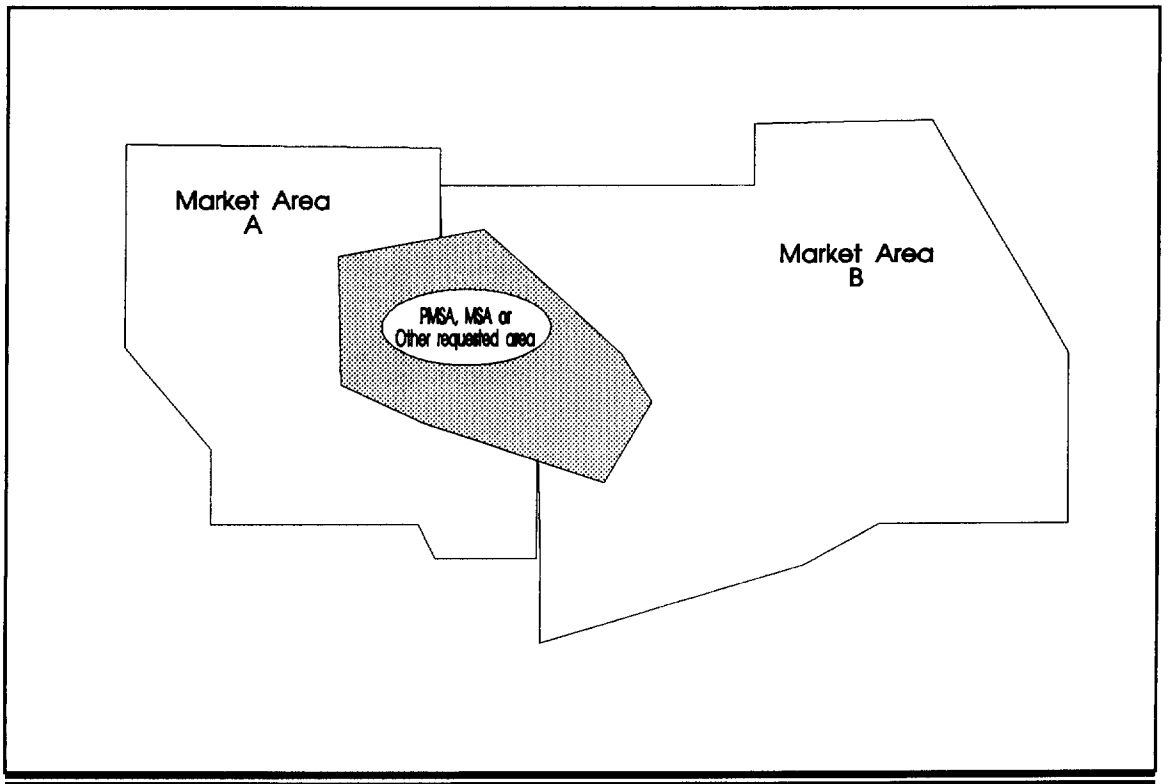
3) Only consider the applications that are sole applicants in a market area. There are only 75 markets in this category. (75/978)

4) Only consider the applications that are sole applicant and on public notice. (56/978)

5) Require Public Noticed applicant to update their application to meet the standard of applications desired by the FCC and then do # 1 or 2. (much less than 328/978)

6) Only consider the applications that are sole applicants in a market area. There are only 75 markets in this category. And require financial verification. (much less than 75/978)

7) Only honor the applications as of a certain date that would grant only the number desired. (FCC picked #/978)



In the event that a requested market service area over laps the ultimately selected allocation scheme the applicant should be given a post card choice to determine the area he is requesting or be placed by the FCC into the area which most closely matches the principal cities of the original request.

Respectfully submitted,

Perry W. Haddon

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