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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act	)	
Competitive Bidding	)	PP Docket No. 93-253
	)	

COMMENTS OF MEBTEL, INC.

MEBTEL, Inc. (MEBTEL), by its attorneys, hereby submits its comments concerning the referenced rule making proceeding concerning the establishment of rules governing the auction of PCS spectrum. In support whereof, the following is respectfully submitted:

1) MEBTEL has approximately 7,000 access lines in rural North Carolina. MEBTEL has always considered itself a rural telephone exchange company. However, the Commission's proposed treatment of rural telephone companies would exclude many rural telephone companies such as MEBTEL from the special provision which sets aside Blocks C and D for use by rural telco's and other designated entities.

2) As noted at paragraph 72 of the NPRM, Congress's objective was to promote economic opportunity for rural telephone companies. To meet this objective paragraph 77 of the NPRM defines a rural telephone as "those carriers that are eligible for the exemption from the telephone company-cable television cross-ownership restrictions under Section 63.58 of our Rules." That definition is wholly inadequate to meet the goal articulated by Congress.

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3) First, §63.58 of the Rules looks at the number of people in a community and that determination is wholly independent of whether the telephone company is large or small, rural or urban. For example, if a community of 2,500 exists in NYNEX's telephone service area, it would appear that NYNEX could receive a rural exemption under §63.58 and provide cable television service within its telephone service area. There is no doubt that NYNEX cannot be considered a "rural telephone company."

4) Second, the Commission's decision to license PCS on an MTA and BTA basis renders consideration of individual community size irrelevant. PCS licenses, unlike telephone cable-TV cross ownership exemptions, will not be issued on a community by community basis. Thus, the Commission's proposed PCS rural telephone company definition proposes to compare apples to oranges.

5) The PCS licensing areas, MTA's and BTA's, are large areas encompassing much more than a single community. The Commission's proposed rule would exclude a great many telephone companies which have heretofore considered themselves "rural." Moreover, many rural telephone companies could obtain a number of §63.58 exemptions within a particular BTA but would seem to be excluded from the proposed rural telephone company definition because service to more than 2,500 was provided in the wide ranging BTA.

6) A more workable rule, and one which would more accurately describe what is and what is not a rural telephone company, would define rural telephone companies by the number of access lines owned or operated by a rural telephone company in a particular

BTA.[1] MEBTEL proposes that 50,000 access lines be the number of access lines selected to determine what constitutes a rural telephone company. This definition would more closely mirror what in reality is a "rural telephone company" and would ensure that a large telephone holding company does not attempt to slip into the Commission's proposed definition because it provides service to a community of fewer than 2,500 persons located within a BTA.

7) MEBTEL is also concerned that the Commission proposes to permit any woman's or minority group compete for the C & D Blocks regardless of the size of those entities. In creating a special application classification for small businesses and rural telephone companies, Congress could hardly have intended for those same small companies and rural telephone companies to compete against large businesses merely because of immutable characteristics such as the race and sex of the large business owners. Thus, the special provision relating to woman/minority owned businesses should apply only if the pertinent business is properly classified as a small business, to be defined in this proceeding, or if the pertinent business is properly classified as a rural telephone company.

8) As a final matter, paragraph 77 of the NPRM seeks comments on other issues relating to eligibility. Specifically, MEBTEL urges the Commission to limit designated the area in which C & D Block filers may file. Mebane considers that a fair approach would permit C & D Block filers to file for any BTA which is located

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[1] The lines of affiliated and subsidiary companies in a particular BTA should be grouped together.

within the MTA in which its business is located. In this way, local businesses with strong ties to the community would be the licensees while the prospect of speculation for licenses would be greatly diminished.

9) Moreover, the Commission's broadcast comparative hearing files are filled with cases in which sham applications were denied. To gain comparative advantage, various investors used minorities and/or women to front as the purported controlling party. To eliminate that kind of game playing in the PCS auctions, the Commission should limit eligibility for the C & D Blocks to minority and women controlled businesses which existed prior to August 10, 1993.[2]

10) By limiting eligibility for the C & D Blocks to going concerns the Commission would eliminate much of the suspicion and litigation found in the broadcast comparative hearing area. If a business was a going concern prior to August 10, the Commission will be assured that the entity is interested in entering PCS as a business proposition rather than as a speculative venture. Minority/woman "controlled" business entities formed after August 10 would appear to be formed merely to apply for, and speculate on, PCS facilities. The Commission should not turn a blind eye to the significant problems it has had regulating woman/minority owned

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[2] The day the Omnibus Budget Reconciliation Act of 1993 added §309(j) to the Communications Act of 1934, as amended.

broadcast applicants and the Commission should apply what it learned in that area to the PCS auctions.

WHEREFORE, in view of the information presented herein, the Commission should adopt rules which better define "rural telephone company" and which limit the manner in which preferences are accorded to filers for the C & D Blocks as discussed herein.

Respectfully submitted,
MEBTEL, INC.

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