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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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NOV 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

REPLY COMMENTS OF PERSONAL NETWORK SERVICES CORP.

PERSONAL NETWORK SERVICES CORP.

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No. of Copies rec'd 24
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November 30, 1993

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SUMMARY

Personal Network Services Corp. ("PNS") hereby submit its reply to the comments submitted in response to the Commission's Notice of Proposed Rule Making in the competitive bidding proceeding.

PNS believes the Commission has ample authority to adopt set-asides and preferences for minorities and other designated entities. PNS encourages the Commission to proceed with its proposal to set aside certain PCS spectrum blocks for bidding by designated entities, and to adopt a broad range of preferences.

The Commission should adopt a flexible approach for establishing the level of control necessary to achieve and maintain designated entity status, recognizing the difficulties faced by minority entities in raising capital. The Commission also should establish flexible mechanisms for the payment of winning auction bids by minorities, and PNS submits a detailed proposal for how such mechanisms should be structured. Finally, PNS urges the Commission to include among any anti-trafficking restrictions a five-year holding period on the unlimited transfer of a PCS license granted to any designated entity.

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To: The Commission

REPLY COMMENTS

Personal Network Services Corp. ("PNS"), by its attorneys, hereby submits its reply to the comments filed in response to the Notice of Proposed Rule Making (the "Notice") in the above-captioned proceeding.

1. PNS is a Hispanic-owned telecommunications company founded with the objective of acquiring and developing personal communications networks throughout the United States. PNS's principal founded and manages a large cellular resale operation which serves more than 10,000 subscribers and received an Inc. 500 award as one of the fastest growing companies in the United States. PNS's management, which has more than ten years experience in the computer and telecommunications industries, has been closely following regulatory developments over the last several years. The competitive bidding proceeding, in combination with the Commission's establishment of personal communications services, represents a great advancement in government policy. The large spectrum allocation for

licensed commercial personal communications services ("PCS") demonstrates the federal government's commitment to new communications technologies that will increase productivity, convenience, and personal security. The creation of seven licensed PCS spectrum blocks also demonstrates a commitment to the enhancement of competition in the mobile communications marketplace. Finally, the concept of set-asides and preferences for designated entities shows a concern for protecting economically disadvantaged sectors of society.

2. Although PNS believes that recent legislative and regulatory actions are, on balance, beneficial, PNS nonetheless is deeply concerned that there may be excessive optimism regarding PCS. Specifically, PNS questions the financial viability of seven PCS licensees. PCS licensees will have entrenched competition (two cellular carriers and one ESMR carrier). Thus, there could be a total of ten service providers. PNS believes that markets with populations below one million will not support this number of competitors.[1]

3. The comments filed in this proceeding reflect the widespread interest in and enthusiasm for PCS among a diverse cross-section of American businesses. PNS encourages the Commission to address the needs of those entities identified by Congress in amending the Communications Act. In view of the competitive disadvantages facing PCS providers in smaller markets, the Commission should consider the following recommendations which are intended to result in substantial and long-term participation in PCS and other spectrum-based services by designated entities.

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[1] PNS's concerns will be set forth in greater detail in comments PNS will file in the reconsideration phase of the Second Report and Order of the Commission's PCS proceeding.

I. The Commission Should Adopt Set-Asides and Preferences for Designated Entities

4. The Commission has divided the allocated PCS spectrum into seven blocks: two 30 MHz blocks (Blocks A and B) to be awarded within 51 Major Trading Areas ("MTA"); one 20 MHz block (Block C) to be awarded within 492 Basic Trading Areas ("BTA"); and four 10 MHz blocks (Blocks D, E, F, and G) to be awarded within the BTAs.[2] In the Notice, the Commission proposed that Blocks C and D be set aside for bidding only by certain designated entities -- small businesses,[3] businesses controlled by minorities[4] and women, and rural telephone companies.[5] The Commission also proposed a number of preferential measures designed to increase meaningful participation in the provision of spectrum-based services by designated entities.[6]

5. The vast overwhelming majority of the commenters who addressed the question of set-asides and preferences expressed support for the broad outlines of the

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2 Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, FCC 93-451, released October 22, 1993, at ¶¶56, 76-77.

3 With respect to a definition of "small business," PNS notes that the comments offer no consensus. PNS believes the Commission should adopt a standard based upon revenue, rather than net worth, and recommends a $25 million in revenues/200 employees standard in order to qualify as a small business.

4 PNS supports the Commission's proposed definition of minority.

5 Notice at ¶121.

6 See id. at ¶79.

Commission's proposal.[7] These comments provide clear guidance to the Commission that its proposals are consistent with the requirements of the Communications Act[8] and with other applicable law.[9] PNS strongly supports frequency set-asides and preferences for

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7 See, e.g., Comments of Alliance for Fairness and Viable Opportunity ("Fairness Alliance") at p. 10; Alliance Telecom, Inc. ("Alliance Telecom") at p. 7; American Personal Communications ("APC") at p. 6; American Wireless Communication Corporation ("American Wireless") at p. 19; American Women in Radio and Television, Inc. ("AWRT") at p. 3; AT&T at p. 24; California Public Utilities Commission ("CPUC") at p. 2; CALL-HER at p. 2; Cellular Telecommunications Industry Association ("CTIA") at p. 6; Cook Inlet Region, Inc. ("Cook Inlet") at p. 7; Corporate Technology Partners at p. 2; Council of 100 at p. 4; Data Link Communications at p. 2; E.F. Johnson Co. at p. 6; FiberSouth, Inc. at p. 2; General Communications, Inc. at p. 13; GTE at p. 12; Iowa Network Services, Inc. at p. 7; JMP Telecom Systems, Inc. at p. 2; Andrea L. Johnson at p. 4; Lightcom Cellular, Inc. at p. 2; LuxCel Group, Inc. at p. 3; Mercury Communications, L.C. at p. 1; McCaw Cellular Communications, Inc. ("McCaw") at p. 19; Minority PCS Coalition at p. 3; National Association of Black Owned Broadcasters, Inc. ("NABOB") at p. 2; National Association of Business and Educational Radio ("NABER") at p. 11; National Association of Minority Telecommunications Executives and Companies ("NAMTEC") at p. 7; National Rural Telecommunication Association at p. 2; National Telecommunications and Information Administration ("NTIA") at p. 25; Pacific Telecom Cellular, Inc. at p. 5; Palmer Communications, Inc. at p. 2; Personal Communications Network Services of New York, Inc. at p. 2; Rural Cellular Association at p. 10; Small Business PCS Association at p. 2; Southwestern Bell Corporation ("SWB") at p. 41; Suite 12 Group at p. 12; Systems Engineering, Inc. at p. 1; Telephone and Data Systems, Inc. ("TDS") at p. 16; Telephone Electronics Association at p. 5; Telepoint Personal Communications, Inc. at p. 1; Telmarc Group at p. 3; United Native American Telecommunications, Inc. ("UNAT") at p. 5; Small Business Administration ("SBA") at p. 1; United States Telephone Association at p. 3; Valley Management, Inc. at p. 2; Vanguard Cellular Systems, Inc. at p. 2; Richard L. Vega Group ("Vega Group") at p. 10; Venus Wireless, Inc. at p. 3; Windsong Communications, Inc. ("Windsong") at p. 2; Wisconsin Wireless Communications Corp. ("Wisconsin Wireless") at p. 2. Compare Comments of Association of Independent Designated Entities at pp. 3, 8; BellSouth Corporation et al. ("BellSouth) at p. 20; Converging Industries at p. 2; NYNEX Corporation at p. 19; PacTel Paging at p. 30; Sprint Corporation at p. 9; Telocator at p. 7.

8 47 C.F.R. §309(j).

9 See, e.g., Comments of American Wireless at pp. 6-18; AWRT at pp. 4-7; Minority PCS Coalition at pp. 5-6; George E. Murray at pp. 5-8; NABOB at p. 2; NAMTEC at pp. 7-14.

designated entities, and accordingly urges the Commission to set aside Blocks C and D for bidding exclusively by designated entities[10] and to establish a broad range of preferences for minority applicants.

II. Eligibility for Designated Entity Status

6. In the Notice, the Commission requested comment on whether, in order to be eligible for set-asides and preferences, women and minorities should be required to own 50.1% of the applicant in order to qualify for preferential treatment, or whether simple control should be sufficient regardless of the percentage of equity held.[11] Most commenters support a requirement that the designated entity have a majority controlling interest in the applicant.[12] For example, Cook Inlet states that minorities must have actual control and hold a significant equity interest in the applicant entity in order to fulfill the goals behind preferences and to deter sham applicants.[13] Similarly, NAMTEC states that small

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10 PNS strongly agrees with NABOB, NAMTEC, and others that designated entities should be permitted to bid on all PCS blocks, not just the set-aside blocks, and that preferences should apply to any designated entity bid. See, e.g., Comments of NABOB at pp. 9-10; NAMTEC at pp. 17-18. Compare Comments of McCaw.

11 Notice at ¶77.

12 See, e.g., Comments of Fairness Alliance at p. 11; Alliance of Rural Area Telephone and Cellular Service Providers at p. 3; Alliance Telecom at pp. 5-8; BellSouth Corp. at p. 27-30; Brown and Schwaninger at pp. 6-7; CalCell Wireless, Inc. at p. 27; CPUC at pp. 5-6; CALL-HER at p. 12; Cellular Service at p. 8; Cook Inlet at p. 20; GTE at pp. 13-14; Iowa Network Services at p. 21-23; Lightcom International at 2-3; LuxCel Group at p. 4; Minority PCS Coalition at pp. 3-4; NTIA at pp. 25-28; Pacific Bell at p. 21; Pacific Telecom Cellular, Inc. at p. 4; Palmer Communications at p. 2; PMN, Inc. at p. 9; Arlene Strege at p. 1; Telocator at p. 9; TDS at p. 17; Tri-State Radio at p. 18; UNAT at p. 16; Vega Group at p. 7; Windsong at p. 3.

13 Comments of Cook Inlet at p. 20.

businesses, women and minority-owned businesses "should have controlling interest, i.e., 51% of voting stock."[14]

7. A few commenters, however, recognize that a more flexible approach will satisfy the goal of diverse ownership while preventing "front" applicants.[15] SWB, for instance, advocates adoption of a simple control standard, rather than majority control.[16] Alliance Telecom proposes that designated entities be required to maintain at least 20% ownership after one-third of the service area has been constructed.[17] American Wireless proposes a "percent participation benefit" that would give a sliding scale of preferential treatment to consortia based upon the level of involvement by designated entities.[18]

8. PNS believes that a 50.1% equity ownership requirement, in combination with other rules designed to ensure that only qualified individuals and entities achieve designated entity status, will serve a limited purpose. Over time, however, such a requirement will hinder the licensee's ability to compete. Capital requirements for the PCS industry will be extremely large, and it will be very difficult for most companies that qualify for designated entity status to attract necessary capital while maintaining majority or 50.1% equity control. Indeed, maintaining this level of ownership will be virtually impossible given

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[14] Comments of NAMTEC at p. 4.

[15] See Comments of American Wireless at p. 27; SWB at pp. 41-42; Wireless Services Corporation at p. 3; Wisconsin Wireless at p. 2.

[16] Comments of SWB at p. 41. PNS agrees with SWB that "creative financing options ... should enhance these groups' opportunities to participate in the PCS market." Id.

[17] Comments of Alliance Telecom at p. 6.

[18] Comments of American Wireless at p. 28 (and see id. at p. 29 regarding need for flexibility).

the huge capital required to deploy a PCS network and given the competitive environment facing PCS operators, including the strong competitive position enjoyed by cellular carriers and the solid financial position PNS expects MTA licensees will possess. The history of many high technology firms illustrates this difficulty: the founders of such companies as McCaw, Cellular Communications, Inc., and Vanguard Cellular Systems, Inc. lost majority equity control early during their companies' development. Similarly, PCS providers' need for capital will force designated entities to relinquish majority control or even to sell out early to major "deep pocket" players, because once they dip below the 50.1% benchmark, monies due on the auction could become due and payable.

9. The Commission should acknowledge that the capital formation stage is critical in the life of young emerging technology companies; to expect anything different from minority-owned companies would be to ignore reality. In order to mitigate the impact of this fact, PNS recommends adoption of the following rules:

- Require 50.1% equity ownership by designated entities <u>only until</u> commercial PCS operation begins.
- <u>After</u> commercial operation begins, allow designated entity equity ownership to be reduced to 20% with no effect on the operator's designated entity status, but only if no single non-designated entity owner has more than a 15% equity position.[19]
- Permit designated entity licensees to establish two classes of stock -- a "freely trading" class and a restricted "designated entity" class. The latter class could be marketed through minority- owned investment banks to minority shareholders. This mechanism would ensure an equity base for the designated entity company and maximize participation by the minority investment community. Further, the

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[19] If the licensee is a limited partnership, the designated entity should be required to be the general partner.

minority equity base could be leveraged with equity raised through the open market. This would ensure that minority shareholders have a significant stake in the designated entity for the length of the anti-trafficking period established by the Commission.[20]

10. Finally, unlike some commenters,[21] PNS does not support limiting designated entity status or preferences to the specific BTA where the company operates.[22] There tend to be conglomerations of minorities within certain regions of the United States, and such a limit would artificially limit participation and competition for PCS spectrum among the designated entities themselves. The impact would be twofold, dampening efforts to foster minority dispersion throughout the United States, and minimizing government receipts by minimizing competition among designated entities.

III. The Commission Should Adopt Flexible Payment Methods for Designated Entities

11. In the Notice, the Commission requested comment on how payment of winning bids should be structured, and proposed various payment scenarios, including allowing designated entities to pay for their licenses in installments, with interest set at the prime rate plus one percent.[23] These proposals are, for the most part, not a source of

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20 These shares could be converted into freely trading shares after the anti-trafficking period expires. PNS recommends a five-year holding period for designated entity PCS licenses. See Part IV, infra.

21 See Comments of General Communication, Inc. at p. 13; MebTel, Inc. at p. 4; NYNEX at p. 18; Pacific Telecom Cellular at p. 5.

22 Accord Alliance of Rural Area Telephone and Cellular Service Providers at p. 3; Cook Inlet at pp. 30-32; Devsha Corp. at p. 5; Palmer Communications at p. 5.

23 Notice at ¶¶ 79, 121 & n.57.

controversy and are generally supported. In this regard, PNS agrees that the Commission's rules for auction payments should recognize, as many commenters have stressed,[24] that capital formation remains the primary obstacle facing minority companies, and should, accordingly, provide flexibility for such applicants.

12. PNS agrees with the many commenters who favor permitting designated entities to pay for their licenses in installments.[25] However, such a payment plan should be sufficiently flexible to allow the designated entity PCS operator to develop a viable and competitive system. PNS's financial models indicate that, with per pop values of $12 to $15,[26] a 10-year payment schedule with interest rates at one percent over the 10-year Treasury Bond rate would result in a payment of principal plus interest equal to 40% of

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[24] See, e.g., Comments of Minority PCS Coalition at p. 14; NAMTEC at pp. 20-21.

[25] The comments suggest various lengths for the installment period. Most support longer periods, up to, or even exceeding, the length of the license term. See, e.g., Comments of Alliance of Rural Area Telephone and Cellular Service Providers at pp. 4-5 (10-year installment period); American Wireless at p. 21 (10-year period); AWRT at p. 3; Bell Atlantic Personal Communications, Inc. at p. 15; BellSouth at p. 23; CPUC at p. 4; CALL-HER at p. 11; Cellular Service at p. 11; CTIA at p. 26 n.62; Cook Inlet at p. 47; Corporate Technology Partners at p. 5 (10-year period); Devsha Corp. at p. 5 (10-year period); FiberSouth at p. 5 (no payment until third year of license term); Lightcom International at p. 2; McCaw at pp. 17-18; MCI at p. 14; Minority PCS Coalition at p. 10 (10-year period with staggered amounts paid out over years 3-9 and balloon payment in year 10); NABOB at p. 11 (7-year period beginning with date of receipt of first revenues); NAMTEC at pp. 15-16 (10-year period); Palmer Communications at pp. 2-4 (5-10 year period); Point Communications at p. 4 (at least 10 years, beginning after third year); Small Business PCS Association at p. 5 (10-year period beginning in third year); Suite 12 Group at p. 12 (10-year period); Systems Engineering at p. 4 (10-year period); Telepoint Personal Communications at p. 3 (pay over license term, beginning in third year); Telocator at p. 7; UNAT at p. 10; SBA at p. 1; Venus Wireless at p. 4; Windsong at p. 4 (5-year period).

[26] See Notice at ¶103 n.98. The Notice refers to the Congressional Budget Office's March 1992 estimate that the auction value of a 25 MHz PCS license is approximately $15 per pop, or $.60 per pop per MHz.

revenues. This payment will be impossible to achieve solely with internally generated funds.[27] Such a payment schedule would consume 100% of the entity's operating cash flow, hampering its competitiveness.

13. The biggest barrier to entry and establishment of a viable, competitive system will be capital formation. In order to ensure strong participation by designated entities, PNS recommends that the following payment mechanisms be adopted:

- The Commission proposed that bidders make an upfront payment prior to the auction of $.02 per MHz per pop, calculated based on the amount of spectrum and population covered by the license. PNS supports an upfront payment, but believes the payment should equal

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[27] PNS believes financial cash flow ratios for PCS providers will be lower than cellular industry ratios due to the greater degree of competition facing the industry. Cellular has, for the most part, positive cash flows in the top 200 markets. This may be concluded by examining the financial performance of the publicly traded cellular companies as analyzed by the investment banking firm of Donaldson Lufkin and Jenrette in its Spring 1993 Cellular Communications Industry Overview, which shows that most of the RBOCs, GTE, Sprint, Vanguard Cellular, LIN Communications, Comcast, Associated Communications, ALLTELL, Century Communications and United States Cellular had positive operating cash flows. (Although no information was available on three RBOCS -- Ameritech, Southwestern Bell, and Bell Atlantic -- it is common industry knowledge that they also enjoy positive operating cash flows from their cellular subsidiaries.) These companies represent over 90% of the U.S. cellular industry in terms of subscribers. Operating cash flow margins (operating cash flow/revenues) for the cellular industry segment ranged from a high of 46% for LIN Communications to a low of 10.9% for U.S. Cellular. This difference may be attributable to two key factors: market size and length of operations. LIN Communications' average market size stood at 7,092,211, while U.S. Cellular's average market size was only 308,233, and operations in LIN's markets began in 1986 and thus are more mature than U.S. Cellular's markets, 61% of which (adjusted POPS) commenced operations after 1990. U.S. West provides a much better example because its average market population is 374,477 and its operating cash flow margin for 1992 was 23.8%. This was accomplished despite the fact that 91% (adjusted POPS) of its markets were quite mature since operations commenced in 1988.

$.005 per MHz per pop for designated entities.[28]

- Winning designated entity bidders should make an immediate deposit equal to 10% of the winning bid, payable within 90 days of the completion of the auction.

- The remaining 90% of the winning bid should be paid out in quarterly installments, over a period beginning in the third year of the license term and extending until the tenth and final year, with a balloon payment due in the tenth year. Each payment would consist of an increasing percentage of the principal amount, plus interest, as follows:

Year 3	5%
Year 4	6%
Year 5	7%
Year 6	8%
Year 7	9%
Year 8	10%
Year 9	10%
Year 10	35%

- Payments by designated entities should be capped at 15% of total revenues for the preceding quarter. Any shortfalls throughout years 3 to 5 would be added to payments in years 6 through 10. However, during years 3 through 5 the licensee should be required to make a minimum payment equal to 70% of the established payment schedule.

- Interest should be set at the prevailing 10-year Treasury Bond rate plus 1%, determined as of the date the upfront payment is made.[29]

- Minority-owned entities should be granted an auction credit equal to

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28 Many commenters support, without extensive discussion, the Commission's .02/pop/MHz proposal. See, e.g., Comments of Cellular Service, Inc.; Corporate Technology Partners at p. 8; MCI at p. 13; Ray Communications; Small Business PCS Association at p. 4; SWB at p. 38. Others urge the Commission to require no upfront payment. See Comments of Association of Independent Designated Entities at p. 7; Devsha Corp. at p. 4.

29 The Prime Rate, as proposed by the Commission, would give the government an additional revenue source, which is not called for given that the government already will receive auction monies. The 10-year Treasury Bond rate represents the government's true cost of money. The 1% spread would cover any administrative costs.

> 50% of the designed entity ownership composition, up to a maximum of 25% of the total auction bid, when evaluated against bids of small businesses, women-owned businesses, and rural telephone companies.[30]

14. Under the proposed rules, designated entities will have approximately 90 days after the release of the final order in March 1994 and commencement of auctions in May 1994 to raise the required capital. This short time frame, and the complex nature of raising capital funds for new technologies under an uncertain regulatory environment, will minimize participation. Therefore the Commission should allow designated entities a minimum 9 month period for capital formation. In addition, licensees should be permitted to place licenses as collateral for commercial loans. Otherwise, it will be virtually impossible for designated entities to secure adequate financing.

15. The Commission also sought comment on the content and extent of the information that applicants should be required to include in their applications to demonstrate that they have the financial means to construct and operate a facility if they receive a license. The Commission proposed adopting the existing standard for RSA cellular applicants, which requires a demonstration "that they have the available resources to meet the realistic and prudent estimated costs of constructing and operating their facilities for one year."[31] PNS

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30 PNS agrees with those commenters who urge the Commission to recognize that not all designated entities are similarly situated and that the auction rules should include some mechanism for according minority applicants an enhanced preference. See, e.g., Comments of CalCell Wireless at pp. 21-22; Minority PCS Coalition at pp. 7-8; NABOB at p. 14. See also Small Business Advisory Committee Report at pp. 4-5.

31 Notice at ¶¶ 98, 128.

agrees with those commenters[32] who support "self-certified" demonstrations of financial qualifications or "highly confident" letters from lending institutions, as originally proposed by the Commission's Small Business Advisory Committee Report.[33]

16. Finally, PNS believes that the Communications Capital Fund espoused by Andrea L. Johnson[34] is an attractive mechanism to help increase minority- and women-owned business participation in the PCS marketplace, because additional equity capital would be made available to these sectors.

IV. The Commission Should Adopt Restrictions on Transfers of Licenses Held By Designated Entities

17. In the Notice, the Commission proposed several safeguards intended to prevent unjust enrichment and avoid collusion among bidders.[35] Among the antitrafficking measures on which comment was requested were transfer prohibitions and financial disincentives to negate windfall profits on sales of licenses.[36]

18. No consensus emerged from the comments regarding antitrafficking measures. Some commenters oppose all forms of transfer prohibitions,[37] while some argue

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32 See Comments of Fairness Alliance at p. 12; American Wireless at p. 29; NABOB at pp. 11-13; NAMTEC at pp. 20-21; Windsong at p. 5.

33 Notice at ¶80 & n.60.

34 Comments of Andrea L. Johnson at pp. 8-9.

35 Notice at ¶¶ 82-94.

36 Notice at ¶¶ 84-89.

37 See, e.g., Comments of APC at p. 8; NexTel, Inc. at p. 12; NYNEX at p. 20; Paging Network, Inc. at pp. 26-27; Telocator at p. 14; Time Warner Telecommunications at p. 4.

that strict enforcement of construction deadline requirements or other mechanisms is sufficient.[38] Commenters suggested various holding periods before licenses held by designated entities may be transferred,[39] although there is general agreement that restrictions should be minimal or waived when such licenses are transferred to another designated entity.[40]

19. PNS believes that the Commission should prohibit all transfers of the set-aside Block licenses prior to the commencement of commercial operation. Instead, the Commission should conduct a re-auction among designated entities. In the absence of any flagrant violations of the Commission's regulations, the original authorization holder should receive a return of its upfront payment, plus a 25% return on equity funds invested.[41] The Commission should establish a minimum bid price in the re-auction equal to the remaining principal balance, the original authorization holder's equity investment, plus required rates of return. Any excess funds should be made available to the Commission and applied against the balance of the outstanding auction debt. The new designated entity should be required to maintain the same payment schedule as the original designated entity, unless any excess

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38 See, e.g., Comments of Devsha Corp. at p. 6; Windsong at p. 5.

39 See, e.g., Comments of Alliance of Rural Area Telephone and Cellular Service Providers at pp. 5-6 (1 year); American Wireless at 34 (3 years); Cook Inlet at p. 50 (2 years); Corporate Technology Partners at p. 7 (4 years); Minority PCS Coalition at p. 14 (2 years); NAMTEC at p. 23 (3 years); Palmer Communications at pp. 7-8 (1 year); Windsong (3 years).

40 See Comments of Cook Inlet; Corporate Technology Partners; Minority PCS Coalition; NAMTEC; Systems Engineering; Venus Wireless; Windsong.

41 Twenty-five percent rates of return are standard for the venture capital industry. Guaranteeing a return on equity funds invested will ensure that in the future, venture capital will continue to be made available for high risk telecommunications ventures.

funds are applied to the auction debt, in which event a new payment schedule should be computed over the remaining term of the license. The 35% balloon payment also should be maintained, and the new licensee should assume existing debt obligations held by the original licensee.

20. In the event that no bid from a designated entity meets the minimum required bid, the spectrum should be auctioned in the open market. In this instance the minimum bid price should include the principal balance owed from the initial auction, a subsidy equivalence equal to the average (market) price paid for the 10 MHz E, F, and G Blocks, multiplied by a factor of two, less the actual (subsidized) bid originally placed on the 20 MHZ C Block,[42] plus the original licensee's 25% rate of return on equity investments. If an open market auction fails to achieve the minimum required bid, the winner should be that bid (i.e., either the designated entity bid or open market bid) with the smallest percentage difference between actual bid and minimum established bid.

21. With respect to transfers occurring after the commencement of commercial operation, PNS recommends the following. During the first five years of the license term, a designated entity should be permitted to transfer to another designated entity with no impact on the installment payment schedule; transfer to a non-designated entity, however, would result in the entire remaining principal amount, plus the subsidy equivalence, becoming due and payable to the Commission upon consummation of the transfer. The same requirements would apply to any transfer occurring after the five-year

[42] The 10 MHz set-aside D Block should be excluded from the market valuation average in order to arrive at a more realistic market valuation for the 20 MHz block.

benchmark, except that a transfer to a non-designated entity would not require payment of the subsidy equivalence. This exception is based on the presumption that the designated entity has responsibly operated the system for five years and thus earned the right to profit from the value created. In this regard, PNS believes strongly that a five-year holding period provides the Commission reasonable assurance that the licensee is not trafficking in PCS licenses. A two- or three-year holding period, as suggested by many commenters, is not a sufficient anti-trafficking measure. Moreover, PNS projects that PCS operators will not have a positive cash flow until at least the fourth year of commercial operation.

V. <u>Conclusion</u>

22. Implementation of these recommendations will ensure that the Congressional mandate to promote the participation of designated entities, including minority-owned businesses, in the personal communications industry becomes a reality. Participation by the designated entities in this sector of the U.S economy unfortunately has lagged, and the time is ripe to encourage their participation through effective policies which truly help them overcome their biggest handicap -- lack of capital resources. These policies also will help promote minority-owned investment hanks and encourage investment by the minority

community. Finally, as these companies grow they will also become a powerful political voice for the minority shareholder community to which they respond.

Respectfully submitted,

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November 30, 1993

DC.64634

CERTIFICATE OF SERVICE

I, Minnette Atkins, hereby certify that I have this 30th day of November, 1993, caused copies of the foregoing REPLY COMMENTS OF PERSONAL NETWORK SERVICES CORP. to be delivered by hand, courier charges prepaid, to the following:

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