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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GEN Docket No. 90-314

In the Matter of)
)
Amendment of the)
Commission's Rules to)
Establish New Personal)
Communications Services)

To: The Commission

**CONSOLIDATED RESPONSE OF GEORGE E. MURRAY
TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

George E. Murray, by his attorneys and pursuant to FCC Report No. 1992 released December 13, 1993,^{1/} hereby responds to the Petitions for Reconsideration and Clarification filed in the above-captioned rulemaking proceeding in response to the Second Report and Order, FCC 93-451, released October 22, 1993 (the "Wideband Order"). The following is respectfully shown:

I. Preliminary Statement

1. Mr. Murray has himself sought reconsideration of the Wideband Order.^{2/} Mr. Murray's petition advocated a building block approach to PCS licensing in which all of the available wideband spectrum would be allocated in 10 MHz blocks and on the basis of Basic Trading Area ("BTA") license areas. This approach would facilitate the aggregation of spectrum, foster the meaningful participation of Designated Entities,^{3/} avoid technical problems, and increase opportunities for the formation of strategic alliances. Ultimately, the goal of

^{1/} 58 Fed. Reg. 65,595 (December 15, 1993).

^{2/} See Petition for Reconsideration of George E. Murray filed December 8, 1993 (the "Murray Petition").

^{3/} This term has been defined by the Commission to include small businesses, women-owned businesses, minority-owned businesses and rural telephone companies.

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Mr. Murray's proposal was to foster an allocation scheme likely to result in a fully competitive marketplace.

2. Certain problems with the allocation specified in the Wideband Order which were identified in the Murray Petition have been affirmed by the large number of petitions for reconsideration and clarification filed by other parties. The recent Public Notice lists 65 petitions for reconsideration or clarification of the Wideband Order.⁴ Those seeking revisions in the promulgated rules represent a broad cross-section of industry participants including Regional Bell Operating Companies,⁵ associations,⁶ manufacturers,⁷ Local Exchange Carriers,⁸ Interexchange Carriers,⁹ cable telephone companies,¹⁰ cellular telephone companies,¹¹ a major SMR operator,¹² and a variety of parties

⁴ See note 1, supra.

⁵ See, e.g., Reconsideration Requests of Ameritech, Bell Atlantic Personal Communications, Inc. ("Bell Atlantic"), BellSouth Corporation ("BellSouth"), NYNEX Corporation ("NYNEX"), PacTel Corporation ("PacTel"), Southwestern Bell Corporation ("Southwestern"), and U.S. West.

⁶ See, e.g., Reconsideration Requests of American Petroleum Institute, Cellular Telecommunications Industry Association ("CTIA"), National Telephone Cooperative Association ("NTCA"), Organization for the Protection and Advancement of Small Telephone Companies, Rural Cellular Association, Telocator, Telecommunications Industry Association, and the Utilities Telecommunications Council.

⁷ See, e.g., Reconsideration Requests of Apple Computer, Inc., Ericsson Corporation, Motorola, Inc., Northern Telecom, and Rockwell International Corporation.

⁸ See, e.g., Reconsideration Requests of Cincinnati Bell Telephone, et al., Concord Telephone Company, GTE Service Corporation, Pacific Bell and Nevada Bell, and Telephone and Data Systems, Inc. ("TDS").

⁹ See, e.g., Reconsideration Requests of AT&T, GTE Service Corporation, MCI Telecommunications Corporation, and Sprint Corporation.

¹⁰ See, e.g., Reconsideration Requests of Comcast Corporation and Time Warner Telecommunications.

¹¹ See, e.g., Reconsideration Requests of Bell Atlantic, Columbia Cellular Corporation, Florida Cellular RSA, McCaw Cellular Communications, Inc., PacTel, Point Communications Company ("Point"), Radiophone, Southwestern, Sprint Corporation, and TDS.

¹² See Reconsideration Request of NexTel.

with an avowed interest in establishing PCS systems.^{13/} Viewed as a whole, these petitions for reconsideration and clarification expound certain common themes regarding revisions to the Commission's proposal that are deserving of the Commission's serious attention.

II. Greater Uniformity Must Be Incorporated Into the Channel Block Allocations

3. A variety of commenting parties agree with the position advocated by Mr. Murray that the mixture of 10 MHz, 20 MHz and 30 MHz channel will not serve the public interest. The proposal most often advocated by those seeking reconsideration is to carve all of the licensed PCS spectrum into 20 MHz blocks. Although Mr. Murray still favors 10 MHz allocations across the board, a move towards uniformity in channel blocks of 20 MHz would be a marked improvement over the "complicated labyrinth" the Commission has created.^{14/}

4. Bell Atlantic correctly indicates in its petition that there is little if any record support for the "gerrymandered" channelization plan reflected in the Wideband Order, and recommends instead that there be six 20 MHz license blocks.^{15/} BellSouth also advocates 20 MHz blocks for all licensees. In its view, by initially licensing blocks of uneven spectrum, the Commission is prejudging how the PCS market should turn out.^{16/} In addition, Point and TDS advocate six 20 MHz blocks with four in the lower band and two in the upper band.^{17/}

5. Some proposed revisions to the channelization plan derive from the same concern expressed by Mr. Murray that the current allocation does not

^{13/} See, e.g., Comments of American Personal Communications, George E. Murray, and SpectraLink.

^{14/} Commissioner Barrett describes the wideband allocation as a compromise designed to "make everyone happy" but which instead results in a "complicated labyrinth" that "raises more questions than it answers". Dissenting Statement of Commissioner Andrew C. Barrett in GEN Docket No. 90-314 at p. 1.

^{15/} See Bell Atlantic Petition, pp. 10-11.

^{16/} BellSouth Petition, p. 19.

^{17/} See Point Petition, p. 2; TDS Petition, p. 2, n. 2.

adequately address the technical problems associated with aggregating spectrum across the lower and upper bands.^{18/} For example, NYNEX recommends positioning the two 10 MHz blocks between the 30 MHz blocks and moving the 20 MHz block to the higher PCS band in order to facilitate interoperability.^{19/} Similarly, Iowa Network Services, Inc. recommends that there be six channel blocks; three 30 MHz and three 10 MHz. CTIA recommends an allocation of four 20 MHz and four 10 MHz blocks.^{20/} This CTIA proposal is echoed in the recommendation of NextTel Communications, Inc.^{21/}

6. All of these alternative channel block plans derive from a common concern that the Commission plan is too complicated and will prove to be inflexible. As such, the petitions for reconsideration raise serious questions about the wisdom of the Commission's "chinese menu" approach to spectrum block allocation. Adopting greater uniformity in the channelization and smaller channel blocks will result in an increasingly flexible and competitive allocation.

^{18/} The Commission proposes to allow a PCS licensee to aggregate up to 40 MHz of spectrum. Doing so under the current allocation would require a lower band 30 MHz licensee to aggregate a 10 MHz upper band allocation in order to reach the spectrum cap. Or, a lower band 20 MHz licensee could reach the cap by also acquiring two upper band 10 MHz allocations. Equipment manufacturers indicate that the aggregation of spectrum across the upper and lower bands will be technically difficult and result in increased operating costs.

^{19/} NYNEX Petition, pp. 6-11.

^{20/} CTIA Petition, p. 3. CTIA, like Mr. Murray, advocates a building block approach to PCS licensing. According to CTIA, such an approach allows market forces to operate through both the auction process and after-market transactions to aggregate the most economically efficient spectrum blocks. Ultimately, CTIA argues that a mixture of 20 MHz and 10 MHz blocks will provide technical advantages and also simplify negotiations with microwave operators. Id. at p. 5.

^{21/} It is ironic that NextTel and CTIA agree. NextTel, in its bid to become the "third" cellular system in major markets, has not always enjoyed the support of cellular carriers and their association, CTIA. Nevertheless, NextTel indicates that the record supports four 20 MHz and four 10 MHz blocks. NextTel Petition, p. 5.

**III. Smaller, More Uniform Geographic
Service Areas Will Serve the Public Interest**

7. The Murray Petition pointed out the difficulties inherent in intermixing Basic Trading Area ("BTA") and Major Trading Area ("MTA") license areas.^{22/} Again, the principal concern was that this approach would create competitive inequities and, ultimately, inhibit the growth of a robustly competitive market.^{23/}

8. Petitions for reconsideration and clarification filed by others echo Mr. Murray's conclusion that all licenses should be issued on a BTA basis. For example, BellSouth advocates 20 MHz blocks for all licensees, on a BTA basis.^{24/} According to BellSouth, any MTA licensing would result in a lack of parity, not only between MTA and BTA PCS licensees, but also between MTA PCS licensees and MSA/RSA cellular licensees. Nextel Communications and Point Communications, two experienced mobile service providers, also agree that MTAs are too large.^{25/} Additionally, CTIA advocates that all licenses be awarded on a BTA basis.^{26/}

9. The suggestion that MTA license areas are too large also gains support from those who, on reconsideration, seek a relaxation of the construction requirements.^{27/} The gist of these comments is that the initial unavailability of equipment coupled with the capital intensive nature of PCS architecture and the size of the allocated regions requires that the strict construction requirements and timetables be relaxed. In Mr. Murray's view, the better approach would be to reduce the market areas to smaller, more manageable sizes.

^{22/} Murray Petition, pp. 8-9.

^{23/} Mr. Murray was particularly concerned that the bands reserved for Designated Entities were limited to BTA areas, thus reducing the possibility that such entities could construct and operate fully competitive regional systems.

^{24/} BellSouth Corporation, p. 17.

^{25/} See Nextel Communications, p. 11; Point Communications, pp. 4-5.

^{26/} CTIA Petition, p. 9.

^{27/} See, e.g., Petitions of BellSouth, p. 10; Mibtel, Inc., p. 3; Motorola, pp. 3-4; NTCA, p. 8.

This would likely result in increased competition and, as a result, the maximum competitive pressure towards the prompt instruction and implementation of service.

10. In sum, the petitions for reconsideration, viewed as a whole, support Mr. Murray's view that the geographic license areas should be modified to specify smaller license territories of greater uniformity.

IV. The Technical Rules Should Be Modified to Allow for Increased Power

11. A diverse group of petitioning parties has challenged the relatively low power limits for PCS stations, and propose power increases that would create greater parity with cellular operators. The Commission should be particularly impressed by the number of technically sophisticated participants who advocate this change.

12. American Personal Communications, Ameritech, MCI Telecommunications Corporation, Pacific Bell and Nevada Bell, Telocator, Time Warner, and U.S. West -- most of whom have PCS trial experience -- all advocate increases in power for PCS stations.^{28/} Generally, those seeking reconsideration on this point recommend an increase in base station power limits to 1000 watts.^{29/} Others propose higher limits.^{30/}

13. The Commission should take particular note of the fact that two major wireless system manufacturers also advocate increases in the power limits. Those in the business of selling base stations would likely benefit from lower power limits which would require the installation of a greater number of

^{28/} See Petitions of American Personal Communications, p. 3; Ameritech, pp. 1-2; MCI, p. 7; Pacific Bell and Nevada Bell, pp. 3-4; PacTel, pp. 1-7; Telocator, pp. 2-7; and Time Warner, pp. 11-13.

^{29/} See, e.g., Petitions of American Personal Communications, MCI, and Telocator.

^{30/} Pacific Bell and Nevada Bell ask the Commission to mandate no specific radiated output power lower than 1900 watts. PacTel Corporation recommends an increase to at least 1500 watts. Time Warner suggests that antenna height and power limits should be limited only to the extent necessary to control inter-system interference and to address health problems. U.S. West requests power limits of 1600 watts EIRP/1000 watts ERP.

transmitters to serve a particular area.^{31/} Nevertheless, both Motorola and Northern Telecom have advocated increases in the PCS power limits to at least 1000 watts.^{32/} The Commission should give particular weight to these positions which, in some measures, could be viewed as statements against the manufacturers' own interests.

14. Mr. Murray, whose principal interest in this proceeding has been to foster an allocation scheme that will accomplish the Commission objective of creating meaningful opportunities for minority-owned businesses, believes that the Commission would take a significant step towards improving the allocation in this regard by adopting increased power limits. Minority participation would be encouraged by higher power limits that would reduce PCS infrastructure costs and increase competitiveness with existing cellular systems.

**V. Cellular Eligibility Restrictions
Should Be Relaxed Only For Those Who Enter
Strategic Alliances With Designated Entities**

15. Not surprisingly, a large number of cellular telephone providers ask that the Commission relax the eligibility restrictions applicable to cellular carriers interested in providing PCS service within their existing cellular territories. Many major carriers indicate that there should be no eligibility restriction at all arising from non-controlling interests in cellular systems.^{33/} Others suggest that the attribution and population standards should be revised.^{34/}

^{31/} Manufacturers are indicating that differences in propagation and power levels between PCS and cellular under current proposed limits would require PCS operators to install from two times to four times as many transmitters to provide comparable coverage.

^{32/} Motorola petition, pp. 7-10; Northern Telecom, pp. 4-21.

^{33/} See, e.g., Petitions of Bell Atlantic, p. 13; NYNEX, pp. 13-15; Sprint Corporation, pp. 7-12.

^{34/} See, e.g., Petitions of Alliance of Rural Area Telephone and Cellular Service Providers, p. 9; GTE Service Corporation, p. 2; BellSouth, pp. 10-12. Additionally, the rural cellular telephone companies suggest that no attribution limits should apply to them. See, e.g., Petition of Anchorage Telephone Utility, p. 1.; Concord Telephone Company, p. 2.

16. Mr. Murray previously has supported the recommendation of the FCC's Small Business Advisory Committee that relief from spectrum and eligibility restrictions should only be accorded to those who form strategic alliances with Designated Entities.^{35/} The number of existing cellular carriers who have challenged the cellular eligibility restrictions indicates that there is significant interest by cellular carriers in participating in PCS services beyond the role to which they would be limited in the Wideband Order. This means that the Commission could indeed create substantial and meaningful opportunities for Designated Entities by adopting some or all of the proposed relaxations in the cellular carrier eligibility rules but only for cellular carriers who form a strategic alliance with a Designated Entity. This approach would accommodate the concerns expressed by the cellular carriers in their petitions for reconsideration, while at the same time meeting the Congressional mandate of guaranteeing realistic opportunities for Designated Entities in the PCS licensing proceedings.

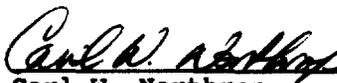
VI. Conclusion

17. The foregoing premises having been duly considered, George E. Murray respectfully requests that the record of this proceeding, viewed as a whole, supports the reconsideration of the Wideband Order as indicated in Mr. Murray's petition for reconsideration and this responsive pleading.

Respectfully submitted,

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^{35/} See Comments of George E. Murray in PP Docket No. 93-253, filed November 10, 1993.

CERTIFICATE OF SERVICE

I, Deborah J. Wallace, hereby certify that I have this 29th day of December, 1993, caused copies of the foregoing Consolidated Response of George E. Murray to Petitions for Reconsideration and Clarification to be delivered by hand, courier charges prepaid, or First Class United States Mail, postage prepaid to the following:

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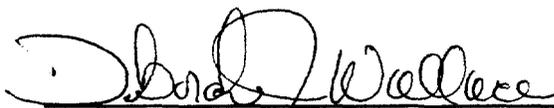
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