

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

RECEIVED

JAN 3 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

GEN Docket No. 90-314

COMMENTS OF MCCAW CELLULAR COMMUNICATIONS, INC.

Scott K. Morris  
Vice President - Law  
McCaw Cellular  
Communications, Inc.  
5400 Carillon Point  
Kirkland, Washington 98033  
(202) 828-8420

R. Gerard Salemm  
Senior Vice President -  
Federal Affairs  
Cathleen A. Massey  
Senior Regulatory Counsel  
McCaw Cellular  
Communications, Inc.  
1150 Connecticut Ave., N.W.  
4th Floor  
Washington, D.C. 20036  
(202) 223-9222

January 3, 1994

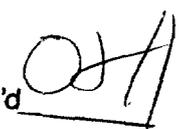
No. of Copies rec'd  
List ABCDE 

TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY . . . . .	2
II. THE RECORD SUPPORTS ELIMINATION OF THE CELLULAR ELIGIBILITY RESTRICTIONS, ALLOWING FULL PARTICIPATION BY CELLULAR CARRIERS IN PCS . . . . .	4
A. Petitioners Recognize, as Did the <u>Second</u> <u>Report and Order</u> , the Valuable Contributions To Be Made by Cellular Carriers to the Successful Development of PCS . . . . .	5
B. The PCS/Cellular Eligibility Restrictions, Particularly When Combined with Certain of the Commission's Competitive Bidding Proposals, Would Unfairly and Unnecessarily Exclude Important Cellular Participation . . . . .	7
C. The Record Conclusively Demonstrates that the Public Interest Will Best Be Served by Permitting Cellular Carriers To Participate on an Equal Basis with Other PCS Applicants . . . . .	10
D. MCI and GCI Seek To Create Their Own Special Spectrum Set-Aside by Excluding Bids from Qualified Cellular Carriers . . . . .	18
III. PETITIONING PARTIES HAVE DEMONSTRATED THE NEED TO CLARIFY THAT PCS LICENSE HOLDERS MAY SUBDIVIDE THEIR AUTHORIZATIONS BY GEOGRAPHY OR SPECTRUM . . . . .	21
IV. CONCLUSION . . . . .	24
ATTACHMENT A	

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

RECEIVED

JAN 3 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

GEN Docket No. 90-314

COMMENTS OF McCaw CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw") hereby comments on the petitions for reconsideration and clarification filed with respect to the Second Report and Order in the above-captioned docket.<sup>1</sup> The record compiled on reconsideration supports eliminating the cellular eligibility restrictions and allowing cellular carriers to participate in personal communications services ("PCS") licensing on the same basis as all other interested parties. In addition, the record confirms that the public interest would be served by affording PCS licensees the flexibility to subdivide their authorizations on a geographic and spectrum basis.

I. SUMMARY

The Second Report and Order unjustifiably restricts cellular carriers from participating fully in the PCS

---

<sup>1</sup> 8 FCC Rcd 7700 (1993). See 58 Fed. Reg. 59174 (Nov. 8, 1993). Sixty-six petitions were filed with the Commission. These filings were placed on public notice at 58 Fed. Reg. 65595 (Dec. 15, 1993). Pursuant to an Order Denying Extension of Time, DA 93-1575 (Dec. 29, 1993), comments on the petitions are due January 3, 1994. McCaw filed a petition for reconsideration and clarification ("McCaw Petition") seeking certain relief from the Commission as discussed further herein.

marketplace. New Section 22.904 simply ignores the benefits -- recognized by the Second Report and Order itself -- that cellular carriers' full participation in PCS would afford to the technological development of PCS and the expeditious initiation of service to the public. The restrictions on cellular carrier participation are particularly egregious when the effects of the Commission's proposal for combinatorial bidding are factored into the PCS eligibility rules.

The Commission has based its cellular eligibility restrictions on two unfounded and mutually inconsistent notions. On one hand, the Second Report and Order reflects a perception -- not supported by the record -- that cellular carriers' existing wireless infrastructure will allow them to exploit PCS spectrum to gain an insuperable and anticompetitive advantage over other wireless service providers. On the other hand, the Commission apparently also fears that cellular carriers will bid for PCS spectrum only to warehouse the frequencies and remove them as a possible competitive source.

These allegations cannot stand together, and neither will stand alone. First, cellular carriers have no unwarranted competitive advantages over other likely participants in PCS. Like potential applicants such as local exchange carriers, cable companies, and interexchange

carriers, cellular carriers possess facilities and offer services that can be used to complement PCS offerings -- the only difference is that they use 800 MHz frequencies in their existing networks instead of relying on the ubiquitous wire or broadband fiber systems that are operated by other potential PCS providers. Yet, the Commission imposes no restrictions on the ability of these potential PCS providers to compete, and it encourages them to utilize their existing infrastructure to develop PCS.

Second, to the extent the Commission believes that cellular carriers will bid on PCS spectrum only to warehouse it, such a strategy makes no sense. If a cellular carrier were to attempt to warehouse PCS spectrum, it would pay top dollar at auction only to lose the license at the conclusion of the build-out period. Moreover, because of the number of PCS licenses and alternative wireless providers, this warehousing effort would fail because other PCS providers would deploy their services even if the cellular carrier were to withhold its PCS spectrum.

There simply is no justification for the Commission to single out cellular carriers and deny their full and active participation in PCS on an equal footing with other similarly situated potential applicants. On reconsideration, the restrictions on cellular eligibility to bid for PCS spectrum should be abolished.

The Commission also should clarify on reconsideration that PCS licensees may partition their operating authority on a geographic or spectrum basis. This clarification would permit more efficient use of the PCS spectrum and enable service to be launched more quickly throughout the authorized service area. Furthermore, if the Commission does retain the cellular eligibility restrictions, this clarification would at least allow cellular carriers to acquire up to 15 MHz of PCS spectrum in-region, for a total of 40 MHz of wireless spectrum. This change would eliminate the illogical 10 MHz restriction imposed in the Second Report and Order and allow cellular carriers to hold, in the aggregate, as much spectrum as their wireless PCS counterparts.

II. THE RECORD SUPPORTS ELIMINATION OF THE CELLULAR ELIGIBILITY RESTRICTIONS, ALLOWING FULL PARTICIPATION BY CELLULAR CARRIERS IN PCS

Over twenty petitioners share a common conviction that the Commission should eliminate or reduce the restrictions on cellular carrier eligibility for PCS licensing. Some petitioners join McCaw in seeking a simple, straightforward solution to the numerous adverse consequences of the cellular eligibility restrictions; they advocate a policy that allows cellular carrier participation on the same basis as any other entity seeking to obtain PCS licenses.<sup>2</sup>

---

<sup>2</sup> E.g., Bell Atlantic, Radiofone, TDS.

Other parties have suggested relief ranging from an eligibility test that focuses on actual control of cellular licensees,<sup>3</sup> to an increase in the population overlap allowed between the carriers' existing cellular system and proposed PCS licensing area,<sup>4</sup> to reliance on an "effective POPs" measure to determine when cellular carriers would be limited to eligibility for only a 10 MHz PCS band.<sup>5</sup> All these petitioners agree that the current cellular eligibility restrictions are inconsistent with the public interest and thus should be repealed, altered, or refined. While McCaw agrees with the comments of petitioners who seek to relax the current restrictions, it strongly believes that the only rational solution is to eliminate the restrictions in their entirety, since they are fundamentally anticompetitive and disserve the public interest.

A. Petitioners Recognize, as Did the Second Report and Order, the Valuable Contributions To Be Made by Cellular Carriers to the Successful Development of PCS

In the Second Report and Order, the Commission found that "participation by cellular operators in PCS offers the

---

<sup>3</sup> E.g., Alliance of Rural Area Telephone and Cellular Service Providers at 8; Columbia Cellular at 7-8; NYNEX at 14-15; PTCI at 2, 5.

<sup>4</sup> E.g., Alliance of Rural Area Telephone and Cellular Service Providers at 8; CTIA at 21-22; Florida Cellular at 5; PNSC at 10; Sprint at 4.

<sup>5</sup> E.g., GTE at 3-5; Sprint at 11.

potential to promote the early development of PCS by taking advantage of cellular providers' expertise, economies of scope between PCS and cellular service, and existing infrastructures."<sup>6</sup> In specifically authorizing cellular carriers to participate freely in PCS -- at least in areas outside of their cellular service areas -- the Commission concluded that this participation "will foster a competitive market environment that will benefit consumers by lowering prices, improving service and increasing the availability of innovative products."<sup>7</sup>

Many petitioners concur with the Commission that cellular participation in PCS will promote the successful development of this service and benefit consumers.<sup>8</sup> PTC states that "[t]he FCC is correct in its assessment that cellular licensees are well positioned to deploy PCS in their cellular service areas and can aid in achieving the Commission's goal of fostering PCS."<sup>9</sup> Radiofone points out that "the nascent PCS industry and its potential customers have much to gain from the participation of established cellular providers."<sup>10</sup> In particular, "[c]ellular operators

---

<sup>6</sup> Second Report and Order, 8 FCC Rcd at 7744.

<sup>7</sup> Id.

<sup>8</sup> See, e.g., Bell Atlantic at 14-15; NYNEX at 12.

<sup>9</sup> PTC at 3.

<sup>10</sup> Radiofone at 3.

have existing plant, personnel, and resources available to rapidly deploy PCS service upon authorization, and have the experience, resources, and expertise useful in bringing PCS to its fullest potential."<sup>11</sup> These themes are reflected repeatedly throughout the petitions, confirming the validity of the Commission's own conclusion.

B. The PCS/Cellular Eligibility Restrictions, Particularly When Combined with Certain of the Commission's Competitive Bidding Proposals, Would Unfairly and Unnecessarily Exclude Important Cellular Participation

Despite the public interest benefits to be derived from cellular carrier participation in PCS, the Commission's eligibility limitations would restrict cellular participation in response to unfounded fears about potential anticompetitive behavior. Bell Atlantic has correctly reported that "[t]he Commission's decision to quarantine cellular carriers from PCS provision in-market ignores these companies' experience and resources in wireless service provision, and instead relies upon a speculative 'potential for unfair competition.'"<sup>12</sup> Radiofone correctly asserts that, although the cellular eligibility restrictions are based on alleged concerns about "undue market power," the

---

<sup>11</sup> Id. See also TDS at 2-3 ("The efficient development of PCS technologies depends on making available in the PCS market the expertise of cellular operators, their marketing capabilities and the economies of scope between cellular and PCS technologies.").

<sup>12</sup> Bell Atlantic at 13 (footnote omitted).

Commission has not performed any sort of analysis or estimate of market power.<sup>13</sup> Bell Atlantic underscores the fact that the Second Report and Order "contains no countervailing reasons to justify the harsh eligibility rule that the Commission has imposed," and that "[t]he cellular restriction is inherently anticompetitive."<sup>14</sup>

The Commission's eligibility restrictions would exclude entities with cellular interests from pursuing PCS licenses even though there is no realistic possibility of any anticompetitive behavior. Sprint has pointed out that "the Commission has established a market concentration standard that precludes many cellular providers from offering a robust PCS service in areas where they lack market concentration that could lead to market power."<sup>15</sup> Cellular carriers have only minimal market penetration; McCaw, the country's largest cellular carrier, has never served more than five percent of the potential subscribers in its cellular markets.<sup>16</sup> Thus, approximately 95 percent of the population is available for capture by PCS and other wireless service providers. In no event could cellular carriers be considered to have market

---

<sup>13</sup> Radiofone at 8-9.

<sup>14</sup> Bell Atlantic at 15.

<sup>15</sup> Sprint at 2.

<sup>16</sup> See Reply Comments of McCaw Cellular Communications, Inc., GN Docket No. 93-252, at 8 (filed Nov. 23, 1993).

power. McCaw accordingly concurs with Bell Atlantic's assessment that "[t]here is simply no justification for this rule."<sup>17</sup>

As pointed out by McCaw and others, the unfair exclusion of qualified PCS applicants would be further aggravated by adoption of the Commission's unjustified combinatorial bidding proposal. Cellular operators would, as a practical matter, be shut out of national and regional MTA licenses under the bidding scheme set forth in the Commission's notice of proposed rulemaking regarding auction procedures.<sup>18</sup> The exclusion of cellular carriers from participation in national and regional bids and licenses would place many existing wireless service providers at a distinct and unnecessary competitive advantage as this marketplace continues to evolve and develop.<sup>19</sup>

---

<sup>17</sup> Bell Atlantic at 13.

<sup>18</sup> Implementation of Section 309(j) of the Communications Act Competitive Bidding, 8 FCC Rcd 7635 (1993).

<sup>19</sup> The unacceptable consequences of the cellular eligibility restrictions are further enhanced by the Commission's selection of major trading areas ("MTAs") and basic trading areas ("BTAs") as service areas, instead of the well-established metropolitan statistical areas ("MSAs") and rural service areas ("RSAs"). Absent open eligibility, cellular carriers will be forced to implement inefficient network and operational designs, as they seek to mesh PCS facilities with their cellular backbone facilities.

C. The Record Conclusively Demonstrates that the Public Interest Will Best Be Served by Permitting Cellular Carriers To Participate on an Equal Basis with Other PCS Applicants

The record makes clear that the current cellular eligibility rule is riddled with intrinsic problems. While reform is possible and urged by some, the risk of excluding the most qualified and experienced participants from PCS far outweighs the entirely speculative and unwarranted concerns underlying the rule. Instead, the public interest will be best served by open eligibility for PCS licenses for all interested, qualified entities, including existing cellular operators and other parties with cellular interests in proposed PCS service areas. Through truly open entry policies, the Commission can best enhance the development of PCS and the speedy initiation of service to the public.

The Second Report and Order attempts to explain the cellular eligibility restriction with two separate and contradictory rationales. Clearly, in that event, both justifications cannot be reliable. As described below, neither rationale is valid.

First, the Second Report and Order reflects a perception that the existing cellular infrastructure somehow will enable cellular operators (with cellular service areas in the PCS licensing areas) to exploit PCS spectrum to obtain an insuperable, anticompetitive advantage over other wireless service operators. This premise, however, ignores the fact

that numerous other parties -- which are not similarly restricted in their ability to seek PCS authorizations -- are encouraged to leverage their unique resources, including in some circumstances monopoly bottleneck facilities, to deploy PCS.

Local exchange carriers ("LECs"), for example, control facilities essential for interconnection to the telephone network, necessary to make many proposed service offerings useful to consumers.<sup>20</sup> Many such carriers also have experience with the design and operation of radio-based communications systems, which in turn may enable them quickly to plan and install PCS operations. These carriers are unrestricted in their ability to bid for PCS licenses.

Cable companies also are developing systems that can serve as PCS backbone networks.<sup>21</sup> In fact, the Commission has very recently granted to Cox Enterprises, Inc. ("Cox") a PCS preference "for its development and demonstration of

---

<sup>20</sup> This analysis is confirmed in Reed, Putting It All Together: The Cost Structure of Personal Communications Services, OPP Working Paper No. 28 (Nov. 1992) ("OPP Working Paper") at 29-32. Reed concluded, inter alia, that "the telephone network offers the key strategic advantages of ubiquitous network presence for transport and switching facilities, in addition to an advanced signalling network and intelligence nodes." Id. at 32.

<sup>21</sup> See id. at 32-36. The OPP Working Paper observed, for example, that "[t]he strategic advantage of the cable television infrastructure is that it offers a ubiquitous, alternative medium of transport for PCS in residential areas." Id. at 35.

PCS/cable plant interface technology and equipment that results in spectrum-efficient applications for PCS services."<sup>22</sup>

Interexchange carriers ("IXCs"), like MCI, have facilities that will be essential to many PCS configurations. Like many other types of carriers, MCI has network planning and deployment capabilities that afford it competitive strengths equivalent to those of other interested PCS participants.

Thus, while cellular carriers have capabilities that will enable them to enhance the competitive offering of PCS, so do many other existing providers of telecommunications services.<sup>23</sup> The Commission has failed to justify its different treatment of wired versus wireless carriers. Cellular carriers should not be penalized as compared to these other likely PCS applicants simply because they currently use radio frequencies to deliver their services.<sup>24</sup>

---

<sup>22</sup> FCC News, "PCS Pioneer's Preference Granted to APC, Cox, and Omnipoint (GEN Docket 90-314)," Rpt. No. DC-2553 (Dec. 23, 1993).

<sup>23</sup> This fact is, as noted above, confirmed by the OPP Working Paper.

<sup>24</sup> To the extent the Commission decides to retain the eligibility limitations on cellular operators, such spectrum cap should be applied as well to ESMRs. As observed by Point Communications, "[t]hroughout the nation, ESMR operators, with their digital format, will have as much capacity to provide service as cellular operators, who must continue to devote a large portion of their spectrum to analog service.

(continued...)

McCaw believes that cellular carriers possess no greater advantage to obtain an anticompetitive position in the PCS marketplace than LECs, cable companies, IXCs, or other potential PCS applicants. If special treatment is to be afforded companies like Cox, at the very least the Commission should ensure cellular carriers likewise can compete on equal footing in the PCS marketplace.

The cellular eligibility restrictions adopted by the Commission were based on assumptions about competitive environment that have changed in very meaningful ways in the short time since the record underlying the Second Report and Order was compiled. In its Petition, McCaw identified a number of marketplace developments that necessarily must be factored into consideration of the cellular eligibility

---

<sup>24</sup>(...continued)

The ESMR operators will also have larger regional footprints than the cellular operators. It makes no sense to exempt ESMR operators from the restrictions which apply to cellular." Point at 3 n.4. BellSouth has concluded that the existing "spectrum limits and attribution rules prevent entities with even modest cellular interest from offering effective competition to others, and give Enhanced SMR operators an unwarranted spectrum advantage over all others. These rules . . . stifle competition by imposing widely varying limits on the ability of PCS licensees to compete with each other." BellSouth at 12. See also Sprint at 13; U S West at 20-22. Adoption of this approach also is most consistent with the policies set forth in the Commission's regulatory parity proceeding, by treating competing carriers in an even-handed, non-discriminatory fashion. See Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, FCC 93-454 (Oct. 8, 1993).

questions.<sup>25</sup> These changes include RBOC and cable company alliances;<sup>26</sup> MCI's receipt of funds from British Telecom and its finalization of its national PCS consortium; Motorola's investment in Nextel; and joint ventures among members of the cable industry. Developments such as these show not only that PCS applicants will be well-financed and technically experienced but also that many telecommunications companies are planning to enter PCS in order to diversify both their infrastructures and their service offerings. Cable companies want, for example, to provide telephony -- wired and wireless -- and LECs plan to supplement their ubiquitous fixed networks with wireless extensions. It would be unfair to deny cellular carriers a similar opportunity to expand their service portfolios, and perhaps extend the reach of competition in other segments of the communications market.

The second rationale in support of cellular carrier restrictions is the belief that cellular licensees would

---

<sup>25</sup> McCaw Petition at 3.

<sup>26</sup> The incongruence of the cellular eligibility policy is demonstrated by the Bell Atlantic/TCI merger. If this merger is consummated prior to the broadband PCS auctions, the combined entity would be able to obtain up to 40 MHz of PCS spectrum in Denver, TCI's flagship cable market, and Harrisburg, Pennsylvania, where Bell Atlantic controls local exchange facilities. In neither market, obviously, does Bell Atlantic control cellular facilities. In contrast, in Phoenix, Arizona, where Bell Atlantic controls a cellular system, but where it has no local exchange facilities and TCI has no cable facilities, the combined entity would be limited to bidding for 10 MHz of spectrum.

warehouse PCS spectrum. Competitive bidding renders such a strategy economically illogical and prohibitively expensive. It is inconceivable that a cellular carrier would spend hundreds of millions of dollars or more for spectrum it does not intend to use. Moreover, warehousing would fail to gain a competitive advantage for the cellular carrier, since competing service would be available from other PCS licensees. In any event, the PCS performance standards categorically preclude such conduct and underscore the financial irrationality of this approach. Any PCS cellular licensee failing to provide service would lose the spectrum -- for which it has paid substantial sums of money -- to another potential competitor if it fails to construct facilities and provide service to the public in the time frame established by the Commission.<sup>27</sup>

Radiofone has observed that "[t]he Commission assumes that cellular carriers will be tempted to engage in anticompetitive behavior because 'PCS and cellular licensees serving the same area, while perhaps not offering identical services, will compete on price and quality.'"<sup>28</sup> In

---

<sup>27</sup> See Radiofone at 10-11.

<sup>28</sup> Id. at 4. Comcast has pointed out that the Commission has focused on the potential competition between cellular and PCS, but ironically fails to acknowledge the local loop alternative possibilities presented by PCS. Comcast at 5-8, 10-12. This underscores the Commission's double standard with regard to PCS licensing eligibility.  
(continued...)

response, Radiofone has aptly stated that, "[w]hile PCS may very well offer a number of services which are provided over cellular systems, the Commission and the industry clearly contemplate PCS being a platform from which to provide a number of new and innovative services."<sup>29</sup> Rather than pose a competitive threat to existing cellular operations, PCS spectrum is "a means of remaining viable as a competitor in the long run."<sup>30</sup> For its part, Bell Atlantic makes clear that "[t]here is no basis for assuming that cellular carriers will behave anticompetitively in the PCS marketplace, and the Commission has regulatory tools and antitrust laws at its disposal to deal with such behavior if it occurs."<sup>31</sup>

The Commission thus should take the action that best serves the public interest -- open eligibility for all qualified, interested entities. This is particularly the

---

<sup>28</sup>(...continued)

While cellular carriers face unwarranted restrictions, local exchange carriers, whose operations are also subject to competition from PCS, are encouraged to participate in the new service.

<sup>29</sup> Radiofone at 4. See also Bell Atlantic at 15. Bell Atlantic indicates that the Commission's failure to impose comparable PCS eligibility restrictions on ESMR operators underscores the irrationality of the restrictions applied to cellular. Id. at 15-16 n.36.

<sup>30</sup> Radiofone at 6 (footnote omitted).

<sup>31</sup> Bell Atlantic at 17. PNSC concludes that "it is evident to PNSC that permitting meaningful participation in PCS by cellular carriers will not reduce competition." PNSC at 9.

case where the Commission has allocated spectrum and adopted a channel plan that provides licensing opportunities for seven different service operators.<sup>32</sup> This is more than double the number of licensees per market proposed by the Commission in its notice of proposed rulemaking in this proceeding,<sup>33</sup> which also contained the tentative conclusion to exclude cellular carriers from fair participation in the PCS marketplace. The Commission's Part 99 rules should be revised to ensure that cellular carriers are eligible for licensing of up to 40 MHz of PCS spectrum anywhere in the country, regardless of any service area overlap.

Should the Commission nonetheless retain the cellular eligibility restrictions, the Commission should clarify, as requested in McCaw's Petition, that carriers would be permitted to come into compliance with ownership and attributable interest standards by the date on which PCS operations are initiated.<sup>34</sup>

---

<sup>32</sup> As detailed by Radiofone, consideration of cellular, PCS, ESMR/SMR, and mobile satellite operations, both existing and contemplated, leads to the conclusion that there soon will be approximately ten to fifteen providers of advanced mobile radio services in any particular geographic area. See Radiofone at 9-10.

<sup>33</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676 (1992) (Notice of Proposed Rulemaking and Tentative Decision).

<sup>34</sup> See also GTE at 5-7.

D. MCI and GCI Seek To Create Their Own  
Special Spectrum Set-Aside by Excluding  
Bids from Qualified Cellular Carriers

In contrast to the numerous requests for removal or reduction of the cellular eligibility restrictions, MCI and GCI ask the Commission to narrow to even a greater extent the opportunities for cellular carriers to participate in a meaningful way in PCS. MCI urges the Commission to exclude the nine largest cellular carriers and their affiliates (those holding interests of 20 percent or more in cellular licenses that in the aggregate cover more than 10 percent of the nation's POPs) from eligibility to bid for PCS licenses in one of the 30 MHz MTA blocks.<sup>35</sup> GCI would designate block A as the "non-dominant carrier block" and would preclude "dominant" cellular carriers (which it defines as any cellular carrier that covers more than 5 percent of the nation's population) from owning licenses in this block.<sup>36</sup>

In support of these requests for relief, MCI and GCI proffer reckless, unfounded allegations of possible anticompetitive behavior on the part of cellular carriers.<sup>37</sup>

---

<sup>35</sup> MCI at 2, 5.

<sup>36</sup> GCI at 8.

<sup>37</sup> NYNEX takes advantage of this pleading cycle to raise yet again a claim that McCaw's proposed merger with AT&T somehow warrants the grant of relief sought by NYNEX and other Regional Bell Operating Companies -- in this case, removal of the cellular separate subsidiary requirement as well as the MFJ directives. NYNEX at 21-22 nn.27 & 28. This  
(continued...)

The purely speculative nature of the cellular carrier behavior they purportedly fear underscores the true anticompetitive purposes underlying the MCI and GCI requests for relief. MCI and GCI in fact are merely seeking to gain an unwarranted competitive advantage by striving to exclude all entities that could provide effective competition to the national PCS network envisioned by both of these petitioners. Rather than succeed on the merits of competition, MCI and GCI would rather rely upon artificial devices imposed through the regulatory process.

MCI asserts that existing cellular carriers have a substantial competitive advantage stemming out of their exemption from auctions, both initially and with respect to license renewals.<sup>38</sup> These claims, of course, ignore the realities of the cellular industry. Most cellular licensees, including McCaw, have had to expend substantial sums of money in comparative hearings or acquisition costs in order to obtain and establish their cellular operations.<sup>39</sup> Moreover,

---

<sup>37</sup>(...continued)  
argument clearly is irrelevant in the context of this proceeding.

<sup>38</sup> MCI at 3, 4.

<sup>39</sup> MCI argues that excluding the nine largest carriers from one of the 30 MHz MTA blocks "could be viewed as analogous to the original cellular allocations, where the LECs were excluded from applying for the A block of cellular licenses." MCI at 4. MCI conveniently ignores the other part of that equation -- the B block of cellular frequencies  
(continued...)

they assumed the enormous capital costs of deploying the cellular infrastructure and the risks of building a new industry from scratch. This, of course, contrasts with MCI's own wireless track record of obtaining and selling cellular licenses for profit.<sup>40</sup>

MCI alleges that the joint efforts of many cellular carriers to ensure that their customers receive the most effective cellular service throughout different market areas somehow lessens competition at the local level.<sup>41</sup> MCI offers no sound basis for this conclusion. MCI has been, as is well known to the Commission, putting together its own consortium of carriers to bid on PCS licenses, on a national basis. According to MCI, participants in its consortium are engaged in a beneficial activity. Given MCI's emphasis on the importance of national service opportunities and interoperability, it is ironic that MCI distorts the efforts of cellular carriers to ensure that users have effective

---

<sup>39</sup>(...continued)  
were specifically reserved for the LECs, intentionally facilitating their entry into cellular.

<sup>40</sup> MCI -- with a healthy profit from the sale of its license interests -- exited from the cellular industry at a time when the industry's potential was still unknown. Now, MCI would bar from PCS those entities that have built the cellular industry and established its competitive success. Principals associated with American Personal Communications ("APC"), one of the three recipients of a preference in PCS, likewise obtained and sold cellular authorizations early on.

<sup>41</sup> MCI at 5.

nationwide service capabilities into a purportedly negative act.

Finally, MCI asserts (again without any factual basis) that "the nine largest cellular providers have at least an incentive to collude tacitly in bidding on the two 30 MHz bands to eliminate new competition."<sup>42</sup> This claim plainly ignores the realities of the cellular marketplace and the nature of intense competition to be found in that marketplace. Thus, there is no basis for the tacit collusion among large cellular carriers cited by MCI. This argument, like the rest contained in MCI's plea for special treatment, underscores the inherently self-serving nature of MCI's efforts to hamstring potential competitors. Accordingly, its petition should be summarily rejected.<sup>43</sup>

III. PETITIONING PARTIES HAVE DEMONSTRATED THE NEED TO CLARIFY THAT PCS LICENSE HOLDERS MAY SUBDIVIDE THEIR AUTHORIZATIONS BY GEOGRAPHY OR SPECTRUM

In its Petition, McCaw recommended that the Commission clarify its PCS policies and rules to state that PCS

---

<sup>42</sup> Id.

<sup>43</sup> GCI more generally makes claims that the existing cellular marketplace is not competitive and that cellular licensees have and will act upon an incentive to block a nationwide PCS license in order to protect their competitive position. Like MCI's claims, those contained in the GCI petition lack any factual or rational support, and clearly must be rejected by the Commission. The efforts of these two petitioners to establish an unfair competitive position through regulatory means and at the expense of the public must be forcefully rejected by the Commission.

licensees would be permitted to subdivide PCS operating authority on either a geographic or spectrum basis.<sup>44</sup> A number of other petitioners have also proposed such clarification.<sup>45</sup>

Several parties point out that permitting partitioning of PCS operating authority will help to expedite the initiation of PCS service offerings in both rural and metropolitan areas.<sup>46</sup> Partitioning will allow parties to devote their resources to developing facilities and service offerings in more focused service areas. NTCA concludes that "[p]artitioning in rural areas is required to assure more rapid deployment of services to these areas, a better match of rural licensees with the most viable local, regional or national providers, the encouragement of specialization, innovation and creativity among providers, and the fostering of locally-owned and operated entities with an interest in concentrating on local areas, most notably rural areas."<sup>47</sup>

---

<sup>44</sup> McCaw Petition at 6-8.

<sup>45</sup> E.g., Time Warner at 10-11 ("Should the Commission decline to modify its rules and directly license 40 MHz of spectrum to each PCS provider, TWT suggests that licensees in the lower band be expressly permitted to lease, enter into joint ventures or consortia, or otherwise utilize portions of the spectrum licensed to others in the same band."). See also PCS Action at 10.

<sup>46</sup> E.g., Alliance of Rural Area Telephone and Cellular Service Providers at 2; U.S. Intelco Networks at 7-8; Rural Cellular Association at 7.

<sup>47</sup> NTCA at 6.

Partitioning would also help to achieve the statutory goal of promoting participation by rural telephone companies and other designated entities in PCS.<sup>48</sup> Rural telephone companies could band together with one another and other carriers to seek an MTA-based license, for example, and then subdivide the authority in order to permit the development of service capabilities complementary to existing operations of the participating carriers. Similarly, assurances that operating authority may be subdivided may enhance the participation of a wider diversity of designated entities, who are assured that they will be able to devote resources to a smaller service area or a tailored niche opportunity.<sup>49</sup>

Grant of this requested clarification takes on added importance in the event the Commission retains its limitations on cellular participation in PCS. Section 99.204 currently restricts certain entities with cellular interests from "assignment of more than one 10 MHz frequency block" in defined overlapping service areas. Section 99.202(c)

---

<sup>48</sup> See H.R. Rep. No. 111, 103d Cong., 1st Sess. 254 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 581. See also, e.g., U.S. Intelco Networks at 7-8; Rural Cellular Association at 7.

<sup>49</sup> In this regard, licenses resulting from a partitioning of a PCS license should each be stand alone and compliance with performance requirements should be assessed on that basis. Thus, a partitioned licensee's retention of its authorization would not be tied to the performance of other partitioned licensees, but would be based solely on that entity's own operations. See Alliance of Rural Area Telephone and Cellular Service Providers at 7.