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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) Gen. Docket 90-314
Rules to Establish New Personal)
Communications Services)

REPLY TO OPPOSITIONS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA"), by its attorneys, respectfully submits its reply to the oppositions/comments in the above-captioned proceeding.¹ Specifically, CTIA replies to those parties opposing CTIA's proposals to: (1) allocate four 20 MHz blocks and four 10 MHz blocks using a BTA-only service area scheme; and (2) raise the cellular overlap limit from 10% to 40% and to increase the cellular attribution standard from 20% to 30-35%. None of these parties provides any basis for the Commission to reject CTIA's proposed modifications. As these proposed modifications will promote economic efficiency and otherwise further the public interest, the Commission should adopt them on reconsideration.

¹ Personal Communications Services, Second Report and Order in Gen. Docket 90-314, 8 FCC Rcd. 7700 (1993) ("PCS Order").

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I. CONTRARY TO EXPRESSED FEARS, CTIA'S PROPOSED ALLOCATION AND SERVICE AREA PLAN WILL ENSURE THAT THE MANY VISIONS OF PCS ARE EFFICIENTLY REALIZED

In response to CTIA's proposal to allocate four 20 MHz licenses and four 10 MHz licenses, certain parties maintain that incumbent wireless providers harbor a dark motive to increase the costs² and delays associated with introducing PCS, thereby retarding its development to the point of stifling competition.³ Quite the contrary, CTIA's proposal will most efficiently realize the goals underlying the Commission's PCS proceeding, *i.e.*, universality; speed of deployment; diversity of services; and competitive delivery.⁴

Considering its early stage of development, CTIA does not presume knowledge of PCS' evolutionary capabilities. "Big-vision" PCS, that is, high-speed data broadband services and wireless networks competitive with the local loop, is entirely plausible and worthy of private development, but no one particular application should dictate the regulatory scheme.

² Such costs are argued to include transaction costs resulting from license aggregation and from relocating microwave incumbents. CTIA already addressed the microwave incumbency issue in its opposition. See CTIA Opposition/Comments at 12. APC now cites anecdotal evidence illustrating the potentially deleterious effects of interference by microwave incumbents. APC Opposition at 10-12. To generalize from unrepresentative, "worst case" interference scenarios would simply be bad public policy.

³ See MCI Opposition at 2-3; PCS Action Opposition at 2-9; APC opposition at 1-2, 10-15; GCI Comments and Opposition at 3-5; cf. AMT and DSST Joint Comments at 2-6 (supports FCC's allocation plan without amendment).

⁴ See Personal Communications Services, Notice of Proposed Rule Making and Tentative Decision in GEN Docket 90-314, 7 FCC Rcd. 5676, 5679 (1992).

Because the varying forms of PCS are not yet "knowable," it is illogical to award large blocks of spectrum to any licensee when the specter of inefficient spectrum usage looms so large. Thus, 10 MHz, which permits PCS operations of minimum efficient scale, should be the foundation from which the Commission makes its allocation decisions.⁵

In consistently advocating a "building blocks" approach to PCS allocation and service areas, CTIA seeks to most efficiently ensure PCS' full potential. A modular approach, allowing for the opportunity to aggregate and partition spectrum,⁶ ensures that each licensee deploys only such spectrum as is necessary to realize its vision, thus facilitating spectrum efficiency. Moreover, with the advent of a fundamentally different initial licensing mechanism, spectrum auctions, all PCS participants,

⁵ See AMT and DSST comments at 5 (with AMT and DSST's efficient PCS architecture, "10 MHz PCS allocations [may] ultimately . . . offer effective system capacity well in excess of that available to the analog cellular systems" now operating).

⁶ MCI and GCI object to partitioning because of the many small systems potentially created and the increased costs and complexity involved in coordinating frequency use and avoiding interference. MCI opposition at 4-5; GCI opposition at 15. Such objections, though, presume a static, narrow view of PCS.

Moreover, MCI's proposal to ban the partitioning of blocks smaller than 10 MHz, MCI opposition at 5, seems an attempt to constrain cellular operators subject to the eligibility and attribution limits from acquiring an additional 5 MHz of spectrum up to the 40 MHz limit, considering its objection to CTIA's proposal to permit such acquisitions. See *id.*; see also GCI opposition at 5-7 (limit cellular operators to 10 MHz); PCS Action opposition at note 34 (retain 10 MHz limit). Neither MCI, GCI nor PCS Action, though, refute CTIA's analysis that acquiring an additional 5 MHz to the 40 MHz limit will not raise anticompetitive concerns. See CTIA petition at note 31.

including "big vision" participants, can aggregate sufficient spectrum at the initial bidding stage to realize their own business plans. And the aftermarket will be available to provide for any necessary market corrections.⁷ In short, CTIA's modular approach to PCS licensing will let the market dictate what services succeed or not, rather than the government skewing outcomes through its allocation processes.

Opponents of CTIA's proposal to award PCS licenses solely at the BTA level again invoke tired claims that small areas increase the expenses and delays associated with PCS licensing.⁸ Unfortunately, such arguments take a narrow view of PCS and fail

⁷ PCS Action argues that licensees with only a 10 or 20 MHz allocation may have problems surviving the aftermarket (*i.e.*, there would be no PCS operating revenues from which to survive while negotiating with incumbent microwave providers), while a cellular licensee with 25 MHz of cellular spectrum may be able to immediately provide PCS services and use its cellular revenues to leverage transaction and other costs in the PCS aftermarket. PCS Action opposition at 5-8. This argument apparently assumes, quite mistakenly, that adequate capital is only available from current cellular operations. To the extent that a "newcomer" has a viable vision for PCS, it should be able to receive adequate financing, just as the nonwireline cellular licensees were able to finance the construction of their systems despite the wireline "headstart." And such financing should account for those periods before service is initiated. Moreover, "newcomers" such as PCS Action, with a membership roster including The Washington Post, Cox Enterprises and Time Warner Telecommunications, surely cannot complain that it will be unable to receive adequate financing to compete against a cellular operator's existing revenues.

⁸ See, e.g., PCS Action opposition at 10-12; APC opposition at 3-9.

to account for the efficiencies generated by the auction process.⁹

To the extent the market dictates, the auction process will permit bidders to form regional PCS service areas, and with minimal delay or additional expense. Smaller service areas (such as BTAs) provide those who prefer to offer regional PCS services with the ability to aggregate geographic markets directly through the bidding process. By contrast, efficiency would be reduced by forcing potential bidders to bid for areas larger than needed to provide their particular visions of PCS. As CTIA has consistently noted, it is much easier to correct for market inefficiencies by aggregating to the desired geographic area rather than inducing a current holder (and a potential competitor) to divest its interests. A BTA-only service area scheme will thus better achieve efficiencies than a larger initial allocation.

Moreover, some parties argue that evidence of consolidation in the cellular market areas necessitates larger PCS market

⁹ PCS Action also claims that CTIA's argument for exclusive BTA service areas is undercut by Besen and Burnett's statement that the geographic market for mobile services may be almost as large as an MTA. See PCS Action opposition at 12 (referencing Besen and Burnett, Charles River Associates, "An Antitrust Analysis of the Market for Mobile Telecommunications Services," at 27 (December 8, 1993) (at Appendix A to CTIA's petition)). PCS Action mischaracterizes Besen and Burnett's statement as it was made in the context of assessing the relevant geographic market for a price discrimination analysis. It is not relevant to an assessment of the proper geographic service area.

areas.¹⁰ Such an argument assumes that PCS is no more than a cellular clone, and that market developments relevant to cellular will automatically hold for PCS. If, as argued so vehemently by CTIA's opponents, "big-vision" PCS will provide local loop competition and broadband services, i.e., non-cellular services, then cellular market areas should be of little relevance.

II. CONTRARY TO EXPRESSED FEARS, RELAXATION OF THE CELLULAR ELIGIBILITY AND ATTRIBUTION STANDARDS WILL ENHANCE CONSUMER WELFARE TO THE ULTIMATE BENEFIT OF THE PUBLIC INTEREST

CTIA's opponents generally argue for the retention of the current 10% cellular overlap rule and the 20% attribution standard. Moreover, MCI, along with GCI, advocate additional restrictions on the participation of the nine largest cellular providers. But no one provides a comprehensive discussion, much less refutation, of CTIA's proposals (and accompanying economic analysis) to increase the overlap restriction to 40%, to increase the attribution threshold to 30-35% and to adopt a single majority shareholder exception (applicable regardless of corporate form) to the attribution standard.

MCI, in support of its proposal to eliminate potential competition by prohibiting the nine largest cellular carriers from bidding for one 30 MHz license, provides a highly-conclusory

¹⁰ See, e.g., APC opposition at 6-9. APC also claims that consolidation will be harder with PCS than in cellular because the PCS industry will face competition from entrenched cellular providers, and thus will be deterred from competing with cellular or the local exchange. Id. at 9. This argument once again ignores the advantages resulting from spectrum auctions (i.e., consolidation can occur in the bidding stage) and incorrectly assumes that newcomers will be unable to obtain adequate financing.

and perfunctory criticism of the arguments raised by CTIA and others for relaxing cellular eligibility restrictions. Specifically, MCI criticizes CTIA for basing its proposed eligibility rules on antitrust principles.¹¹ MCI ignores the Commission's underlying rationale for imposing eligibility and attribution restrictions, i.e., the threat of undue market power. Apparently MCI also forgets that the economic foundation of antitrust learning, particularly the criteria for identifying the existence of undue market power, is necessarily relevant to this proceeding.¹² Thus, the empirical application of antitrust principles set forth in CTIA's petition and accompanying economic analysis should be accorded substantial weight.

MCI's sole support for its proposition that cellular common carriers possess market power is a citation to comments by the U.S. Department of Justice ("Department") and a report by the U.S. General Accounting Office ("GAO").¹³ In fact, the

¹¹ See MCI opposition at 11.

¹² The Commission has relied on such criteria in analogous situations. See, e.g., Competitive Carrier Rule Making, First Report and Order in CC Docket 79-252, 85 FCC 2d 1 (1980); Cable Television Services, Report in MM Docket 89-600, 5 FCC Rcd. 4962, 5005-5006 (1990).

¹³ See MCI opposition at 11, notes 18 and 19. In the very same sentence, MCI both cites favorably the Department's cellular market-power analysis and criticizes the Department for its initial recommendations on the allocation of cellular spectrum. Id. Clearly, MCI exhibits the same ambivalence concerning the value of the Department's antitrust analysis as it does for CTIA's, which puts CTIA in very good company indeed.

Department did not, as stated by MCI,¹⁴ find that cellular operators possess market power. The Department merely surmised, in the absence of a factual record, that cellular markets "might not perform in an ideally competitive manner."¹⁵ Moreover, anticipating the market structure adopted in the PCS Order, the Department found that a "market with five or more firms in direct competition, however, would be more likely to provide competition than the present [two-firm cellular] system."¹⁶ Similarly, the GAO report found that there was insufficient evidence for it to determine whether cellular markets were competitive.¹⁷

GCI and Cablevision Systems Corporation express vague concerns about undue market power should cellular eligibility rules be relaxed,¹⁸ but nowhere do they address, much less rebut, CTIA's detailed econometric analysis demonstrating that a 40% overlap rule and a 30-35% attribution rule would not result in

¹⁴ CTIA assumes that MCI meant to cite to the Comments of the United States Department of Justice in Gen. Docket 90-314 (November 9, 1992) ("DOJ PCS comments") considering that there are no "Reply Comments" filed by the Department on December 9, 1992, in the Commission's PCS docket file.

¹⁵ See DOJ PCS comments at 6 (emphasis added).

¹⁶ Id. at 6-7.

¹⁷ See GAO, Report to the Honorable Harry Reid, U.S. Senate, "Telecommunications: Concerns About Competition in the Cellular Telephone Service Industry," at 3 (July 1992). In its assessment of the cellular industry, GAO also found "no evidence of anticompetitive or collusive behavior." Id.

¹⁸ See GCI opposition at 9-10; Cablevision Systems Partial Opposition at 3-4. GCI, in fact, does not foreclose raising the 20% cellular attribution threshold. See GCI opposition at 10.

undue market power.¹⁹ Moreover, while the Association of Independent Designated Entities ("AIDE") expresses concern about cellular/PCS cross-ownership, it does so on the dubious ground that cellular providers may not fully utilize the acquired PCS spectrum.²⁰ Such an event is highly unlikely considering that no firm, except possibly an outright monopolist, may likely engage in such conduct profitably.²¹ Further, TDS provides support for CTIA's position with highly persuasive anecdotal evidence of the anomalous results of restrictive eligibility rules.²²

PCS Action objects to CTIA's proposed relaxed thresholds because of its imagined threat of anticompetitive behavior by cellular consortia. PCS Action hypothesizes that several cellular carriers, each with an ownership interest of less than CTIA's proposed 30-35% attribution, form a consortium to acquire a 30 MHz block, thus effectively acquiring 55 MHz of spectrum in

¹⁹ For this same reason George E. Murray's proposal to relax the cellular eligibility restrictions only for those entities entering into strategic alliances with designated entities, see Consolidated Response at 7-8, should be rejected. CTIA's proposed relaxed thresholds obtain equally for all cellular operators.

Moreover, Cellular Information Systems' ("CIS") proposal to exclude RBOC- and LEC- affiliated cellular operators from acquiring more than 10 MHz of PCS spectrum in the affiliated landline franchise area, see CIS Opposition at 1, should similarly be rejected as there is no demonstration that these operators exercise undue market power.

²⁰ See AIDE Partial Opposition at 18, 20.

²¹ See CTIA opposition at 7-8.

²² See TDS comments at 6-9. Cf. PMN Opposition at 1 ("limited partnership interests and consortia of such interests" should be exempt from the eligibility and attribution rules).

a given geographic area.²³ Aside from the fact that 55 MHz does not exceed the 35% market share threshold for undue market power adopted by the courts and antitrust agencies, it is doubtful that there would exist effective unanimity of control of even that amount of spectrum. The interests of the co-owners of the PCS block are unlikely to fully coincide with those of the cellular carrier owning the 25 MHz block and there is therefore little likelihood, as CTIA has already explained,²⁴ that coordinated action would be attempted, much less successful.

CONCLUSION

None of the parties who criticize CTIA cite anything more than unfounded fears to support their arguments. This being the case, the Commission should adopt CTIA's proposals on reconsideration.

Respectfully submitted,



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January 13, 1994

²³ See PCS Action opposition at 16-17.

²⁴ See CTIA petition at 16-17; CTIA opposition at 8.

CERTIFICATE OF SERVICE

I, Jennifer A. Donaldson, hereby certify that I have this 13th day of January, 1994, caused to be mailed, by first class mail, postage prepaid, a copy of the Opposition/Comments of the Cellular Telecommunications Industry Association to the Petitions for Reconsideration to the following:

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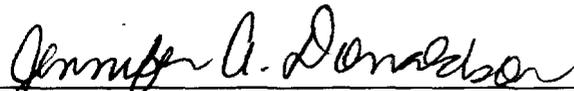
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