

JAN 13 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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

GEN Docket No. 90-314

REPLY OF PCS ACTION, INC.

In its Petition for Reconsideration and Clarification, PCS Action, Inc. ("PCS Action")¹ urged the Commission to permit aggregation of spectrum across licenses in the 1850-1970 MHz band in an amount not to exceed the 40 MHz aggregation ceiling set in the Second Report and Order in GEN Dkt. No. 90-314, 8 FCC Rcd. 7700 (1993) ("PCS Second Report and Order").² PCS Action demonstrated that, without lower band aggregation, the limited aggregation plan proposed by the Commission needlessly complicates the development of PCS and, by delaying its deployment, jeopardizes the success of PCS as well. PCS Action continues to contend that the rapid deployment of PCS requires the use of 40 MHz licenses.

All but one of the parties that addressed PCS Action's proposal supported it, most of them unconditionally. As addressed in this Reply, PCS Action believes the lone opponent's argument

¹ A list of PCS Action's members is attached hereto.

² In a separate petition, Time Warner also proposed that licensees in the lower bands be permitted to "lease, enter into joint ventures or consortia, or otherwise utilize portions of spectrum licensed to others in the same band." Petition for Partial Reconsideration of Time Warner Telecommunications, GEN Dkt. no. 90-314, at 11-12 (filed December 8, 1993). These proposals for lower band aggregation contemplate the transfer of spectrum but not licensee control: "In all cases, the 'lessor' would make spectrum available but retain ultimate control of it." PCS Action, Inc.'s Petition for Reconsideration and Clarification, GEN Dkt. no. 90-314, at 10 (filed January 3, 1994)("PCS Action Petition").

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is unfounded. The record clearly supports PCS Action's proposal, the Commission should permit lower band licensees seeking to aggregate 40 MHz to lease or otherwise obtain portions of spectrum from other lower band licensees.

I. The Transfer Of Spectrum To Facilitate Lower Band Aggregation Is In The Public Interest

Whether or not they addressed PCS Action's petition, several parties addressed the proposal that lower band licensees be permitted to partition their authorized spectrum and lease or otherwise contract for its use by other lower band licensees. Advanced MobileComm, Digital Spread Spectrum Technologies, Inc., CTIA, McCaw, and Telocator all support it.³

Advanced MobileComm and Digital Spread Spectrum Technologies, Inc. stated that they "believe that the fine-tuning of the allocation decision through the adoption of proposals to permit . . . spectrum partitioning of PCS licenses would increase the flexibility of PCS licensees to timely respond to market conditions which, in turn, should allay concerns that the initial allocation decision may not exactly match initial market conditions."⁴

CTIA states that it "agrees with PCS Action that under the Commission's allocation scheme . . . the need for dual-band equipment would be potentially greater,"⁵ that, in principle, it

³ It is not always clear from the comments whether the spectrum transferability proposal these parties endorse includes PCS Action's condition that the lower band licensee transferring spectrum retain control of its license and remain responsible for the authorized spectrum.

⁴ Joint Comments of Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc., GEN Dkt. no. 90-314, at 3 (filed January 3, 1994). NYNEX also refers to PCS Action's proposal as "fine tuning." Opposition of NYNEX Corporation, GEN Dkt. no. 90-314, at 2 (filed December 30, 1993).

⁵ Opposition/Comments of the CTIA, GEN Dkt. no. 90-314, at 13 (filed January 3, 1994) ("CTIA Opposition"). Other petitioners also recognized the dual band problems caused by the current aggregation scheme. See Consolidated Response of George E. Murray, GEN Dkt. no. 90-314, at n.18 (dated December 29, 1993), and Petition for Reconsideration of Bell Atlantic Personal Communications, Inc., GEN Dkt. no. 90-314, at 11 (filed December 8, 1993).

"supports the concept of license partitioning and aggregation,"⁶ and that "the Commission should permit PCS license partitioning and aggregation to increase spectral efficiencies."⁷

Without referencing PCS Action's petition, McCaw notes that it proposed, and that a number of other petitioners have also proposed, "that the Commission clarify its PCS policies and rules to state that PCS licensees would be permitted to subdivide PCS operating authority on . . . [a] spectrum basis."⁸

Telocator notes its endorsement of PCS Action's proposal, and "urges the Commission to adopt proposals to permit 'subleasing' of any spectrum."⁹ As it explained:

[T]he rules should be clarified to provide that any PCS licensee is permitted to negotiate agreements with other PCS licensees for additional spectrum. Increasing carriers' ability to respond to market forces in structuring PCS offerings provides further flexibility in the use of spectrum and could allow needed accommodations simplifying the provision of PCS during the initial deployment phase where numerous OFS licensees are still present.¹⁰

Other parties appeared to lend conditional support to spectrum transferability and lower band aggregation.¹¹

⁶ CTIA Opposition at n.39.

⁷ *Id.* at 16.

⁸ Comments of McCaw Cellular Communications, Inc., GEN Dkt. no. 90-314, at 21-22 (filed January 3, 1994).

⁹ Comments of TELOCATOR, GEN Dkt. no. 90-314, at 6-7 (filed January 3, 1994).

¹⁰ *Id.* at 7.

¹¹ See Opposition to Petitions for Reconsideration of Citizens Utilities Company, GEN Dkt. no. 90-314, at 10-12 (filed December 30, 1993); MCI Opposition, GEN Dkt. no. 90-314, at 8 (filed January 3, 1994); and Comments of the Association of American Railroads, GEN Dkt. no. 90-314, at 8-9 (filed January 3, 1994).

II. **GTE's Objection Is Unfounded**

GTE is the only party that opposes PCS Action's petition;¹² its objection is disingenuous. On the one hand, it clearly supports the voluntary subdivision of spectrum through leasing, consortia, and joint ventures. On the other hand, GTE objects to PCS Action's proposal to the extent that it would allow splitting of the 20 MHz BTA designated-entity license. However, unless the 20 MHz licensee is allowed to voluntarily partition its spectrum, flexible aggregation in the lower band will be severely curtailed, if not impossible. Moreover, considering that the lower band licensee would remain in control of any spectrum it made available pursuant to a lease or similar arrangement, there is no need to limit the designated entities to entering into these arrangements solely with other designated entities.

GTE's Opposition can only be characterized as a myopic view that if the designated entity licensees are permitted to lease spectrum, they may be somehow maneuvered out of the PCS market. GTE's position is not only myopic, it mitigates against the interests of the 20 MHz BTA license holders. As Commissioner Barrett has pointed out, the 20 MHz allocation standing alone may well be an "albatross;"¹³ PCS Action's proposal positively addresses that concern by increasing the value and usefulness of the 20 MHz license. Therefore, PCS Action's proposal to allow "subleasing" of the spectrum could actually benefit designated entities who hold PCS licenses.

GTE's objection to PCS Action's petition appears to be based on a more fundamental objection to aggregation by 30 MHz licensees. GTE has cleverly worded its Opposition as support for spectrum subdivision "to expedite the introduction of new services, promote

¹² Comments of GTE Service Corporation, GEN Dkt. No. 90-314, at n.30 (filed December 30, 1993) ("GTE Comments").

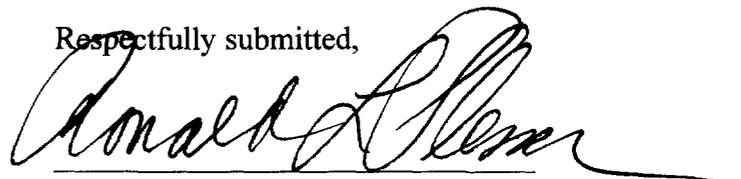
¹³ Dissenting Statement of Commissioner Andrew C. Barrett, PCS Second Report and Order, 8 FCC Rcd. at 7862.

participation in PCS by additional entities, and create incentives for the development of innovative niche offerings."¹⁴ In effect, GTE appears to favor subdivision only because it may lead to small PCS allocations. For reasons amply stated in this record by PCS Action and others, licensees with 40 MHz of spectrum are the best hope to achieve the rapid deployment and full potential of PCS services.

Conclusion

For the foregoing reasons, PCS Action requests that the Commission modify or clarify its PCS Second Report and Order to enable PCS licensees in the 1850-1970 MHz band to aggregate a maximum of 40 MHz of spectrum within the band by leasing or otherwise obtaining spectrum from another lower band licensee.

Respectfully submitted,



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¹⁴ GTE Comments at 9.

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Membership Roster

Service Provider Members:

- American Personal Communications/
The Washington Post Company
- Associated PCN Company
- Cox Enterprises, Inc.
- Crown Media
- Omnipoint Corporation
- Providence Journal Company
- Times Mirror Cable Television, Inc.
- Time Warner Telecommunications

Manufacturing Members:

- Motorola Inc.
- Northern Telecom
- QUALCOMM, Inc.

CERTIFICATE OF SERVICE

I, Mark J. O'Connor, hereby certify that a copy of the attached "Reply of PCS Action, Inc." was sent this day, January 13, 1994, via first-class mail, postage prepaid, to the following addressees:

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