

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules to Establish New Personal)
Communications Services)

COMMENTS OF PCS ACTION, INC.

Ronald L. Plesser
Emilio W. Cividanes
Mark J. O'Connor

Piper & Marbury
1200 Nineteenth Street, N.W.
Seventh Floor
Washington, D.C. 20036
(202) 861-3900

Counsel for PCS Action, Inc.

Date: April 22, 1994

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Introduction and Summary

PCS Action, Inc. ("PCS Action") has long believed that, generally, the Commission's allocation plan in the PCS Second Report and Order has the best prospect of fostering competition and creating a workable plan at the outset. Throughout the proceedings on the reconsideration of the Commission's PCS Second Report and Order, PCS Action has asserted that the allocation of spectrum for new PCS services must be accomplished in a way that ensures rapid rollout and new entrant viability, which will engender effective competition to existing wireless and wireline providers. The record developed by the Commission's PCS Task Force at last week's two-day panel discussion clearly supports PCS Action's views. Moreover, apparently recognizing the impact caused to the demand for all wireless services should PCS licensing be delayed further, the cellular industry's chief spokesperson stated last week that the industry would now support a Commission decision to forgo major reconsideration -- "we also want to get on with it [*i.e.*, the licensing of PCS]."2

1 A list of PCS Action members is attached.

2 Communications Daily, April 12, 1994, at 2, quoting Thomas Wheeler, President, Cellular Telecommunications Industry Association. The same call to finalize the regulatory process quickly can be heard from the PCIA. See Written Testimony of Personal Communications Industry Association to the FCC Panel Discussion at 2 (April 11, 1994) ("PCIA Testimony") ("Now it is time to move forward").

PCS Action, Inc. hereby submits its comments on how the record developed by the Commission's PCS Task Force at the two-day panel discussion clearly supports PCS Action's views on reconsideration.

I. PCS Can Bring Effective Competition to the Wireless Market

The panelists, including all the economists representing a variety of interests, were virtually unanimous in viewing PCS as a major entrant into the market for mobile wireless communication services, not merely as a cluster of services to be offered using the newly licensed spectrum.³ These competitive services include cellular, ESMR, and PCS.⁴ Defining PCS as *part* of the wireless market, rather than a *separate* market, requires the Commission to give PCS a fair opportunity to develop as a strong competitive alternative to other wireless services, rather than as a "highly fragmented marketplace with multiple [PCS] licensees."⁵ The call for "frequency parity" must be viewed in the context of a single wireless market. In that

³ See, e.g., Oral Statement of Thomas A. Stroup, President, Personal Communications Industry Association to the FCC Panel Discussion, transcript at 20 and 81 (April 11, 1994) ("PCIA Statement"); Oral Statement of Mark Lowenstein, Director, the Yankee Group to the FCC Panel Discussion, transcript at 35 (April 11, 1994) ("Yankee Group Statement"); Oral Statement of Stanley M. Besen, Charles River Associates to the FCC Panel Discussion, transcript at 140 (April 11, 1994) ("Charles River Statement"); Oral Statement of Jerry Hausman, MacDonal Professor of Economics, Massachusetts Institute of Technology, Department of Economics to the FCC Panel Discussion, transcript at 159 (April 11, 1994) ("MIT Statement"); Oral Statement of Elliott Hamilton, Vice President and Director, MTA-EMCI, to the FCC Panel Discussion, transcript at 46-47 (April 11, 1994) ("EMCI Statement"); Oral Statement of Mark A. Roberts, C.P.A., Alex, Brown & Sons to the FCC Panel Discussion, transcript at 248-249, 252 (April 11, 1994) ("Alex, Brown Statement"); Oral Statement of Paul Rissman, Alliance Capital Management, L.P. to the FCC Panel Discussion, transcript at 239 (April 11, 1994) ("Alliance Statement"); Oral Statement of Alex D. Felker, Vice President, Technology, Time Warner Telecommunications to the FCC Panel Discussion, transcript at 14 (April 12, 1994) ("Time Warner Statement").

⁴ Further, some panelists posited that eventually this competitive wireless market would also compete against the local exchange carriers. See Alex, Brown Statement, transcript at 252-253 (PCS can offer a competitive alternative to the local loop); Oral Statement of David Kerr, Senior Industry Analyst, BIS Strategic Decisions to the FCC Panel Discussion, transcript at 59 (April 11, 1994) ("BIS Statement") (Demand studies indicate that consumers want wireless POTS); Oral Statement of Nancy Peretsman, Managing Director, Salomon Brothers to the FCC Panel Discussion, transcript at 245 (April 11, 1994) ("Salomon Brothers Statement") (PCS has a broader role in telecommunications than just the wireless market).

⁵ Written Testimony of BIS Strategic Decisions to the FCC Panel Discussion at 3 (April 11, 1994) ("BIS Testimony"). See also Written Testimony of Hatfield Associates, Inc. to the FCC Panel Discussion at 1 (April 11, 1994) ("Hatfield Testimony").

light, the allocation of at least 30 MHz Major Trading Area (MTA) licenses for new PCS entrants is a necessary step toward parity in the market.

Most panelists who view the market broadly and addressed the issue of number of PCS licensees concluded that the economic realities of the market support only two or three PCS licensees.⁶ Five or six vigorous, full-service *wireless* licensees -- consisting of these two or three PCS licensees, the incumbent cellular licensees, and an ESMR system -- would provide for a wide range of consumer choice, and wireless service prices would attain a more competitive level.⁷

II. The Commission Should Promptly Begin Issuing PCS Licenses

Expeditious licensing of PCS is one of the crucial elements of a PCS regulatory regime promoting competition in the marketplace for wireless services. The other elements are: (1) wide bandwidth assignments (which is related to rapid development), (2) broad geographic license areas, and (3) making major cellular licensees, ineligible for PCS licenses within their service areas.

Even with a bandwidth and geographic area allocation plan *designed* to promote competition, it will be nearly impossible to build a viable PCS industry unless PCS operators can rapidly roll out wireless services. "The benefits of a perfect auction mechanism can easily be outweighed by the costs to consumers of delaying the availability of service."⁸ Time-to-market is a key indicator of success for PCS licensees.⁹ Timing of PCS deployment will affect demand

⁶ See, e.g., BIS Testimony at 7; Written Testimony of Alliance Capital Management, L.P. to the FCC Panel Discussion at 2 (April 11, 1994) ("Alliance Testimony"); MIT Statement, transcript at 159; Salomon Brothers Statement, transcript at 279.

⁷ See Alliance Testimony at 2; MIT Statement, transcript at 159: Dr. Hausman made clear that the optimal market would be two cellular, one ESMR; and two PCS providers.

⁸ Hatfield Testimony at 1.

⁹ Written Testimony of Time Warner Telecommunications to the FCC Panel Discussion at 18 (April 12, 1994) ("Time Warner Testimony").

for specific wireless services and the relative market share of each.¹⁰ The Commission can further expedite the process by finalizing the service and allocation rules and by licensing PCS. By doing so, the Commission will enhance stability so that others can resolve delay as quickly as possible. This in turn will enhance the prospects of success of a PCS industry determined to lower the consumer cost of wireless telephony and bring greater functionality to wireless communications. By contrast, the panel discussion demonstrated clearly that too much delay in deploying PCS will cripple PCS, will hurt competition in wireless services, and will jeopardize international trade opportunities.

Delay includes all of the hurdles that must be overcome before PCS is available to the consumer. These delays include the creation of a competitive bidding system, the manufacturing of equipment,¹¹ financing the capital and operating costs of a PCS system,¹² processing of applications,¹³ moving microwave incumbents,¹⁴ as well as constructing the PCS system. The

¹⁰ PCIA Statement, transcript at 22-23.

¹¹ Northern Telecom estimates that significant reconsideration allocation changes would cause at least six months of delay to equipment vendors and potential licensees. See Oral Statement of Dave Twyver, President, Wireless Systems Group, Northern Telecom to the FCC Panel Discussion, Telspan Tape 1 of 4, April 11, 1994 at 1.32.30 to 1.33.24 ("Northern Telecom Statement"). PCS Action urges the Commission not to engage in setting standards for PCS equipment, as this would add further delay to the process of equipment manufacturing and deployment.

¹² Panelists from the financial community agreed that unless PCS is viable from the start, financing would be difficult. See Alex, Brown Statement, transcript at 248-250; Salomon Brothers Statement, transcript at 243-244, 322; Alliance Statement, transcript at 241.

¹³ The statutory 30-day public notice period for license application cannot be avoided. However, if after market aggregation is encouraged with a six by 20 MHz licensing scheme, these transactions could also add significant delay.

¹⁴ Comsearch showed that negotiating microwave incumbents will take a considerable amount of time due to: (1) complicated negotiating and financing strategies where the microwave incumbent straddles more than one PCS license; (2) the relocation of microwave incumbents to the 6.7 GHz band and the resulting equipment supply challenges; and (3) the lack of experienced negotiators, coordinators, engineers, and the Commission personnel able to handle such a massive relocation. Written Testimony of Comsearch to the FCC Panel Discussion at 2-5 (April 11, 1994) ("Comsearch Testimony").

Commission in making changes to the Second Report and Order should be sensitive to the delay issue.¹⁵

Several panelists testified that every day of delay in deploying PCS results in decreasing demand for PCS services. They referenced the study conducted by DSS Research that shows that a delay in the licensing PCS from this year to next year would alone result in a 15 percent reduction in PCS market penetration; a two-year delay would result in a total reduction of one-third.¹⁶ A "snowballing" effect occurs because once consumer demand declines, the incentives to mass-produce equipment, to move microwave incumbents, to finance PCS, and to avidly build out a PCS system, all decline with the demand. The longer PCS's entry into the market is delayed, the lower the expected investment returns, which in turn raises the cost of capital.¹⁷ Indeed, investment in PCS is being withheld today because of uncertainty of the service and allocation rules.¹⁸

Assuming early fall 1994 auctions and a two-year build-out, no large-scale PCS system will turn on before early fall 1996.¹⁹ Meanwhile, other wireless services are moving to preempt PCS opportunities.²⁰ Cellular carriers, for example, are adding new customers to their networks at the rate of five million per year -- 14,000 per day.²¹ Even assuming PCS deployment in late

¹⁵ Mr. Ralph Haller, of the FCC's PCS Task Force, suggested this when he asked the first Panel of April 11, 1994 whether it would be better to finalize the current rules or try to substantially change the rules, which would require a reconsideration of the revised rules. FCC Panel Discussion Transcript of April 11, 1994 at 91.

¹⁶ PCIA Statement, transcript at 22-23; Written Testimony of Northern Telecom to the FCC Panel Discussion at 6 (April 11, 1994) ("Northern Telecom Testimony"); BIS Statement, transcript at 96 (PCS auctions in 1995 would be perceived as a significant delay).

¹⁷ Alex, Brown Statement, transcript at 249-250.

¹⁸ Hatfield Testimony at 1.

¹⁹ Alliance Testimony at 1.

²⁰ Alex, Brown Testimony at 3.

²¹ PCIA Statement, transcript at 23.

1996, cellular is projected to grow to a 30 million subscriber level by 1998.²² ESMR is also projected to achieve rapid market penetration as these new networks are deployed in the coming months.²³

GTE Corp., for example, announced this week that it will use its existing cellular spectrum to offer by year's end a new, mass market wireless service priced significantly lower than regular cellular-phone service. Called "Tele-Go," the service was tested for two years and described by GTE's witness at the panel discussion.²⁴ Calling it a "preemptive strike" against PCS that industry analysts have long expected, The Wall Street Journal described the launching of Tele-Go as an effort by cellular "to beat PCS entrants to the punch by expanding [cellular's] base of customers beyond executives to cost-conscious consumers."²⁵ It is no surprise that the GTE witness requested significant revisions to the PCS rules that would result in significant delay in the licensing of PCS.

Absent strong PCS, the consumer will be deprived of true cost and service competition to the cellular duopoly; the Commission has estimated that \$5 billion annually would be saved by consumers if cellular had effective competition.²⁶ This must be sustainable competition, not merely the threat of competition that leads duopolists to temporary cost cutting. The consumer is also being deprived of the enhanced functionality -- wireless data and video transmission -- that PCS promises. The digital technology upon which PCS is based, and which makes possible both

22 Northern Telecom Testimony at 5-6.

23 PCIA Testimony at 6.

24 *See generally* Written Testimony of GTE Personal Communications Services to the FCC Panel Discussion (April 11, 1994) ("GTE Testimony").

25 "Pocket-Phone Service Planned By GTE Corp.: Move Is Attempt to Beat Delayed Rival Service Into Consumer Market," Wall Street Journal A3 (April 19, 1994).

26 *See* Letter from Alfred C. Sikes, Chairman, FCC, to President George Bush, April 28, 1992, at 14 ("Letter of April 28, 1992").

low-cost service and extraordinary functionality, simply will not be available quickly and broadly in the absence of major new entrants to the wireless market.

* * *

Time-to-market is a key indicator of success for PCS licensees.²⁷ The Commission's finalization of PCS service and allocation rules will be the catalyst for resolving potentially crippling delays.²⁸ Timely development of PCS will result in "(1) the largest addressable market allowing many players to successfully compete, (2) the highest volume of product to be manufactured, thus creating economies of scale and scope to minimize costs, and (3) allow U.S. manufacturers to export innovative and cost effective telecommunications solutions to a global marketplace, as well as increase jobs and services in the United States."²⁹

III. The Dual Virtue of the Commission's Allocation Plan

The Commission's allocation plan in the PCS Second Report and Order results in *readily deployable and competitive* PCS systems, not simply the beginning of a process of after-market accumulation of "building blocks" to create such systems. The Commission should maintain the plan's key elements: 30-MHz MTA licenses available to all except certain in-region cellular providers, with a possibility of aggregating to 40 MHz. The Commission should maintain its decision to guarantee vigorous and sustainable competition with the creation of two large-scale spectrum blocks.

²⁷ Time Warner Testimony at 18.

²⁸ This does not preclude the Commission from making minor adjustments that would not require a second reconsideration period. For example, the Commission should reconsider mandating low-power for all PCS antennas. Unless the Commission authorizes use of higher power, universal PCS service will be impossible, less densely populated areas will receive stunted service (if any), consumer prices will be higher, PCS will be far less competitive with cellular, and less efficient systems will have to be used.

²⁹ Northern Telecom Testimony at 2.

A. Wide Bandwidth Assignments for PCS

The Commission should maintain current allocations to blocks A and B in the 1850-1970 MHz band. The Commission correctly reasoned that several allocations of at least 30 MHz in the lower band will most efficiently accomplish its three goals of: (1) rapid deployment of services; (2) opportunity to provide a full range of services through the use of different sized frequency blocks; and (3) successful spectrum-sharing between PCS licensees and microwave incumbents.³⁰

1. The Virtue of Wide Bandwidth Assignments

The 30 MHz allocations together with the ability to create 40 MHz licenses, as directed by the Commission and supported by PCS Action, represent the best hope for having PCS develop first as a wireless competitor, and eventually as a provider of data, imaging, multi-media, and video services and a competitor, to the landline network. Panelists from the financial community agreed that viable licenses are the key to a successful PCS industry.³¹

NTIA was among the first to advocate the virtue of 30 MHz license blocks: rapid deployment, flexibility to avoid certain frequencies now encumbered with microwave users, and lower costs.³² The Commission's decision to issue 30 MHz licenses and permit aggregation of up to 40 MHz will ensure that an economically viable PCS industry will be created. A decision to issue smaller licenses will ensure delay, lost revenues to the Treasury, and a weakened PCS industry.

30 Second Report and Order, 8 FCC Rcd. 7700 at ¶ 58 (1993) ("Second Report and Order").

31 See Alliance Statement, transcript at 25 ("There is enough risk in this as it is that the size of the spectrum grant does not have to be the issue around which risk turns."); Alex, Brown Statement, transcript at 248 (30 MHz MTAs are required to finance a PCS system).

32 Letter to the Honorable James H. Quello, Acting Chairman, Federal Communications Commission from Larry Irving, Assistant Secretary for Communications and Information, United States Department of Commerce, dated September 14, 1993 at 3 ("NTIA Letter").

First, the allocation scheme supported by PCS Action gives PCS operators the necessary flexibility to focus on rapid implementation of service to the public. Given that studies confirm that ubiquitous service throughout the coverage area is among the most important elements of consumers' decisions to subscribe to PCS, PCS operators must be able to provide coverage to a large part of their market on the first day without causing interference to microwave incumbents. Without sufficient spectrum, however, a single existing microwave link can preclude ubiquitous PCS operation.³³ Panelists acknowledged that regardless of bandwidth assignments, "in most markets, before even the first [PCS] cell is turned up, microwave paths will need to be relocated."³⁴ The process of engineering new links, purchasing equipment, coordinating frequencies and securing Commission approval, and constructing and installing systems will take years to complete.³⁵ Consequently, there will be a need to share spectrum with some microwave incumbents as a stopgap accommodation while implementing other reallocations. Spectrum sharing dictates that a minimum amount of spectrum will be needed merely to deploy PCS service initially.³⁶ Otherwise, there will be insufficient spectral room to frequency engineer around microwave paths. Bandwidth assignments of at least 30 MHz coupled with the use of recently developed sharing techniques to work around incumbent microwave users would permit PCS operators to begin service and then evolve toward advanced PCS services.

33 Time Warner Testimony at 6. Microwave licensees in the lower PCS band use two 10 MHz channels -- a total of 20 MHz. See generally "White Paper on PCS Spectrum Issues," PCS Action, Inc. (filed July 21, 1993).

34 Comsearch Testimony at 5; Time Warner Testimony at 5-6.

35 Time Warner Testimony at 4.

36 Comsearch Testimony at 5. The much debated issue of how much of a problem is incumbent relocation underscores at least two indisputable facts: commercial incumbents have at least three years to move and public safety operators can remain at their 2 GHz frequency for five years. Third Report and Order, ET Docket No. 92-9, 8 FCC Rcd. 6589, at ¶ 2 (1993); Memorandum Opinion and Order, ET Docket No. 92-9, FCC 94-60, at ¶ 35 (released March 31, 1994).

On the other hand, an allocation scheme based solely on blocks of less than 30 MHz would deny PCS licensees any flexibility to engineer around incumbent microwave users. It would preclude: (1) immediate head-to-head competition with the existing mobile service industry, and the concomitant loss of billions of dollars in consumer savings as a result of reduced prices in wireless telephone service;³⁷ and (2) the influx of revenue from rapid deployment that would allow PCS operators to finance the costs of more advanced PCS services. In short, an allocation scheme with only 20 MHz licenses will cripple the deployment of PCS.

Second, the ability to begin serving the public soon after the licensing process will give PCS operators more leverage to *negotiate* with microwave incumbents. The panelists acknowledged that the negotiations with microwave incumbents will tend to be protracted and complicated.³⁸ As noted above, a PCS license of less than 30 MHz in the lower band would prohibit any simultaneous operation with incumbent microwave operators. A PCS operator should be able to deploy a cellular-competitive service and then negotiate with incumbent microwave operators on a more level, reasonable basis. By avoiding exorbitant relocation costs that would result from a small allocation, a PCS licensee will be able to expand the range and lower the cost of services available to the public.

Third, any allocation scheme based solely on blocks of less than 30 MHz would impose a significant and unacceptable risk that the vision for advanced PCS will never be realized. Without sufficient spectrum, a non-cellular (or non-ESMR) PCS operator, after paying the auction price, will be forced to negotiate with microwave incumbents for years while revenues are reduced or non-existent.³⁹ Only the deepest pockets (*e.g.*, RBOCs) could survive in such an

37 See Letter of April 28, 1992 at 14 (PCS competition with cellular will save the American public \$2 billion to \$5 billion per year); see also 1994 DSS Research study on Effect of Delayed PCS Deployment ("DSS Study").

38 Comsearch Testimony at 2.

39 For example, a 20 MHz plan would result in extensive disruption, requiring relocation of approximately 50 percent of the 10,000 existing microwave links, including 100 percent of the public safety links, within three years of licensing just to initiate service. See Comsearch, "Spectrum Allocations and Their Impact on Microwave User Relocations: A Case Study," at § 5.0 (April 12, 1993).

environment. In contrast, cellular interests, for example, will not face the same roadblock because their cleared 25 MHz may be readily used to support PCS, as demonstrated by GTE's planned launch of its Tele-Go service. Thus, without the Commission's continued commitment to a competitive playing field from the start, PCS operators will not be able to effectively compete with existing mobile service providers.

Further, as recognized by the Commission, large blocks of PCS spectrum can deliver more than just high quality wireless telephone services. It promises "the fullest range of services."⁴⁰ As PCS Action has explained in this proceeding, studies of the U.S. demand for PCS and the lessons of the early failure of PCS in the U.K. confirm that:

PCS services will evolve from secure, high-quality voice and text transmission with national roaming, to fixed and mobile ISDN data, telemetry, broadband data, advanced intelligent network services, and multimedia.⁴¹

This vision of a full range of service was one of the motivating factors that led NTIA to propose an allocation greater than 20 MHz: "larger allocations would enable PCS licensees to offer alternative services to consumers, such as larger bandwidth data or imaging services, more quickly and more cheaply than would be the case with smaller allocations."⁴²

2. The Modular "Building Blocks" Approach Would Harm PCS

The modular "building blocks" approach advanced by some parties "would slow and make more expensive the initiation of service"⁴³ and significantly reduce PCS auction revenues to the federal government.

40 Second Report and Order at ¶ 58.

41 "White Paper on PCS Spectrum Issues," PCS Action, Inc. (filed July 21, 1993).

42 NTIA Letter at 3.

43 Time Warner Testimony at 13. In addition, a large after market, in which licenses recently allocated through the Commission's auction are then bought and sold in a "private auction," is contrary to the intent of the

The "building blocks" approach would only add to up-front costs by forcing transaction costs on these licensees as they try to negotiate for more spectrum. Incumbent mobile service providers would be the only players with any cleared spectrum to leverage wireless revenues against the prices and transactions costs in the PCS after-market. Moreover, all bidders would place a lower value on spectrum in order to account for after-market transaction costs, thereby reducing significantly the PCS auction revenues to the federal government. These after-market transaction costs, however, are avoided from the start by allocating large spectrum blocks.

Given that the after-market is likely to be dominated by the entrenched mobile service providers, 30 MHz allocations together with the ability to create 40 MHz licenses furnish non-cellular and non-ESMR PCS operators the minimum amount of spectrum necessary to compete with incumbent service providers. Once the incumbents obtain the additional spectrum permitted by the Commission, they will be further advantaged. The 30 MHz allocation together with the ability to create 40 MHz licenses both provides the efficiencies needed to prevent the PCS industry from failing even before it gets started and ensures that PCS auction revenues will approximate the levels projected by Congress and the Administration.

3. Designated Entities

Some panelists argued that licenses no greater than 20 MHz (with at least one license set-aside for designated entities) are necessary for designated entity participation in PCS.⁴⁴ We strongly disagree; designated entity participation does not require that the Commission break up the 30 MHz licenses. If the 20 MHz blocks for designated entities are inadequate, the answer to this problem should be sought in some direction other than making the licenses for other PCS

competitive bidding legislation to recover for the public the value of the allocated public spectrum. *See* 47 U.S.C. § 309(j)(3)(C); *see also* H. Rep. No. 103-11, 103rd Cong. 1st Sess. at 253 (1993) (House finds that "if licensees are engaged in reselling the use of public airwaves to subscribers for a fee, the licensee should pay reasonable compensation to the public for those resources").

⁴⁴ *See* Oral Statement of John Oxendine to the FCC Panel Discussion, transcript at 232, 256 (April 11, 1994) ("Oxendine Statement"); Oral Statement of George E. Murray to the FCC Panel Discussion, transcript at 23, 24 (April 12, 1994) ("Murray Statement").

operators inadequate as well. PCS is an opportunity for new entrants, including new-entrant designated entities, in the wireless market. All new entrants would be disserved by a licensing scheme that favors the existing wireless providers and inordinately delays the rollout of PCS by requiring after-market aggregation.

Moreover, in its Petition for Reconsideration and Clarification, PCS Action described the benefits to designated entities if, under the allocation scheme adopted by the Commission, PCS licensees in the 1850-1970 MHz band were permitted to lease, enter into joint ventures or consortia, or otherwise use portions of spectrum licensed to others in the same band.⁴⁵ Designated entities will benefit from this flexibility whether the Commission decides to allocate them 20 MHz or 30 MHz licenses. The proposed flexibility, which has been endorsed by the Minority Telecommunications Executives & Companies (NAMTEC)⁴⁶ and the American Wireless Communication Corporation (a national consortium of designated entity companies),⁴⁷ furnishes designated entities with a much greater range of opportunities, including much earlier returns on their investment. Through arrangements with the 30 MHz MTA licensees, designated entities can raise the capital to pay for the relocation of fixed microwave licensees or gain concessions that help in building out their areas. They can negotiate the benefits of being part of a consortium and thereby have the opportunity for meaningful participation in the deployment of PCS services. In short, there is no need to abandon the 30 MHz license allocations in order to ensure meaningful participation by designated entities.

⁴⁵ See PCS Action's Petition for Reconsideration and Clarification, GEN Docket No. 90-314, at 10-12 (Dec. 8, 1993).

⁴⁶ See Comments of National Association of Minority Telecommunications Executives & Companies, P.P. Dkt. No. 93-253, at 22 (Nov. 10, 1993).

⁴⁷ Reply Comments of the American Wireless Communication Corporation, GEN Docket No. 90-314 (Jan. 13, 1994).

B. Broad Geographic License Areas for PCS

Panelists were nearly uniform in praising the Commission's decision to use MTAs for PCS licensing. The fact is that new PCS entrants "need to be able to offer seamless mobility at least in an area that encompasses a rational economic region."⁴⁸ This conforms with the Commission's conclusion that wide-area licensing (1) was likely to "provide the economies of scale and scope necessary for the development of low cost PCS equipment," "promote roaming within large geographic areas," and "facilitate interoperability with other PCS systems," and (2) would promote effective coverage and rapid deployment of PCS, reduce the costs of interference coordination between PCS licensees, simplify the coordination of technical standards, and facilitate the relocation of microwave incumbents in the PCS bands.⁴⁹

As noted earlier in these proceedings, NTIA has correctly concluded that a BTA-only licensing scheme could delay the deployment of PCS services because of the need to (1) auction thousands of PCS licenses, (2) have parties "engage in a lengthy process to aggregate very small license areas into large areas, as was frequently done in the cellular service," and (3) then have them coordinate interference among nearly 500 geographic areas.⁵⁰ All of this would increase the costs of PCS service providers and the costs to consumers.

Finally, it should be noted that, apart from the petitions filed by some existing mobile service providers, no petitioners requested that the Commission rely exclusively on BTAs as the service areas for PCS licenses.

48 Alex, Brown Testimony at 2.

49 Second Report and Order at ¶¶ 72-75.

50 See NTIA Letter at 5.

C. Maintain In-Region Cellular Eligibility Rules

The Commission's adoption of a 10 MHz PCS spectrum limit on in-region cellular carriers reflects its recognition that the wireless market is far from being perfectly competitive. Ninety percent of today's cellular market is dominated by nine cellular providers nationwide: affiliates of the seven Regional Bell Operating Companies, AT&T/McCaw, and GTE/Contel, with each local cellular market subject to a duopoly. The new spectrum is intended to provide consumers with relief from the dominant pricing practices of the cellular industry. The duopoly rents currently enjoyed by the cellular industry were confirmed by the experts on the PCS Demand Panel who predicted that once PCS provides the competition, prices for cellular service will fall.⁵¹

All of the economists who testified suggested a single wireless market. If the goal is new competition, then it seems axiomatic to limit the eligibility of existing mobile service providers in that market. In-region cellular incumbents have 25 MHz of clear spectrum at 800 MHz. To this will be added 10 MHz of PCS spectrum for a total of 35 MHz. This is already greater than the 30 MHz proposed for PCS entrants. To provide 20 MHz licenses to in-region cellular entities would greatly tip the balance in favor of existing players by providing 45 MHz to them and 20 MHz to the new entrants. Clearly, this would be an anti-competitive allocation given that wireless is one market.

Commissioner Barrett recognized this ploy in the panel discussion when he asked Dr. Waylan, of GTE, "with your already present 25, would [you] also want an additional 20, and other people would have 20, and you would have 45?"⁵² Although Dr. Waylan did not answer how much spectrum is appropriate for cellular, by opposing restrictions limiting it to 10 MHz in-

51 See, e.g., Yankee Group Statement, transcript at 87.

52 FCC Panel Discussion Transcript of April 11, 1994 at 100.

region, then the cellular industry must want eligibility for 20 MHz or perhaps even 30 MHz. Under either proposal, cellular is demanding a disproportionate amount of spectrum.

The panelists also confirmed that cellular holds a significant headstart in the wireless market.⁵³ This headstart includes the 25 MHz of spectrum that cellular holds and which can be readily used for PCS services.⁵⁴ The headstart also includes the existing physical infrastructure - cell sites, antenna locations, switching equipment -- that new PCS entrants must overcome. Cellular also has a tremendous marketing headstart of an existing, rapidly growing, customer base, which it has built up over a twelve-year period.

As Dr. Kelley's testimony shows, effective restrictions on in-region cellular firms are needed to allow new entrants an opportunity to establish a cellular-competitive service.⁵⁵ Without restrictions, cellular has a strong incentive to use the spectrum auction as a means of keeping new competition away, or driving up the costs of entry, and protecting its monopoly rents. Cellular interests have attacked both the 10 MHz eligibility restriction and the Commission's attribution standards because they understand that a relaxation of one or the other will allow them to inhibit in-region competition. If the attribution standards are relaxed then the in-region cellular operators can easily form consortia to accomplish the same anti-competitive goals.

⁵³ See EMCI Statement, transcript at 88; Yankee Group Statement, transcript at 87-88; Alliance Statement, transcript at 238-240; Northern Telecom Statement, transcript at 102-103.

⁵⁴ Oftentimes, the cellular industry makes the "red herring" argument that its customers are tied to analog equipment and so its 25 MHz is not as efficient as 25 MHz of the PCS spectrum. In fact, cellular is converting its customers to digital equipment every day. See Alliance Testimony at 1; DSS Study at 3. In the time it takes to implement PCS, cellular will be even further along in its phase-out of analog equipment. It is critical to keep in mind that the rate of conversion is entirely within the discretion of the industry. As soon as it is economical to switch its customers to digital, it will do so.

⁵⁵ Oral Statement of Daniel Kelley, Hatfield Associates, Inc. to the FCC Panel Discussion, transcript at 202 (April 11, 1994) ("Hatfield Statement").

Cellular has failed to counter the evidence of anti-competitive behavior and the headstart advantage. Even the study presented by Dr. Besen fails to address the real world antitrust implications of cellular's impact on the wireless market. Besen's evidence before the FCC shows that he studied market concentration in markets with from seven to ten independently competing firms.⁵⁶ This does not reflect the estimates of the expert panelists of five to six independent competitors in the wireless market. Obviously, if the market has ten viable competitors, the ability to impose monopolistic control on the market decreases. But, that is not the wireless market.

In the actual wireless market, and according to the panel experts, cellular will have a competitive advantage with cell-sites and customers already locked in -- this factor is not reflected in the Besen study. In the actual market, PCS will add two, perhaps three, new entrants into a market dominated by two incumbent cellular providers and, perhaps, an SMR operator.⁵⁷ If in-region cellular operators secure one or two of these two or three PCS licenses, then the auction will have generated no more than one new entrant -- and possibly none -- into the wireless market.

In short, neither the panel discussion nor the Besen study provides any basis for the Commission to second-guess its cellular eligibility rules.

IV. Conclusion

For the reasons discussed above and at last week's two-day panel discussions, the Commission should maintain the key elements of the allocation plan set forth in the PCS Second Report and Order: 30-MHz MTA licenses available to all except certain in-region cellular

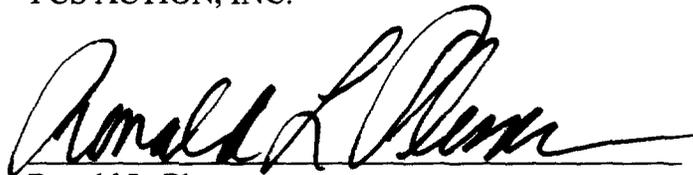
⁵⁶ Written Testimony of Charles River Associates to the FCC Panel Discussion at 6, at Table 1 to 6 (April 11, 1994) ("Charles River Testimony").

⁵⁷ See Salomon Brothers Statement, transcript at 279; Alex, Brown Statement, transcript at 279; MIT Statement, transcript at 159 (economist estimated one or two PCS entrants with three or four existing competitors in the wireless market).

providers, with the possibility of aggregating 40 MHz. The Commission's allocation plan will result in readily deployable and competitive PCS systems, and any effort to undermine or compromise that goal -- to the ultimate detriment of the American consumer -- should be rejected.

Respectfully submitted,

PCS ACTION, INC.

A handwritten signature in black ink, appearing to read "Ronald L. Plesser", written over a horizontal line.

Ronald L. Plesser
Emilio W. Cividanes
Mark J. O'Connor

Its Attorneys

Piper & Marbury
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036

Date: April 22, 1994

PCS ACTION, INC.

1200 19TH STREET, NW • 7TH FLOOR • WASHINGTON, DC 20036 • (202) 861-2957 • FAX: (202) 861-3963

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Ronald L. Plesser
Emilio W. Cividanes
Mark J. O'Connor
Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20036
202/861-3969
Counsel to PCS ACTION, INC.