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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

STATEMENT IN RESPONSE TO PCS PANEL DISCUSSIONS APRIL 11-12

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SUMMARY

DCR Communications, Inc., a "designated entity," under the Commission's proposed rules, is a start-up small business that expects to bid on licenses in the PCS auction. Our view of PCS is considerably different from that expressed by individuals who represented designated entities at the April 11-12 panel discussions.

Our view of PCS is that it is the first mass market wireless telecommunications service. As such it will compete with both cellular and landline telephony. PCS is the next generation of wireless telecommunications, utilizing digital technologies to provide wireless telecommunications services far more advanced than any available today to cellular or landline telephone customers.

PCS is a complete telecommunications system with state of the art technology that integrates voice, paging, messaging and data, offers service anytime to and from anyplace, with security, privacy and ease of use, at lower cost than cellular.

A mass market is necessary to support the cost of building PCS networks. It will cost approximately $7 billion to build one PCS license in all markets. Thus, while we believe that many niche applications will be developed as services for PCS, we do not see PCS as a niche technology.

PCS will bring new competitors into the wireless telephone arena, spurring growth, lowering prices and invigorating the business with new energy and new ideas.

We believe the market can easily support five or six healthy competitors including the two cellular operators and one ESMR operator. We believe that small companies can successfully compete as full PCS-service providers against the entrenched cellular companies and other PCS entrants.

We urge the Commission to adopt a final order as soon as possible and schedule auctions for the fall. While we propose some changes in the proposed rules, we do so in the belief, and with the condition, that our proposals could be adopted without a further pleading cycle because they address issues that have been fully aired in previous cycles.

Summary of our comments and suggestions in response to questions and statements made at the panel sessions:

- The FCC should not delay PCS "to get it right" because the Commission cannot possibly devise a proposal that would be totally satisfactory to all parties. It has fully aired all the major issues and has built a solid record upon which a final order can be based.

- The Commission should make no changes in its proposal for PCS that would require another comment and reply round and delay the auction.

- Because more economic growth will result from the emergence of successful new entrants and designated entities in PCS than if PCS were developed entirely by the existing communications companies, the Commission should retain the spectrum set-aside for designated entities.

- The spectrum set-aside should be the same amount of spectrum as provided in the other two lower bloc allocations, 30 MHz, not 20 MHz.

- The additional 10 MHz for the set-aside should come from a 10 MHz reduction in the allocation for unlicensed use. The proposed 40 MHz allocation for unlicensed use is excessive and need for that amount of spectrum has not been demonstrated.

- The Commission should reject the proposal for six licenses of 20 MHz by BTA. There should be three licenses in the lower band, each with 30 MHz. The Commission should either keep the present MTA/BTA split as proposed in the lower bloc or should auction all licenses by BTA.

- PCS competitors in rural areas and in small cities (less than 100,000) should be able to combine their spectrum and build and share one common PCS infrastructure.

- The PCS rules should allow - even encourage - PCS operators to subcontract the construction and operation of portions (but not a majority) of each of their license areas.

- PCS operators should be required to make up to a certain portion of their spectrum available to resellers, provided there are 30 MHz license grants and only when the spectrum is cleared of other users.

We also propose some modifications in the proposed order that would enable designated entities: to form bidding alliances; to operate wide area systems together; to sell non-controlling equity in both parent companies and their subsidiaries; to permit the pledging of licenses and assets to lenders; to permit an early transfer of control in the event of default but otherwise to impose specific requirements that must be met to transfer control.

Statement, Daniel C. Riker, President, DCR Communications, Inc.

DCR Communications, Inc., founded by some experienced telecommunications entrepreneurs, including minorities and women, plans to bid for PCS licenses as a "designated entity," under the Commission's proposed rules.

We appreciate this opportunity to provide the Commission with a point of view somewhat different from that expressed by representatives of designated entities at the April 11-12 panel sessions.

After more than four years of proceedings before the Commission there is not much concerning PCS that has not already been said or written. We will confine our comments to several areas where we did not hear our point of view expressed in the panel sessions and we will offer a few suggestions that may not have been made previously.

What is PCS?

PCS is the first mass market wireless telecommunications service. PCS is the next generation of wireless telecommunications, utilizing digital technologies to provide wireless telecommunications services far more advanced than those available today to cellular or landline telephone customers. PCS is a complete telecommunications system with state of the art technology that integrates voice, paging, messaging and data, offers service anytime to and from anyplace, with security, privacy and ease of use, at lower cost than cellular. PCS can be a replacement for both cellular and landline telephones. PCS is the next wave of major growth in telecommunications, an industry that has been growing vigorously for 15 years, sparked by significant economic, technological, regulatory and political change. PCS will ride the same waves of change.

A major convergence of technologies and businesses will occur in PCS. The businesses include cellular, long distance, local telephony, data processing, messaging, paging and multimedia. These businesses today have revenues in excess of $200 billion with strong growth. The technologies include digital radio transmission and switching, high speed computerized databases, digital data, voice and video transmission, advanced voice and data processing and compression, and other advanced microprocessor applications. All of these technologies are of recent development. PCS represents the their first unified application.

We do not see PCS as a niche technology or our company as a niche service provider. Our goal is to become a much bigger company is a very huge business. We believe we can compete effectively against the large telecommunications companies. We believe that many niche services will be developed for PCS. However, PCS operators are going to be in a huge mass market business. The magnitude of the cost of a PCS network requires a system operator to have a mass market. One of the PCS frequency blocks would cost approximately $7 billion to build nationwide. Three will cost more than $20

billion to construct. Even a relatively compact BTA, such as Baltimore, will cost $60-80 million to obtain service coverage comparable to the existing cellular systems.

Some PCS services are being offered today by cellular, SMR and paging companies. Cellular will evolve into PCS as digital cellular technologies are deployed. Eventually existing cellular systems will offer fully competitive PCS services. This week, GTE announced it will start offering a service, similar in a number of respects to PCS, in its cellular systems across the country. Digital cellular phones are being manufactured today that are quite similar to PCS phones being sold in Europe. Cellular is not being excluded from PCS. At the moment it is the largest industry in the business.

After 10 years of cellular service, cellular service rates remain high. While cellular equipment prices have dropped significantly, cellular service rates have not changed much. Usage has come down, sometimes creating the illusion that rates are coming down. Peak airtime rates and roaming rates are still very high. PCS will bring new competitors into the wireless telephone arena, spurring growth, lowering prices and invigorating the business with new energy and new ideas.

If the market for wireless is 30 per cent of the population in ten years, or about five times the present market, as most forecasters believe - and we believe the market will be at least that large - the market could easily support five or six healthy competitors. We believe that, as a small company, we can successfully compete against the established cellular companies and other PCS entrants. And we expect to compete across the board as a full-service PCS provider. We expect there will be a number of "designated entities" that will be successful as major players in PCS.

Our vision of PCS is ambitious. We will need a substantial amount of capital investment and debt to achieve our goals. We believe that money is available. However, under the current proposal, it is more difficult for a new entrant in PCS to raise money than it would be if the rules were slightly modified.

Should the FCC Delay PCS "to get it right?"

This question was asked of panelists at the hearing and a strong majority said "no" quite emphatically. We agree, also emphatically. Those who said "yes" have a strong interest in delaying PCS, by whatever tactic. The Commission has done an admirable job of trying to balance the many different interests in PCS. But the truth is that there is no one way the Commission could "get it right." The various interests are so much in conflict that there is no practical way to resolve all the conflicts. The Commission will be criticized by some, perhaps by many, for specifics of its final order but there is little the Commission can do to avoid this. The Commission has taken a leadership role in bringing PCS to the United States and real leadership always receives criticism. Only those who stand for nothing and do nothing are likely to avoid controversy.

Should the Commission make any changes in the proposed order?

The Commission should make no changes in its proposal for PCS that would require another comment and reply round and delay the auction. The major provisions of the proposed order should be adopted, particularly the set-aside for designated entities.

Designated Entities - The Commission is creating a business opportunity that will spur the economy. The spectrum set-aside for designated entities in wideband PCS must be adopted.

More economic growth will result from the emergence of successful new entrants and designated entities in PCS than if PCS were developed entirely by the existing communications companies.

New entrants and designated entities will have to hire more people and will have to spend more money on equipment than existing communications companies. They have no existing plant or people to leverage. Tens of thousands of new jobs will be created and billions of dollars will be spent on equipment, construction, software, office space, advertising, promotion and community service. New entrants into PCS will bring energy and imagination to the business, and even more important, much more competition than currently exists.

Small businesses, rural telephone companies, minority and women-owned businesses, essentially shut out of our wireless communications business, will have an opportunity to enter the business and the nation will benefit.

In creating this business opportunity, the FCC is not guaranteeing any company's success. Designated entities will have to prove themselves in the marketplace. If they prove themselves it will not be because they are designated entities, even though they started with some help. It will be because they have brought to the business a competitive zeal, great energy, intelligence and hard work. And the public will be better served as a result.

The spectrum set-aside must be adopted as it is the primary vehicle providing the access to the wireless business by designated entities.

A specific spectrum bloc, uniform across the country, is of absolutely paramount importance to the designated entities. They must be able to link their systems together to support roaming and inter-system call delivery if they are to compete successfully against the established wireless communications carriers. They can only do this practically through utilization of the same spectrum. We urge the Commission not to adopt an approach in wide-band PCS similar to what has been adopted in narrow-band PCS where there is not an identifiable set-aside for designated entities. It was a reasonable approach for narrow-band PCS because of the number of channels. But in PCS there are likely to only be three major PCS carriers in each market. If there is not a spectrum set-aside for

designated entities, it is quite likely that, in most markets, all three of those carriers will be large companies. The opportunity the Commission intends to create would be lost.

The frequency bloc set aside for designated entities should have the same amount of spectrum as the other two in the lower band. All three blocs should be 30 MHz, not 20 MHz.

What possible justification is there for allocating less spectrum to designated entities than to their direct competitors? It is unfair and saddles small companies, already facing tough obstacles, with an even greater competitive burden.

The costs of building PCS networks, assuming the use of the same technology, are exactly the same whether the spectrum bloc is 30 MHz or 20 MHz. But the larger companies get 50% more capacity for their investment.

The cost of relocating existing users is comparable regardless of frequency block. But the larger operators may find it possible to get into business in some markets sooner than can the designated entities because 30 MHz may provide enough spectrum to work around existing users who do not agree to move, or cannot be quickly moved out of the spectrum. It has been well-documented that in some markets holders of 20 MHz licenses may not be able to start service until all existing users are moved. Again, the designated entities are placed at a competitive disadvantage.

There is social and economic policy behind the proposal to set aside spectrum for designated entities. Congress expressed this intent very strongly and the Commission has consistently supported and advanced the concept. But what social, economic, political or regulatory purpose is served by placing designated entities at a competitive disadvantage from the beginning? Without any regulatory obstacles in their way, they still will face very tough challenges.

It might be argued that it would not be fair to give designated entities the same spectrum as the MTA license holders because of the special advantages the Commission has proposed to give to designated entities, such as paying auction fees over the term of the license. Designated entities face other obstacles that more than offset whatever advantage the Commission provides in its designated entity rules. Large companies, particularly large communications companies, already have economic and technical scale. They can leverage existing assets and people. Their cost of capital will be substantially less. Many large companies will be able to buy PCS licenses and build their systems from their internal cash flow.

Designated entities are going to have raise the capital to buy licenses and build their systems. Much of this capital is going to be debt. While some equity will be available to designated entities, few investors are going to totally fund the substantial capital needs of a designated entity and remain minority shareholders. Thus, the most likely scenario for designated entities is that they will raise enough equity to make their

deposits and down payments on their licenses and borrow what they need to build and operate.

Reduce by 10 MHz the amount of spectrum proposed for unlicensed use, particularly for "nomadic" devices, or shift 10 MHz of unlicensed spectrum from the lower PCS frequency block to the higher block.

The transmission range of "nomadic" devices is said to be only a couple of hundred meters, at most. These devices will be communicating directly with one another. The demand for so much spectrum for these devices is illogical. It is highly unlikely that there will ever be so many nomadic devices within a couple of hundred meters of one another so that 20 MHz of spectrum would be required to support them. In a classroom environment, one of the most likely places where many devices may be used in close proximity, the provision of a low-power in-building system would be much more efficient and would provide far superior communications capability. Up to 30 MHz of transmission capacity would be available for applications such as this, more than enough to support any need.

Why should twice as much spectrum be allocated for unlicensed use than the Commission has proposed to auction to designated entities who then must spend additional billions of dollars to build their PCS systems. Licensed operators will be under far greater scrutiny and their systems will be required to perform at far higher levels of quality - free of interference - than the users of the unlicensed bloc.

In addition, the three major PCS licensed systems, as well as independent service providers using the licensed spectrum, also will be offering services to "nomadic" devices. The total PCS spectrum block will be available for the use of these devices, under a wide variety of circumstances.

There is also a measurable significant demand for licensed PCS. The demand for the use of spectrum by "nomadic" devices is highly speculative. The demand for a massive amount of unlicensed spectrum is not consistent with technological progress and the public interest. A reduction of 10 MHz in this allocation cannot possibly have any significant negative effect on this segment of the industry. But it would allow the Commission to fix a significant inequality in its proposal.

Suggestions for some minor modifications to assist designated entities:

(1) Designated entities should be permitted to form alliances to bid for clusters of BTAs and then operate the cluster as a unified entity, should they so choose. For example, several designated entities could work together in an MTA, each bidding for at least one of the BTAs, but then joining forces to provide service on an MTA-wide basis.

(2) A designated entity should be able to sell a minority (49.9%) of its shares in its parent company as well as a minority (49.9%) of shares in subsidiaries it controls and should be able to hold licenses in its subsidiaries. This structure was employed in cellular and it facilitates the raising of capital without compromising control.

(3) Designated entities must be able to pledge their assets, including their licenses, to obtain financing and the Commission must allow distress transfers of control in the event of genuine defaults in arms-length transactions.

(4) In other than a foreclosure case, a designated entity should not be able to transfer control of a license to any company, other than another designated entity, until it has met the Commission's five year build out requirement and has held the license for at least three years.

Comments on general PCS issues:

(1) The Commission should reject the proposal for six licenses of 20 MHz by BTA. This proposal, if adopted, would lead to serious delays in the deployment of PCS, greatly increase its ultimate cost and substantially reduce its chances for success.

Such a move would create confusion, require more time and more money after the auction for license aggregation, and serve no public interest. No reasonable person can possibly believe that six PCS networks are going to be built in addition to the two cellular and the ESMR systems. The market probably can support three fully independent PCS competitors.

This proposal, if adopted, would be grossly unfair to designated entities unless two of the 20 MHz blocs in the lower PCS bloc were allocated for designated entities and if designated entities were allowed to buy both allocations in each market. The end result would be two 40 MHz license holders in the lower bloc, one of which would be a designated entity, and one 40 MHz license in the upper bloc. We could support that. But if that were to be the end result, why not allocate the spectrum that way from the beginning? The fact is, the FCC's current proposal is better, assuming that the designated entity bloc spectrum is increased to 30 MHz.

(2) The Commission either should keep the present MTA/BTA split as proposed in the lower bloc or should auction all licenses by BTA.

If time permitted - but it doesn't - the Commission might be able to devise better license boundaries than MTAs and BTAs. MSAs/RSAs are no better. Some MTAs are far too large and many BTAs are too small. More than 100 BTAs have less than 100,000 people. Markets that small cannot possibly support stand-alone PCS companies. In

many areas of the country, viable PCS markets can be achieved only through the aggregation of these small BTAs into clusters.

The current proposal is inequitable. The big companies that buy the MTAs may have a competitive advantage over the designated entities holding BTA licenses. Ideally, all three license areas should be the same size. However, we do not believe that all licenses should be MTAs. That would have the effect of significantly reducing the opportunities for new entrants. Thus, if any change in license size were made it should be to eliminate the MTAs. However, by permitting designated entities to work together on an MTA basis, as suggested above, the potential competitive advantage of an MTA could be mitigated.

(3) The rules should permit all PCS competitors in rural areas and small cities (less than 100,000) to combine their spectrum and build and share one common PCS infrastructure.

They would each operate as resellers, sharing the cost of the infrastructure on an equal basis. Such a rule modification probably would significantly improve the prospects for PCS service in rural America.

(4) The PCS rules should allow - even encourage - PCS operators to subcontract the construction and operation of portions (but not a majority) of each of their license areas.

Such subcontracts to "sub licensees" would be subject to all FCC rules and the PCS-license holder would still be held responsible for adherence to all rules and standards. If adopted, this proposal would facilitate rapid construction of PCS systems to provide as ubiquitous coverage as possible. It would permit campuses, government complexes, military bases, office parks, shopping centers, large private and public landholders and small entrepreneurs an opportunity to provide PCS service (with perhaps some customized features for their target population) within relatively small areas but areas too large to serve with unlicensed spectrum. Such systems would be fully compatible with, and interconnected to, the system operated by the license holders and users could pass seamlessly from one to the other. This proposal may be of special importance to designated entities by somewhat lowering their capital requirements.

We believe this proposal could also facilitate the localized niche services developed and offered by entrepreneurs.

(5) PCS operators should be required to make a certain portion of their spectrum available to resellers.

Up to 20% of the spectrum should be made available, on a cost plus reasonable profit basis, to resellers and capacity should be made available on both a system-wide basis and in smaller geographic segments.

We propose this with the following conditions: that the spectrum has been fully cleared of existing users and that the license grant is at least 30 MHz.

As it would not be practical for computer software developers to have to build their own computers, it should not be necessary for every entrepreneurial developer of PCS services to have to build a PCS infrastructure. If properly structured, a reseller arrangement could be of enormous benefit both to the PCS license holder as well as to small PCS entrepreneurs.

Conclusion

We urge the Commission to adopt its proposal for a set-aside for designated entities as being firmly in the public interest because the set-aside will increase access to communications, spur economic growth and it will result in more cost-effective wireless service. However, we ask the Commission to increase the amount of spectrum set aside to 30 MHz. We urge the Commission to avoid forcing designated entities into an artificially disadvantaged position by having to spend as much to build their systems as large companies while having less spectrum. We suggest that the additional 10 MHz for designated entities be obtained by reducing the grant for unlicensed use to 30 MHz but allocating one of the 10 MHz blocs in the upper band to unlicensed use.

We urge the Commission to reject the proposal for six licenses of 20 MHz as being against the public interest because of the negative impact it would have on PCS.

The Commission has had proposals for PCS before it since 1989. The Commission has carried out an exhaustive examination of all of the major issues associated with PCS. By any estimation the Commission has created a very substantial record on which it can issue a final order.

Now it is time to issue that final order and to move as quickly as possible to the auctions. We believe that auctions must be conducted in the fall of this year. It will be very damaging to PCS if they are delayed into 1995.

The Commission must proceed even though there are many parties to this proceeding who are not satisfied. The issues are far too complex, and the competition among parties is far too intense, for the Commission to devise a solution to PCS that will satisfy everyone. But it should be clear that everyone who really wants PCS to be developed agrees that further delays cannot be tolerated, even if the final order is not entirely to one's satisfaction.

Our suggestions for minor modifications in the proposed rules for PCS are made in the belief that they could be adopted without another pleading cycle, or without causing any delay. Any that could not be so adopted should be rejected.