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May 9, 1994

VIA MESSENGER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20555

Re: Opposition to Cablevision's Objection to Processing Broadband PCS Applications Gen. Docket No. 90-314, ET Docket No. 93-266

Dear Mr. Caton:

The April 18 letter filed by Cablevision Systems Corporation ("Cablevision") demonstrates precisely why the applications of pioneer preference awardees should be placed on public notice as soon as possible. American Personal Communications ("APC") opposes Cablevision's request that the Commission defer the acceptance of the pioneers' applications for initial PCS authorization. The Commission should deny or dismiss Cablevision's request and expeditiously place on public notice the applications of APC and the other pioneers.

The impetus for Cablevision's letter is a letter filed by the Bell Atlantic Companies ("Bell Atlantic") raising frivolous arguments as to why the Commission should not accept PCS applications at this time in an attempt to delay further implementation of PCS. As APC pointed out in its response to Bell Atlantic's letter, the Commission's rules do not authorize pleadings to object to an application being accepted for filing. Rather, the Commission's rules provide for a 30-day petition-to-deny period after it has accepted the application and put it out on public notice. APC predicted that if Bell Atlantic were successful in delaying acceptance of APC's application, other parties would try to mimic Bell Atlantic's tactics in an attempt to gain at least two bites

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at every apple by "objecting" to the acceptance of competitors' applications and later petitioning to deny them.[1/]

It has not taken long for APC's predictions to come to pass. Like Bell Atlantic, Cablevision blatantly disregards the Commission's established procedure for objecting to applications and submits a self-styled "response" to Bell Atlantic's letter and the objections to that letter filed by APC and Cox Enterprises, Inc. ("Cox"). Not surprisingly, Cablevision makes no attempt to justify its submission within the Commission's rules, despite the fact that APC specifically identified that Bell Atlantic's letter was riddled with procedural defects. Moreover, Cablevision's only "response" to Bell Atlantic's letter and the objections of APC and Cox is that Cablevision "generally agrees with Bell Atlantic" that the Commission should not accept PCS applications at this time. It is patently clear that the real purpose of Cablevision's "response" is to get its two bites at the apple.

Cablevision attacks the applications of APC and Cox -- prior to their being made available to the public and put out on public notice by the Commission -- on the grounds that the applications do not adequately demonstrate that they will utilize the technology for which they earned a preference, as required by the Commission's Third Report and Order.[2/] Aside from the fact that the assertion is factually wrong,[3/] this is precisely the type of issue that should be addressed following public notice of the application, which provides a full and fair opportunity to all interested parties to express their views. It is inefficient and unsound for the merits of APC's application to be decided based on such ad hoc submissions of those entities who have obtained a copy of the application prior to public notice. Moreover, the fact that APC's application has apparently been shared by a few opponents of PCS pioneers who have similar axes to

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1/ In this case, since the pioneer's qualifications having already been subject to 10 rounds of pleadings, it is more like 12 bites at the apple.

2/ Amendment of the Commission's Rules to Establish New Personal Communication Services, Third Report and Order, FCC No. 93-550 ¶ 8 (Rel. Feb. 3, 1994).

3/ APC's applicaiton in fact demonstrated that APC will use its FAST (now PATHGUARD®) technology as a critical building block for its proposed Washington/Baltimore systems.

grind[4] further demonstrates the need for it to be placed on public notice, and thereby made available to all interested parties and the public. We submit that the FCC should, separately, investigate how Bell Atlantic and Cablevision obtained a copy of APC's and Cox's applications when they have not yet been made public.

In an effort to justify raising its objections to APC's application at this premature juncture, Cablevision attempts to tie its criticisms to the Commission's February 25 Public Notice. Cablevision contends that the Public Notice is "fatally defective" because it did not explicitly instruct the pioneer preference selectees to show that they will utilize the technology for which their preference was awarded. But, there was no need for the Commission to reiterate a requirement that was already a matter of public record. The Commissioner's grant of the pioneer preferences clearly set out this requirement. The absence of this directive in the Public Notice certainly does not warrant further delay in processing these applications. Quite to the contrary, Cablevision's eagerness to pursue this line of attack demonstrates only that the Commission should place the applications on public notice to permit all parties to comment on that issue.

Finally, as part of its concurrence with Bell Atlantic's letter, Cablevision argues without providing legal support that the Commission should not process PCS applications until it completes reconsideration of the underlying PCS rules. As the Commission's rules plainly state, the filing of a petition for reconsideration does not stay or postpone the effective date of Commission rules. 47 C.F.R. § 1.429(k). Rather, the effective date of a rule is stayed only upon specific action by the Commission (see 47 C.F.R. § 1.429(k)), which has not occurred with respect to the Commission's underlying PCS rules. Bell Atlantic and Cablevision both failed to seek a stay of the rules, before the FCC or in court, and therefore this argument is merely a camouflage for its failure to seek a stay. Accordingly, as the underlying PCS rules are in effect -- albeit under reconsideration -- the Commission should not postpone placing on public notice and processing the PCS applications.[5]

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[4] Bell Atlantic, Cablevision and Pacific Bell -- all disappointed pioneer preference applicants -- have embarked on a campaign to discredit and injure the pioneers and to prevent or delay implementation of PCS in their respective service areas. This campaign has included efforts to influence improperly the FCC in its decision to grant the pioneer preferences and abuse of FCC procedures to delay the inauguration of new PCS services.

[5] Moreover, the Commission recognized in its February 25 Public Notice that the finalization of PCS processing rules in PP Docket No. 93-253 may require that the

(continued...)

* * *

The Commission should reject Cablevision's premature challenge to APC's application. APC further requests that the Commission place its application on public notice as expeditiously as possible to move the industry ahead and permit any similar challenges to be made properly rather than prematurely.

Respectfully submitted,

Jonathan D. Blake
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Attorneys for American Personal Communications

cc: Charles D. Ferris, Esq.
James A. Kirkland, Esq.
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Parties in Gen. Docket 90-314
and ET Docket 93-266

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[5](...continued)
pioneer preference selectees amend their applications. To the extent that any new rules would require major amendments to the applications, opposing parties undoubtedly could supplement their petitions. To delay processing the applications -- and ultimately implementation of PCS -- based on such speculation is directly contrary to the public interest.