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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

June 2, 1994

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20054

Re: Personal Communications Services
Gen. Docket 90-314, PP Docket 93-253

Dear Chairman Hundt:

APC has been asked to comment on various changes being considered by the Commission with respect to the PCS rulemaking proceeding. We understand the core package to consist of three 30 MHz and three 10 MHz broadband PCS licenses in the 1850-1990 MHz band, with at least two 30 MHz licenses being for MTAs and one 30 MHz license being for designated entities on either a set-aside or preference basis. Two of the 10 MHz licenses would be available for in-region cellular companies to bid on. Other allocation proposals for unlicensed PCS and MSS are also proposed.

The FCC's PCS Task Force has worked hard and effectively to resolve the difficult trade-off issues presented by the reconsideration process. With one exception,[1/] APC supports the basic plan outlined above, but only if the FCC resists the special pleading of some in the cellular industry to add loopholes that could seriously undercut the pro-competitive, pro-consumer goals that the Task

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[1/] The one major exception is the possibility that Block C licenses for designated entities would be carved up into BTAs. Just as, in good conscience, we could not support 20 MHz licenses for designated entities because of grave concerns about their economic viability, we cannot support BTAs for them either. Although it is true that in a few instances BTAs might be economically sound on a stand-alone basis, generally they could not compete effectively with cellular, ESMR and PCS service areas of broader reach. That fact has been demonstrated by the history of cellular, where repeatedly broader service reach has proved to be a great competitive advantage. If the Commission is concerned about the financial ability of designated entities to provide MTA-wide service, their bidding credits could be increased and build-out requirements could be relaxed. But they should not be constrained to a single BTA when competitive realities dictate broader coverage.

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Force has sought to achieve with the above proposal. For example, the core package would put all broadband PCS in the same frequency range, thereby simplifying handset design and lowering costs. It also would permit effective 40 MHz aggregations by independent PCS providers, resulting in lower costs and earlier market entry through more effective sharing with microwave users. It also will significantly lower costs for cellular carriers providing 2 GHz PCS, which will be able to obtain 35 MHz of spectrum.

The proposed loopholes are, to our knowledge, not available in a single written document (in some cases, in fact, their proponents have not filed them publicly at all), and it thus is difficult to comment on their purpose and detail. We don't even know the extent they are being considered seriously by the Commission. But we believe we have sufficient understanding about these add-ons to the basic package to know that they could be used by entrenched cellular operators to distort the auction process and stifle new competition. Indeed, they appear to be intended to appease the lobbying might of the cellular and wireline incumbents who have long sought to hobble new PCS competitors.

The integrity of this generally well-thought-out licensing scheme can be assured only if in-region cellular operators are not permitted to bid on 30 MHz PCS licenses. Specifically, we oppose proposals to permit in-region cellular incumbents to bid for 30 MHz licenses with a promise to divest their cellular licenses or to permit them to corrupt the auction by arrangements to disaggregate 30 MHz PCS licenses. Under these proposals, in-region cellular companies could, and would have strong incentives to, game the auction process in order to prevent any strong competitor from emerging; they could bid preemptively and at premium levels to achieve this goal, whether or not they ultimately win at auction or even intend to win; and knowing this, Wall Street would decline to finance the bids or the construction and operation of vigorous new independent PCS providers. Similarly, the integrity of the licensing structure should not be compromised through permitting disaggregation of 10 MHz licenses. We believe that if this scenario is permitted to play itself out, the FCC would have missed the opportunity to create a robust industry to compete with wireless and wireline companies; generated low auction revenues; and dashed the hopes and aspirations of new PCS entrants. The public policy goals of the Commission and Congress would have been frustrated.

Nor should the FCC adopt a scheme that would allow a single in-region cellular company to hold 25 MHz of unencumbered cellular spectrum, 10 MHz of PCS spectrum, and 20 percent or more of a designated entity that holds 30 MHz of PCS spectrum. Against the recommendations of the Justice Department and NTIA and the virtually uniform experience in other countries around the world, the basic proposed spectrum plan described above has made exceptionally generous concessions to the CTIA steamroller by permitting in-region cellular incumbents to obtain 2 GHz spectrum. But the various loopholes being proposed would convert generosity into profligacy -- with dire and unintended (at least by the Commission) public interest consequences.

In short, we support the basic proposal, with the one major exception noted above, but not if it is combined with loopholes sought by the entrenched cellular industry.

Respectfully submitted,

E. Y. Snowden
President

cc: The Hon. James H. Quello
The Hon. Andrew C. Barrett
The Hon. Rachelle B. Chong
The Hon. Susan P. Ness
Attached List
Docket Files (prior to 2:00 p.m.)

cc: Karen Brinkmann, Esq.
Byron F. Marchant, Esq.
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