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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 31, 1994

The Honorable James H. Quello, Commissioner
The Honorable Andrew C. Barrett, Commissioner
The Honorable Susan P. Ness, Commissioner
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20054

Re: *Personal Communications Services*
Gen. Docket 90-314, PP Docket 93-253, ET Docket 93-266

Dear Commissioners:

On June 9, 1994, the Commission will finalize its broadband PCS rules, in what may be its most momentous decision of the decade. Certainly, the Commission has not lacked for advice. But when the last frequency measurement has been analyzed and the last demand study has been evaluated, the public policy considerations which should guide the Commission's rulemaking decision will stand out as beacons. These policies will clearly mark the outlines of appropriate regulatory paths, although none should gainsay the difficulty or importance of the fine-tuning in which the Commission is now engaged.

I.

A *first* policy goal is to inject needed, healthy competition into a duopolistic cellular marketplace and a monopolistic landline marketplace — the first immediately, the second a little later. For PCS to accomplish the bright promise it holds for our economy and for American consumers, it must be structured to be competitive from the very outset with the entrenched cellular companies against which it will compete in the marketplace.

A *second* public policy goal must be to promote a consumer-friendly service — affordable, providing nationwide coverage, using lightweight and convenient subscriber equipment, spectrum-efficient, supporting a family of effective and viable PCS services, and laying the groundwork for vibrant growth in data and voice services in the future.

A *third* policy goal should be the not unimportant by-products of the above — an industry that generates good quality jobs, that contributes dazzling productivity enhancements to our economy, that enhances the quality of life of Everyman and Everywoman, that spawns a vital American export opportunity for PCS-related equipment and services and that provides a vital link on the national and global information superhighways.

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II.

Size of License Blocks. The foregoing policy goals virtually compel 30 MHz allocations. This is because of the microwave incumbency problem — entailing 20,000 microwave operations, not all of which will ever be moved and whose partial relocation must, for logistical reasons, take several years — and because of the need for at least 30 MHz licenses to make possible PCS's broader potential, including telco competition. No technical study worthy of the name has shown that spectrum blocks of less than 30 MHz can provide a base for effective PCS services. Those who, without documentation, argue otherwise have a most obvious stake in holding PCS back — to protect their entrenched, government-conferred bottleneck positions. If they have their way, PCS will be a 98-pound weakling (if it grows to maturity at all), unable to play the robust, dynamic role that is necessary if PCS is to aspire to the goals described above.

License Areas. The geographic areas of broadband PCS licenses should be MTAs (which stand for "major trading areas," as delineated by Rand McNally). MTAs define and reflect the real economic regions of our country; they are consistent (in some cases smaller, in some cases larger) with existing cellular and ESMR aggregations. Only by use of MTA licensing will more sparsely populated areas reap the benefits of PCS because PCS services in those areas can then work off of, and be most effectively integrated with, the capital-intensive equipment and service base of the more densely populated core areas. Balkanized licensing areas will make rural service more costly, lower in quality, and slower to emerge. This is what the entrenched rivals of future PCS services want, and so they peddle the theory of aggregating smaller service areas — a process that required 10 years for cellular, delayed service to the public, made it more costly, and was tolerable only because of the absence of entrenched competitors, a luxury PCS will not enjoy.

Cellular Eligibility. APC has been more moderate than other prospective independent PCS providers on this issue — in part because it saw that the issue was holding up the inauguration of wonderful new PCS services and that time is of the essence for PCS. Within the context of in-region cellular providers being prohibited from obtaining any PCS license on their own, APC proposed that they might own up to 20 percent of other PCS bidders and be wholly free to bid out-of-region. APC also did not oppose PCS entry by telephone companies despite their awesome financial resources. Now that it appears that the Commission may permit in-region cellular operators to bid for 10 MHz blocks even in the desirable 1850-1990 MHz band, APC is very dubious that they should be allowed also to hold as much as 20 percent of another PCS operator with

a 30 MHz license and believes that the Commission's current rule is appropriate. After all, cellular operators already have 25 MHz of prime spectrum wholly unencumbered by any microwave sharing burdens.

For the same reason, the package of rather cynical proposals being urged by some in the cellular industry — including permitting "disaggregation" of portions of PCS or cellular licenses, raising the cellular spectrum cap to 40 MHz, permitting post-auction divestiture, increasing cellular eligibility in the designated entity band, and imposing a five-year "sunset" on all cross-ownership restrictions — must be rejected, as we stated in detail in our May 27 letter. Just because some cellular entities have lobbied hard for a preferred position does not mean that it would be in the public interest.

Participation of Designated Entities. We support meaningful opportunities for designated-entity participation in PCS. We have devoted a full measure of our abilities and energies to this issue. Designated entities should not receive second-class PCS licenses, which 20 MHz BTA licenses would be. They should have access to competitive MTA licenses, as an increasing number of designated entities have begun to recognize. They should also be in the lower (1850-1990 MHz) band. We also emphasize our original proposal that in addition to other special treatment they may receive, designated entity licensees should be subject to more relaxed build-out requirements. As a prospective PCS operator, we look forward to the day when we can work with designated entities to help bring the best possible PCS services to the American people.

Delay. The chief executive officer of AirTouch, the Pacific Telesis cellular spin-off, recently stated: "PCS will never overshadow cellular because of the 12-year head-start cellular has on PCS. . . . The delay in auctions works in cellular operators' favor. As long as we can keep the current market structure, we benefit." Delay is the enemy of innovation, new services, new competition. We know it; they know it; you know it. That's why we are grateful that, after all their efforts to erect roadblocks in your way, you are poised to finalize the PCS rules and hold the auctions. We urge you not to waver.

* * *

There is one last aspect of PCS that I would like to address, and that has been, I am convinced, integral, even indispensable, to its development. That is, the Commission's pioneer preference policy. (Because of their recusal on this issue, Chairman Hundt and Commissioner Chong are being given a copy of this letter without

the following paragraphs. Because this is a written submission that is being served on all parties, this is not an *ex parte* presentation.)

For four and a half years I have had a personal vision of PCS for this country that I have done everything in my power to realize. I have assembled the finest technical/developmental minds I could collect; I have uprooted families and driven my team to its limits; my team has responded to nearly impossible demands from the Commission's staff for technical data; I have licensed our patent-pending technologies at far-below-market prices — all to the end of a PCS industry, in whose success our employee-owned company, I hope, will share, but also whose contribution to the national welfare, I believe, will be great and all in reliance on the promise of the pioneer preferences repeatedly held out to us by the Commission.

The PCS rules you are about to adopt importantly reflect the technical genius, allocations ingenuity and committed vision that my group has brought to PCS. I am convinced that PCS services will be bigger and better, more convenient and affordable, faster to market and more universal because of our contribution -- not by a small margin, but by a large measure. With utmost conviction, I know, too, that we have played by the rules.

Nonetheless, we have endured attacks (ten or more rounds) by those who did less but who themselves sought preferences and who at the same time courted us as partners. Neither their tactics nor their motives have been honorable. At another time and in another place, perhaps under the rubric of reinventing government, I personally hope that the Commission will put teeth into its now-ignored policies against frivolous and abusive pleadings, for they put a damaging and costly brake on innovation and new competition. But for now, we urge only that you let us participate — fully, fairly, expeditiously and in recognition of our contributions — in the service we have fought so hard to launch.

Respectfully submitted,

Wayne N. Schelle
Chairman