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Building The
Wireless Future™

CTIA

Cellular
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June 22, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: *Ex Parte* Presentation
PP Docket No. 93-253

Dear Mr. Caton:

On June 22, 1994, a copy of the attached letter from Mr. Michael E. Kalogris, President and CEO of Horizon Cellular Telephone Company, was delivered to Chairman Reed E. Hundt.

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, an original and one copy of this letter and attachment are being filed with your office.

If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Andrea D. Williams
Staff Counsel

Attachment

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Horizon Cellular Group

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610.667.9800
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June 21, 1994

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JUN 22 1994

Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Competitive Bidding for Broadband Personal
Communications Services, PP Docket No. 93-253

Dear Chairman Hundt:

On June 29, you and your colleagues will take the very important step of adopting rules to govern competitive bidding for broadband PCS licenses. On behalf of the 100 small cellular companies within the membership of the Cellular Telecommunications Industry Association ("Small Operators Caucus" or "the Caucus"),¹ I urge you to consider the following views regarding the treatment of small businesses within that context.

As you know, the Omnibus Budget Reconciliation Act of 1993 (OBRA) directs the Commission to *inter alia*, "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures . . ."² The statute does not instruct the Commission to establish special preferences among the named groups (or "designated entities"). The Small Operators Caucus believes that reason, and the desire to issue broadband PCS licenses as quickly as possible, should impel the Commission to craft procedures that will not tilt the playing field so far in favor of one or two of the designated groups that the Congressionally mandated opportunities for another group become a nullity.

That is not to say that the Caucus opposes the grant of any particular device to any particular designated entity. In fact, in recent meetings with FCC staff, I and others representing the Caucus have conceded that a differential in preferences among the various designated entities could be justified. Until late last week, the Caucus was encouraged that the Commission was moving quickly and correctly to create a system of preferences for "entrepreneurs" (designated entities, further defined in terms of annual revenues) which, although they would make distinctions among them, would be balanced and effective.

¹CTIA's Small Operators Caucus is made up of small cellular carriers which individually serve NSAs and RSAs containing collective populations of less than 3 million. The Caucus comprises the overwhelming majority of CTIA's total of 120 U.S. cellular carrier members.

²47 U.S.C. Section 309(j)(4)(D).

It now appears that the Commission is being called upon to create specific advantages for particular designated entities which could greatly reduce the opportunities of other designated entities. We strongly urge the Commission to develop a plan which will move the spectrum into the hands of designated entities as quickly as possible. Any plan which overly favors on type of entity over another only invites the kind of challenges which will slow down significantly the distribution of new spectrum.

The Small Operators Caucus is concerned that the FCC staff may recommend policies, illustrated by the table below, which, if adopted by the Commission, will significantly disadvantage small businesses in four ways:

CATEGORY	SMALL BUSINESS	WOMEN & MINORITY SMALL BUSINESS (less than \$40 mil.)
Installment Payment	2 years interest only	1 year free 4 years interest only
Non-Entrepreneurial Investment	15%	49.9%
Tax Certificate	No	Yes
Bidding Credit	10%	25%

The cumulative effect of such disadvantages could exceed the equivalent of a 25% bidding differential and will squeeze small businesses out of the bidding for the spectrum set aside for entrepreneurs.³

The Small Operators Caucus believes that the disproportionate preferences being considered will not withstand review. They can be markedly improved, however, by two simple changes:

- ▶ Give small businesses the same installment payment terms made available to businesses owned by women and minorities; and
- ▶ Limit the differential in bidding credits between these groups to 10%.

If the Commission determines to create a de facto set-aside through the use of a revenue cap, The Small Operators Caucus submits that a cap of \$125 million is more in line with the realities of telecommunications economics. Simply put, in the telecommunications world, \$125 million in annual revenues represents a small enterprise.

³The difference in installment payment plans has been estimated, very conservatively, to be equivalent to a 10% bidding credit. Adding that to the 15% differential in actual bidding credits results in an overall differential of 25%. The Small Operators Caucus believes that a more realistic estimate of the effect of the two installment payment scenarios would result in an effective bidding credit differential well above 25%, perhaps approaching 50%.

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The Small Operators Caucus believes that its recommendations will create an environment that will provide small businesses realistic opportunities to compete in the broadband auctions while also providing companies owned by women and minorities with a significant edge given their 10% bidding credit differential and their likely receipt of tax certificates.

These concerns must be factored into your deliberations prior to the Open Meeting on June 29. Do not unreasonably delay the issuance of licenses by inviting court challenge of your decision, particularly in a context where a stay of your decision (and the broadband PCS auctions) is a greater likelihood. A balanced approach to auction preferences is the best for all involved.

Sincerely yours,



Michael E. Kalogris
President & CEO, Horizon Cellular Group
and
Chairman, Public Policy Committee,
CTIA Small Operators Caucus

/ccm

Attachment

cc: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness