

are either irrelevant to PCS operation, obsolete,<sup>42/</sup> or inconsistent with the adopted PCS Rules.

Given the one-sentence description of the PCS proposal in the NPRM, it is impossible (absent an amazing act of regulatory mind-reading) to discern what the Commission proposes for PCS regulation. Paragraphs 54 and 55 of the Third R&O attempted to respond to AIDE's arguments, but in fact tacitly conceded AIDE's point.

First, Paragraph 54 appears to suggest that the NPRM identified the "appropriate modifications for PCS services" which it proposed for the Part 22 rules. It did not. The bulk of the NPRM, e.g., all except paragraph 128, was concerned with auction issues. These issues are virtually unrelated to the important topics addressed in the existing rules which the Commission "proposed" for PCS with unspecified "appropriate changes."

Second, the insufficiency of the Commission's notice as to procedural issues is confirmed by the virtual lack of comment on the processing rules which the Commission now characterizes as "essential" to implement narrowband PCS auctions. Only one (1) party out of two-hundred-twenty-two (122) commenting parties -- MCI -- commented on the Commission's "proposed" PCS procedural rules, and MCI's discussion on this topic was limited to slightly over one (1) typed page.<sup>43/</sup> This paucity of comment should be

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<sup>42/</sup> The cited Sections 22.944 and 22.945 have been deleted from the Commission's Rules.

<sup>43/</sup> See Comments of MCI Telecommunications Corporation at 18-19.

compared with the detailed proposals, extensive comments, and exhaustive discussions of those comments in other recently proposed and final land-mobile rules.<sup>44/</sup> Each of those proceedings illustrates the amount of notice required for the proposal and adoption of PCS procedural rules. In other words, the Commission's failure to give adequate notice of its intentions for PCS procedural rules yielded a silent record here.

Finally, the Third R&O failed to resolve the "procedural, processing, and petition to deny" issues which the Commission asserts were raised by the NPRM. This can be seen by comparing the various rules mentioned in paragraph 128 of the NPRM with their apparent disposition in the Third R&O.

Specifically, the NPRM identified forty-seven (47) Part 22 rules by section number as possible candidates for PCS procedural rules. Of those, it apparently adopted only twenty-four (24) rules (Sections 22.3-22.15, 22.19-22.32, 22.39, 22.43-22.44,

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<sup>44/</sup> See, e.g., Personal Communications Services, 8 FCC Rcd 7700 (1993) (GEN Dkt. No. 90-314) (73 parties produced 61-page decision); NPRM, supra (63-page proposal for auction rules); Regulatory Treatment of Mobile Services, 8 FCC Rcd 7988 (1993) (Notice of Proposed Rulemaking) (GN Dkt. No. 93-252) (32-page proposal); Replacement of Part 90, 7 FCC Rcd 8105 (1992) (Notice of Proposed Rulemaking) (PR Dkt. No. 92-235) (419-page proposal); Personal Communications Services, 7 FCC Rcd 5676 (1992) (Notice of Proposed Rulemaking) (GEN Dkt. No. 90-314) (97-page proposal); Revision of Part 22, 7 FCC Rcd 3658 (1992) (Notice of Proposed Rulemaking) (CC Dkt. No. 92-115) (98-page proposal); Cellular Unserved Areas, 6 FCC Rcd 6185 (1991) (First Report and Order and Memorandum Opinion and Order on Reconsideration) (CC Dkt. No. 90-6) (35 commenting parties produced an 87-page decision); 220-222 MHz Band, 6 FCC Rcd 2356 (1991) (Report and Order) (PR Dkt. No. 89-522) (69 commenting parties produced a 35-page decision); Revision of Part 22, 95 FCC 2d 769 (1983) (Report and Order) (CC Dkt. No. 80-57) (23 commenting parties produced a 196-page decision).

exclusive of rules marked "Reserved"). Why were those rules adopted, some with substantial modification? Why were the modifications necessary? What other modifications were considered and rejected? Why weren't the remaining twenty-three (23) rules adopted?

Similarly, the NPRM referenced twenty-four (24) Part 90 rules by section number as possible candidates for PCS procedural rules. None of those were adopted. Why?

The Third R&O's failure to explain the basis for its adoption of the narrowband PCS procedural and processing rules violates 5 U.S.C. §553(c) of the Administrative Procedure Act, which requires "a concise general statement of the[] basis and purpose" of adopted final rules.

In summary, the Commission needs to issue a supplemental Notice of Proposed Rule Making in the PCS proceeding to adopt the substantive PCS rules vaguely alluded to in the competitive bidding NPRM.

**CONCLUSION**

Accordingly, the Association of Independent Designated Entities respectfully requests that the Commission reconsider the Third Report and Order as set forth herein.

Respectfully Submitted,

**ASSOCIATION OF INDEPENDENT  
DESIGNATED ENTITIES**

By:



William J. Franklin  
Its Attorney

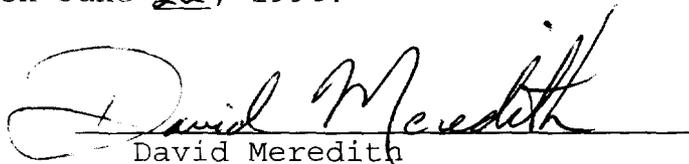
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**DECLARATION OF DAVID MEREDITH  
UNDER PENALTY OF PERJURY**

I, David Meredith, do hereby state and depose as follows:

1. I am a member of the Association of Independent Designated Entities ("AIDE"). AIDE is an unincorporated association, with membership limited to persons and entities likely to be classified as "Designated Entities" under Section 309(j) of the Communications Act. AIDE was formed for the purpose of representing the interests of designated entities before the Commission.
2. Various AIDE members have extensive legal, technical, financial, and communications backgrounds. Many have owned or managed small businesses, and understand the special needs and problems of small and start-up businesses. The women and minority AIDE members also know the unique burdens which they bear.
3. I am self-employed, and hold numerous communications interests in Specialized Mobile Radio systems, both in my own name and as a part owner of various Commission licensees. I believe that I and my communications companies qualify as a small-business "Designated Entities" under Section 309(j) and the Commission's Rules.
4. By myself or with others, I intend to participate in the Commission's auction process for narrowband and broadband PCS, and possibly other services as well. My decision to apply for any specific license will depend on a number of factors, including what licenses are available, the applicable Commission rules for their assignment, and the economic environment in which the licensed service will operate.
5. I wish to have AIDE represent my interests before the Commission in assuring that the auction rules are consistent with the interests of designated entities and otherwise serve the public interest. I believe that my interests are consistent with those of other AIDE members, and that they also wish AIDE to represent their interests. For that reason, AIDE is seeking reconsideration of the Commission's Third Report and Order in the auction proceeding (PP Docket No. 93-253).

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 22<sup>nd</sup> 1994.

  
David Meredith