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June 10, 1994

EX PARTE OR LATE FILED

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

RE: Ex Parte Presentation
GEN 90-314 and PP 93-253
Personal Communications Service

Dear Mr. Caton:

On June 21, 1994, Michael Brown, Melodie Virtue, Oye Ajayi-Obe, Curtis White, Sharron Mack, and Terri Dickerson Jones, representing the Coalition, met with 1) Commissioner Rachel Chong and 2) William Kennard, Don Gips, and Greg Rosten of the FCC.

The meetings were regarding preferences for designated entities and the attached position paper was offered as a leave behind.

In addition, the position paper was left with the offices of Chairman Hundt, Commissioner Quello, and Commissioner Ness.

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

Sincerely,

Richard D. Stamberger

CWC
Coalition for Wireless Competition

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June 20, 1994

Position Paper of the Coalition on Current Broad Band PCS Issues

1. There should be two "entrepreneurial blocks": 1 30 MHz and 1 10 MHz, both BTAs.

Comment: We support having two licenses on which only SWMRs can bid. This is consistent with the Commission's initial decision. As we have explained in the strongest terms we know, just allowing bidding credits for SWMRs while anyone else can bid for such licenses will not work. (See attached charts).

2. The best way to guarantee SWMR participation is to restrict bidding on blocks C and F to SWMRs only (no medium-sized companies) and then provide women and minorities with the difference between #3 and #4 as a bidding credit, i.e. 10% in competition with small business and rural telephone carriers.

Comment: Congress said nothing about providing preferences for medium-sized companies.

3. If "entrepreneurial blocks" have to be used, i.e. expansion of eligibility to medium-sized companies, at least make the cut-off revenue amount approach something that might be characterized as a smaller business: i.e. $60 million per year in revenues.

Comment: The $100-125 million figure being discussed by some FCC staff is very high, converting the preference into one for medium-sized businesses. Although originally supporting the $6 million dollar definition, CWC is willing to accept a compromise figure of $30-40 million in revenue for the definition of a small business.

4. Give small businesses (under $30-40 million in revenues), a 25% bidding credit.

Comment: SWMRs will not be able to compete against much larger entities without such credits. (See our charts). The FCC staff have said they could support bidding credits -- but not set aside licenses for SWMRs only. They have further said a set-aside for this "entrepreneurial block" is acceptable. Our suggestion combines the two ideas.

5. Give minority and women businesses a 35% bidding credit.

Comment: While our position has always been that all SWMRs should be treated equally, the reality appears to be that the cap for "small business" is going up, so we think it is fair to give a differential bidding advantage to minorities and women contrary to our earlier position.

6. Otherwise treat SWMRs equally.

Comment: Other than a reasonable bidding differential, we oppose distinctions amongst SWMRs such as the long list created by the SBAC, which actively disadvantages small business; gives a few bows to female business and purports to give the most benefits to minority businesses. Other distinctions (e.g. letting a single non-SWMR own up to 80% of women and minority firms, while no single entity may own more than 20% of a small business), merely encourage the domination of these blocks by large companies; they do not encourage real ownership opportunities for innovative SWMRs.

7. Define SWMR as 50.1% ownership and control. No restrictions other than that (e.g. another non-SWMR entity may own 49.9%). We are prepared to support lower percentages of ownership but only in limited circumstances which preserve the goal of real SWMR ownership and control, rather than creating "rent a SWMR" situations. And then only if the flexibility is the same for all SWMRs.[1]

Comment: We hear that some FCC staff want the definition of SWMRs to be radically redefined. Only 20.1% ownership, along with "control" would be required. A single non-SWMR could own the balance.

This appears to be another version of the "bidding preferences for big companies which include minority SWMR investment" that we attacked so vociferously. What this would seem to do is create an enormous incentive for big companies to recruit a female or minority they can control and set him or her up in business.

The SBAC plan would limit this to minority businesses, and supercharge the incentive for big companies to do this by granting a 35% bidding credit.

Both plans would seem to reverse the incentives we have been trying to create for big companies to finance real SWMR businesses with their own business plans. It is easy for a big company to "give away" 20% or a fraction of that if they do not give up real control; they won't do that if the SWMR must own half or more of the company.

All of us can conceive of business/finance structures we actually control where

[1] In those instances where the business entity is a publicly held corporation or becomes a publicly held corporation the SWMR interest does not have to exceed the 50.1% threshold. To do so would be prohibitive to the SWMR seeking investment from public markets. Instead the rule should be that a publicly held corporation will be defined as a SWMR to the extent that the largest single stockholder or stockholders are SWMRs and they own collectively 30% or more of the voting stock of the corporation. Similarly, the FCC may want to allow privately held SWMRs to own as little as 30% of the stock, but this should be allowed only if no non-SWMR investor owns more than 20%.

large entities own a majority of the stock, but that will not be the dominant real world model, or even a common one. 80 percent is 80 percent, and in the real world will call all the shots, particularly when one entity can control it all.

The FCC staff plan thus effectively eliminates small business, and the SBAC amendment takes women out also. It is not rational to expect small companies to compete in the auction against a large company's cost of capital (incentivized by the return on 80% of all of a deal), much less if it gets a bidding credit to boot.

8. SWMRs could form consortia among themselves without losing their status.

Comment: This only makes sense. Sec. 287 of the FCC's April decision creates an undesirable restriction on SWMRs ability to strengthen themselves by combining.

9. If a SWMR has control and 50.1% of the stock, we think the Commission should not interfere further in our financing flexibility.

Comment: In some cases, equity could be characterized as debt to get around the 50.1% requirement. Rather than seeking to list all the types of investment relationships, we suggest the Commission list some "safe harbor" debt forms, and say the rest have to be "arms length" and not be the equivalent of common stock. Clear safe harbor debt should be commercial loans from banks, loans secured by equipment (from vendors and third parties), public debt.

The SBAC Executive Committee paper appears to count against the size definition of small business all revenues from "passive investors" in such a business. If this reading is correct, this means that a successful small business which has already found a large partner/investor for its existing business will be eliminated, even if that partner/investor has a minority share and does not control the enterprise.

10. In addition to reasonable application fees, winning bidders should be required to pay, within a week of a successful bid, non-refundable deposits of $10,000 plus 2¢ per pop for 10 MHz licenses; for designated entities winning 30 MHz licenses, this fee should be $30,000 plus 2¢ per pop.

11. Give all SWMRs installment payments: 10% down; designated entities should pay 10% of the auction price (less the deposit above) within 3 months. 90% would be paid over time, after a window to get construction done and customers using the system. No further payments would be required until the end of the third year after the auction, at which point payments of 15% of the auction price would be made each year for the next 6 years.

Comment: Putting aside the involvement of huge companies for these licenses, it is not serious to expect a small business owned by a SWM to compete against a $100 million a year company based on this "advantage".

Installment payments are being "sold" as a huge advantage to SWMRs, but they are not. They don't give us a serious advantage against bigger players. They only remove a huge obstacle. Large companies will borrow the money from a bank and pay in installments; we will borrow from the government and pay in installments. The advantage comes in the cost of interest; we would pay the Government's cost of capital (6%) which is slightly lower than the big companies would pay (and we would pay much more for the rest of our capital than they would.) The cost of spectrum is expected to be a minority of the overall costs. On the whole, the advantage is still very much in the large companies' favor.

12. Auction winners need not demonstrate full financial capability (i.e. bank letters of credit) to build the system in order to receive the license. Rules will require filing of business/construction plan within one year, with no FCC approval of same required; good faith efforts to proceed will suffice.

Comment: Payment for spectrum changes the need for some of the Commission's financing rules. They made sense when licenses were given away.

13. In general, designated entities should be subject to the same rules as all other parties. The FCC should institute a waiver process whereby a designated license holder can demonstrate why it should not have to meet the same universal construction and other rules as all other winning bidders (e.g. it wants to pursue a niche business, while four other license holders in that market are pursuing broad services to all the public).

Comment: The public may be best served by allowed SWMRs to pursue niche businesses, but the FCC should control this to prevent abuse.

14. All financing and similar rights of the initial designated entity should be preserved if the entity transfers its license to another designated entity. There would be no restrictions on transferring a license to a non-designated entity other than those provided in the following paragraph.

15. Any new licensee which is not a designated entity would have to pay the Government the balance due of the spectrum bid immediately. Until 5 years after initial award, a non-designated entity would pay in addition the difference, if any, between the amount initially bid by the designated entity and the "market" price, based on the average of successful bids from non-designated entities for licenses in that market.

Comment: These latter two points appear to be consistent with the Commission's position announced in April.