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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In The Matter of)
Implementation of Section 309(j)) PP Docket 93-253
of the Communications Act -)
Competitive Bidding)

COMMENTS ON PETITIONS OF RECONSIDERATION OF THE
FCC'S FIFTH REPORT AND ORDER

BY DCR COMMUNICATIONS, INC.

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Summary

DCR Communications, Inc., a minority and women-controlled telecommunications company that plans to bid for PCS licenses, urges the Commission to quickly complete the PCS rulemaking process without substantial changes. Further rule changes will cause confusion and will make even more difficult the task of raising money by entrepreneurs.

The Company urges the Commission to resist the pressure coming from various directions to weaken the protections against sham applicants and indirect control by big companies, that currently exist in the entrepreneur block rules. The Commission should not weaken its control group rules and it should not increase the opportunity for the big cellular competitors to control the entrepreneurs' blocks.

In the 5th Report & Order, the Commission resolved the major dilemma of the auction legislation, the inherent conflict between the goals of revenue-raising, introduction of new competition in telecommunications and opportunity for new entrants. By designating one third of the licenses for an entrepreneurs block, where bidding would be restricted to companies below a certain size, the Commission put in place a structure that meets all of its goals as well as those of Congress. The Commission and the staff deserve commendation and admiration for developing a licensing plan that is rational, evenly balanced and fair to all major interests.

The Commission must now be vigilant to fend off efforts to weaken what it has designed. By designating two specific blocks of frequencies for the entrepreneurs the Commission has established a means by which true competition can emerge and a means by which new entrants are given an opportunity in PCS. To realize the promise of this structure, the Commission must ensure that the large cellular companies are not able to gain control of the entrepreneurs' blocks, either through minority investment, or through management contracts, or both. The public interest will be best served by enforcing strict restrictions on participation in the entrepreneurs block by competing cellular carriers. We would prefer that they not be allowed to own any interests in the entrepreneurs block and not be allowed to manage any entrepreneur block licenses.

The Commission should strengthen the current protections against these abuses by clarifying the restrictions on management agreements. We propose that the Commission rule that it will not allow its restrictions on license eligibility to be circumvented by management contracts. No company should be able to use management contracts to obtain effective control of an entrepreneur block license that it would not be qualified to hold in its own name.

We also urge the Commission to hold the entrepreneur block auctions immediately after the MTA auction and to accelerate the MTA auction. We would like to see the entrepreneur block auctions held no later than Feb. 1, 1995. We wish to discourage any thinking that alliances between MTA bidders and entrepreneur block bidders are desirable. How can any alliance with a principal competitor be anything other than a sham? We are concerned that if these alliances are allowed to occur, it only will help

speculators and will work to the disadvantage of the serious entrepreneurs who could bring real competition to PCS. If they are allowed to occur, we will see the same companies that dominate cellular also dominate PCS when the transfer of control restrictions are lifted. And the promise of PCS as a true competitor, along with the opportunity for new entrants in telecommunications, particularly small businesses, women and minority controlled businesses, and rural telephone companies, will be lost, forever.

We also have specific comments on a few points made in specific petitions.

Comments of DCR Communications, Inc.

The purpose of this filing is to make some specific comments on various points made in the petitions for reconsideration of the 5th Report & Order and to express in more detail our concern about the possible undermining of the independence of the entrepreneurs' blocks by competitors.

The recently filed petitions of reconsideration of the 5th Report & Order have four major areas of focus: the Commission's restrictions on the control groups of designated entities; a desire by some to increase the permissible ownership of designated entities by large companies; requests to increase benefits, particularly bidding credits, available to certain groups; and various comments regarding rural telephone company rules. In addition, there are a few other specific suggestions that merit attention.

DCR Communications, Inc. is a minority/women-controlled telecommunications company that is planning to bid for PCS licenses in the entrepreneur blocks. We generally are satisfied with the PCS rules as presently structured. Our greatest concern is that the rules will keep changing. We urge the Commission to quickly complete the PCS rulemaking process without making any substantial changes in the rules already proposed or adopted. Entrepreneurial companies currently seeking investors already face many obstacles. But changes in the rules cause greater confusion and delay and make raising money even more difficult.

We also urge the Commission to resist the pressure coming from various directions to weaken the protections against sham applicants and indirect control by big companies, that currently exist in the entrepreneur block rules. The Commission should not weaken its control group rules and it should not increase the opportunity for big cellular companies to control the entrepreneurs blocks.

While we would be happy to have a higher bidding credit than 25%, we are content with that amount so long as the Commission is vigilant about ensuring that applicants are bonafide.

In the 5th Report and Order, the Commission resolved conflicts within the auction legislation approved by Congress in a quite remarkable way. The Commission and the staff deserve commendation and admiration for developing a licensing plan for PCS that is rational, evenly balanced and fair to all major interests.

There were at least four major purposes of the legislation passed by Congress that authorized the use of auctions for the licensing of spectrum: efficiency of the licensing process; increasing federal revenues by diverting to the federal treasury the payments that, in the past, license speculators had received; increased competition in telecommunications; and expanded opportunity for groups traditionally shut out from telecommunications. The auction structure established in the 5th Report achieves all four purposes.

Auctions were seen as a more efficient way of awarding licenses than either comparative hearings or lotteries and as a means by which the government could gain additional revenue. Under the lottery system, speculators were able to obtain licenses and then sell

them to the companies that actually wanted them. Through auctions, it was believed, licenses would be granted in the first place to companies that actually wanted them and that the money that would have been paid to speculators in the past could now be sent to the U.S. treasury. It was also believed that by eliminating the speculation the provision of service to the public could be speeded up. Aware that speculators might not be deterred by the auction mechanism, the Commission placed limits on transferability and established build-out requirements, (which, unfortunately and we believe, unwisely, the Commission subsequently relaxed somewhat) in an attempt to ensure that those who buy licenses at auction are companies that truly intend to build and operate PCS systems.

To its credit, the Commission repeatedly has reinforced this position by attempting to warn potentially unwary prospective bidders and speculators that PCS is not a gold rush, that it requires large amounts of capital, long term staying power and knowledge and sophistication in the telecommunications business.

Equally important, and fundamental since the first NPRM, has been the intent of the Commission, supported by strong language in the auction legislation, that the public interest will be best served through the introduction into telecommunications of additional competition and new competitors. The domination of the cellular and local telephone business by a few giant companies has been cited repeatedly as a cause of concern. The GAO concluded that there was no effective competition in cellular. The Commission has made the introduction of additional competition a hallmark of its policy.

This new competition could not be expected to come from the same companies that dominate the business today. This new competition must come from new participants in telecommunications or from those whose participation today is limited.

The auction legislation created a dilemma for the Commission. The goals of revenue raising from auctions, the introduction of new competition and the creation of opportunities for small businesses, minority and women controlled companies and rural telephone companies are not necessarily compatible. In the 5th Report, the Commission resolved the dilemma.

By designating one third of the licenses for an entrepreneurs block, where bidding would be restricted to companies below a certain size, the Commission put in a place a structure that meets all of its goals as well as the goals of Congress. The giant telecommunications companies can compete for two thirds of the licenses. Most of the MTA licenses will be purchased by the existing large telephone, cellular and long distance companies -- for the most part, the same group of companies that currently dominate telecommunications.

Most observers expect the auction prices for the best MTAs to be very high and for billions of dollars to be generated for the U.S. Treasury. If this proves to be the case, the MTA auctions are not likely to result in PCS ownership by new competitors. That can only come from the auction of the entrepreneurs blocks. Some of these new competitors will be companies that are owned by minorities and women. Some will be rural telephone companies. And some will be small and medium-sized businesses. Some companies will buy one license. Some will buy many. But they have a common interest that, if not undermined, should result in the creation of powerful competition.

By designating two specific blocks of frequencies for the entrepreneurs the Commission has established a means by which true competition can emerge. If the winners of these frequencies form alliances to gain economies of scale, national marketing, roaming and brand name recognition, strong competition to the entrenched cellular and local telephone companies can develop. Forces are at work to undermine the Commission's structure. The Commission must be vigilant to ensure that this does not happen.

The Commission did exactly the right thing by creating the entrepreneur blocks and restricting eligibility to bid on them. The billions of dollars that will be raised from the auction of the MTA blocks meet the revenue-raising goal of the auction legislation. It also seems likely that these licenses will be purchased by companies that intend to build and operate PCS systems. The goals of introducing new competition and opening up participation in telecommunications to new entrants can only be achieved through the auction of the entrepreneur blocks.

The purpose of the entrepreneur block auction is to ensure that the existing large telecommunications companies face new competition and that at least some of that new competition comes from entities and individuals who have had little opportunity in this business in the past. By definition, these entities and individuals do not have the financial resources of the major companies. And there is no way they can be expected to obtain these resources prior to the auction and still retain their independence and ability to compete. To succeed in competition with the major companies, the entrepreneurs will have to band together in regional and national alliances. These alliances will compete against the major national cellular brand names, AT&T, Cellular One and Mobilink. However, these alliances will not be possible if major cellular companies are allowed to buy into the entrepreneur block and control it indirectly. The Commission must not take any more actions that weaken the restrictions that prevent this from happening.

Any increase in the percentage that a big cellular company can have in an entrepreneur is dangerous. Any decrease in the control of the entrepreneur by the control group is extremely hazardous.

The Commission requires that to qualify as a minority and/or women-controlled company, the applicant must have a control group composed 100% of minorities and/or women and this control group must have 25% of the equity and 50.1% of the voting stock. These are tough restrictions. The rule is particularly difficult when one of the investors in a designated entity, as well as one of the members of its control group, is a minority or women-owned corporation that has one or more non-minority male investors, which often is the case with successful minority or women-controlled corporations. Even if these companies are overwhelmingly controlled by minorities and/or women and even if the non-minority male investor is totally passive, the company is disqualified from participating in the control group of an applicant without causing that applicant to lose its eligibility for the maximum benefits. This is a bizarre, and perhaps unintended, outcome. However, this rule was set forth in the 2nd Report & Order, which is no longer subject to reconsideration.

Aside from this problem, we support the Commission's control group approach. The Commission's rule ensures that an applicant seeking the benefits of a minority/woman-controlled company is a bonafide minority and/or woman-controlled company.

Furthermore, the Commission's control group rule, when viewed in conjunction with the limits on transferability and the build-out requirements, helps to reduce the potential of big company intrusion into the entrepreneur's block. The major weakness in the Commission's strategy is its vague language concerning management contracts.

Columbia PCS and Pacific Telesis request more specific guidance concerning management agreements. This is of concern to us as well. The language is far too vague. As it stands now, it appears that a major telecommunications company, including a competing cellular carrier, could own 49.9% of the equity and 15% of the voting stock of a minority/woman applicant and could have a management contract permitting it to design, build and operate the PCS system for the applicant, presumably using its brand name, personnel, and market position. It could further align that license with its cellular interests and undermine alliances among PCS entrepreneurs that otherwise could become formidable competition. If this is permitted to occur, the opportunity for true competition to emerge in PCS could be seriously damaged. Also, if this is permitted to occur, it could have the greatest negative impact on the serious and most-qualified independent entrepreneurs.

If the Commission permits these kind of alliances, they are likely to raise the auction prices. This could have the unintended effect of making it more likely that entrepreneurial speculators who really have no interest in PCS as a business will benefit at the expense of serious entrepreneurs who have the knowledge and ability to create the competition in telecommunications the Commission and Congress wish to have occur.

The public interest and the intent of the Commission and of Congress will be much better served if big cellular companies are kept out of the entrepreneurs block even as minority, passive investors, but most certainly they should be forbidden to have contracts allowing them to manage an entrepreneur block system.

We need to know now the specific limits the Commission will place on management agreements. In particular we are concerned that shams may result if entrepreneurs are able to turn over the operation of their businesses to companies that otherwise would not be eligible to operate in the entrepreneurs block. At the least, the Commission should say that it will not allow its restrictions on license eligibility to be circumvented by management contracts. No company should be able to use management contracts to obtain effective control of an entrepreneur block license that it would not be qualified to hold in its own name.

This does not mean that legitimate services such as billing, operator services, maintenance and other services commonly available cannot be purchased by entrepreneurs from telephone or cellular companies. But these agreements must be arms-length and they must not turn over any of the strategic and day to day system management responsibilities to a company that is not eligible to hold a PCS license in that block. This rule also would not prevent management agreements among qualified entrepreneurs.

We believe that no major cellular or telephone company should be allowed to own or manage any minority interests in the entrepreneurs block and should not be allowed to acquire any interest in the future. It matters not whether the PCS license is in the territory

served by the telephone or cellular company. The fact is that any substantial interest in the entrepreneur blocks by these companies will cripple their competitiveness.

The effects can be forecast if a major cellular carrier is allowed to acquire an interest in an entrepreneur block PCS carrier in an area of the country where the cellular company does not have cellular or local telephone interests. That PCS company will be approached by PCS companies from the areas where the cellular carrier does operate and will be asked to participate in a brand name, marketing and roaming alliance. The larger that alliance the stronger competitor it will be to that cellular company. What are the prospects that the PCS company will be allowed by its cellular investor to participate? In fact, the cellular company's condition for investment may well be the use of a technology compatible with its cellular technology, not with the technology of other PCS carriers. That PCS company may have other obligations to its major investor that will preclude it becoming part of a viable national PCS network. If enough PCS companies make these kinds of arrangements with major cellular carriers, then no national PCS alliance will be possible. And without these alliances, the value of the PCS licenses held by entrepreneurs will be minimal.

Entrepreneurs who seek alliances with their competitors do so at their peril and at the peril of the rest of the entrepreneur block. Our example here is not idle speculation. Agreements of this very kind are being discussed today among prospective entrepreneur block bidders and major cellular carriers.

If the result of keeping very tight rules on the entrepreneurs blocks is that their auction prices are low, this also will serve the public interest. Revenue-raising was not the only purpose of auctions. If serious entrepreneurs are able to buy PCS licenses at reasonable prices, they will be in a stronger position to mount effective competition. If very high prices occur in the entrepreneur blocks, most serious entrepreneurs will drop out of the bidding. The winners will be the speculators who fully intend to turn over their licenses to their big company investors as soon as they are allowed to do so.

Independent entrepreneurs who are serious about competing in PCS against the big companies will have done their own financial analysis. They will know what price they can pay and still be viable competitors. Because the large telecommunications companies can leverage their existing resources or can achieve other economies or savings or fend off competition, they can value PCS licenses in ways the entrepreneurs cannot. They can justify paying more for a license than can any independent entrepreneur. A higher auction price for a major company is offset against cost-savings, or market share savings, that would result from owning, or indirectly controlling that PCS license. If the major cellular companies are allowed to fund the entrepreneurs -- and worse, even manage them -- then the entire entrepreneur block auction could be a sham.

In suggesting a lengthy delay between the MTA auction and the entrepreneur auction in its recent public sessions, the Commission has indicated a desire to give disappointed bidders in the MTA auction a chance to form alliances with entrepreneurs in the BTA auction. We wish to discourage this thinking. How can any alliance with a company's principal competitor be anything other than a sham? The major telephone companies are also the major cellular companies. These companies are the direct competitors to the PCS companies that don't have telephone and cellular businesses. If these companies can

look to the entrepreneur block to fill in the areas where they didn't win PCS licenses, then what is the point of the entrepreneur blocks? Is it simply to help a few entrepreneurs get rich through a scheme like this? Is it simply another version of the non-wireline fiasco of cellular? Or is its purpose to create viable competition to the existing carriers and to give opportunities to serious new entrants to participate in PCS as a business, not as a speculation?

The argument has been made that big telecommunications company investment in entrepreneurs is needed, even if auction prices are low, because of the capital-intensive nature of the business after the auction. Not only do entrepreneurs have to buy their licenses, they also have to spend huge amounts of money to build and operate their systems. The truth, however, is that PCS system construction and operation can be financed in much the same way as were most of the non-wireline cellular systems.

Two of the most successful entrepreneurial companies in the modern history of telecommunications, MCI and McCaw, became successful without -- and one might argue because they didn't have -- deep-pocketed partners. They had to rely heavily on borrowed money to build their networks. They had to rely on their own wits and skills to compete successfully. Both succeeded against heavy odds. We don't know if it is actually true but, empirically, it seems that telecommunications companies that have had to operate independently generally have been more successful than those which were dependent on a parent corporation or one major investor. We believe that this will also occur in PCS. There is no reason why a number of powerful new companies cannot emerge from the entrepreneurs blocks if the independence of the block is not compromised. And this has been one of the goals of both the Commission and Congress.

Based on our discussions with major manufacturers and third party financial institutions, we believe that serious and knowledgeable entrepreneurs who buy PCS licenses at reasonable prices will be able to obtain more than sufficient financing to build and operate their systems successfully.

The Commission will be doing no favors for the serious entrepreneurs if it changes the rules to make it easier for the entrepreneur blocks to be controlled by the competing cellular companies. In the end, the value of the PCS licenses will be much less because the competitiveness and independence of the block will be compromised. And in the end -- when the restrictions on transferability are lifted -- the twin goals of new competition and new competitors in telecommunications will not have been achieved. By then, the same companies that control cellular will also control PCS.

We have some specific comments about a few points made in some of the recent petitions for reconsideration.

American Personal Communications expressed concern about the regulation of antenna height. This is a well-founded concern and we urge the Commission to adopt APC's position. The rule, as presently written, constitutes an administrative nightmare both for the Commission and for PCS carriers.

McCaw proposes that the length of a round in the auction be increased to two days. We believe that after the first couple of rounds, the length of the rounds in the MTA auction should be reduced to no more than half of one day, so that a minimum of two rounds could occur each day. With only 99 licenses being auctioned, it should not be difficult to make a complete assessment of each round, and prepare bids for the next round, in a half day. This will become particularly true after the first couple of rounds. It seems fairly likely that as the bid prices rise, the number of bidders in most MTAs will drop quickly to probably no more than a dozen.

The critical issue for the entrepreneurs is the Commission's intent to hold the entrepreneur auction after the MTA auction. Obviously, if the McCaw proposal were adopted, the BTA auction would be delayed even more. At the recent public sessions conducted by the Commission, FCC staff members said they expected the MTA auction to take six to eight weeks with the BTA auction a few weeks after the MTA auction is concluded. This is very bad news for the serious entrepreneurs. The winners of the MTA auction will have a head start obtaining sites and equipment, the two most critical components of system construction, and they may well be able to get into service much earlier as a result.

There is no valid justification for delaying the entrepreneur's auction this long. Given the fact that the rules are not final, making the raising of money difficult, a little delay at this point may be welcome by many entrepreneurs, but not several months. We believe the auction should occur as soon after the MTA auction as is practical, certainly no more than one week, but no later than Feb. 1, 1995. Steps should be taken to ensure that the MTA auction is concluded by Jan. 25, 1995 and we propose that the first step should be to shorten the rounds.

The Small Business PCS Association: We are members of this association and have represented it on occasion in filings and in meetings at the Commission. However, we disagree strongly with one element of its petition for reconsideration. We do not support a limit on the number of POPs that one entrepreneurial company can acquire. We support the Commission's limit of 10 per cent of the licenses. When that limit is viewed in conjunction with the total asset limit of \$500 million on a bidder, we do not think there is any danger that the block will be dominated by one or two companies. We do not believe a POP limit will work to the advantage of the entrepreneurs block. It could result in a highly fragmented block with no company having enough scale to be able to compete effectively. Another result could be that there are many markets with no bidders

Association of Independent Designated Entities: We strongly oppose any further NPRMs on PCS, or any other action that would delay the auctions even further. We see no justification for them. The Commission has given an ample airing to all issues and many opportunities for all interests to be heard.

Conclusion

The PCS proceeding began at the Commission five years ago. Since then the Commission has conducted hearings and provided more than ample opportunity for all interests to express, and to reiterate, their positions on every imaginable issue. The Commission has built an enormous record of which it can be proud and upon which it should be able to base its final decisions with confidence.

It is time to end the PCS proceedings and proceed to the auctions and then to the roll out of PCS in the United States. During the time this proceeding has been under consideration in the United States, three PCS networks have been built in Europe, two in the United Kingdom and one in Germany. Others are being planned all over the world. The United States has fallen behind many other countries in wireless telecommunications technology, services and competition. We can catch up but we must get started.

The Commission has put in place a structure that meets its goals and the goals of Congress. Very little more needs to be done to implement it. We wish to see the Commission strengthen its resolve to prevent shams and speculation in PCS licenses. We want to see true competition emerge in telecommunications and we want to be among those companies that do compete successfully against the established carriers. We are asking the Commission to make sure that cellular carriers are not able to weaken their competition by getting control directly, or indirectly, of the entrepreneur blocks.