

BELLSOUTH

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September 14, 1994

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

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SEP 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: CC Dockets 90-314/93-252/93-253, 94-54
Ex Parte Presentation

Dear Mr. Caton:

In accordance with the requirements of Section 1.1200 et. seq. of the Commission's Rules, you are hereby notified that on September 14, 1994, Gary W. Hight, Executive Director-Regulatory Strategy, Rebecca A. Jackson, Director-Regulatory Strategy & Finance, John A. Harwood, General Attorney, Charles P. Featherstun, General Attorney and Ben G. Almond, Executive Director-Federal Regulatory; all of BellSouth Corporation met with Donald Gips, Deputy Chief-Office of Plans and Policy, Jonathan Cohen, Senior Counsel, Gregory Rosston, Telecommunication Policy Analyst, Stan Wiggins, Attorney and Andrew Sinwell, Telecommunication Policy Analyst, all of the FCC. During the meeting we discuss issues associated with three major subjects: 1) auction Design Processes, 2) investment criteria for contractual agreements with designated entities in auction participation and 3) cellular resell by the LEC affiliate of the cellular carrier. The attached documents were used for discussion of subjects 1) and 2) listed above. Subject 3 is addressed in the comments filed by BellSouth in Docket 94-54.

If there are any questions in this regard, please contact the undersigned.

Sincerely,



Ben G. Almond
Executive Director-Federal Regulatory

Attachments

cc: Donald Gips
Jonathan Cohen
Gregory Rosston

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List ABCDE

BellSouth Ex-Parte 9-14-94

- 1. BellSouth Views On Auction Software Access Security**
- 2. Need For Dedicated And Dial-Up Access**
- 3. Need For More Than One Waiver Per Stage**
- 4. Assistance With Software Testing**
- 5. Timing Of Payment Subsequent To Successful Bidding**

**BROADBAND PCS
OPTIONS AND RIGHTS OF FIRST REFUSAL**

- I. LIFT RESTRICTIONS ON OPTIONS**
- A. CALL AND PUT OPTIONS CAN BENEFIT DESIGNATED ENTITIES**
- 1. PROVIDE DESIGNATED ENTITIES ("DEs") WITH ACCESS TO CAPITAL AND OTHER RESOURCES**
 - 2. ALLOW DEs TO EXERCISE THEIR BUSINESS JUDGMENT**
- B. COMMISSION'S LIMITATIONS OVERLOOK COMMERCIAL REALITIES**
- 1. DE, AS C BLOCK LICENSEE IN A BTA, FACES COMPETITION FROM TWO CELLULAR CARRIERS, AN ESMR AND TWO MTA BASED PCS PROVIDERS**
 - 2. DE LICENSEE'S COVERAGE AREA IS A FRACTION OF THAT OF ITS COMPETITORS**
 - 3. TRADITIONAL LENDING THROUGH BANK FINANCING MAY NOT BE AVAILABLE TO DEs WITHOUT SUPPORT OF NON-DE INVESTOR**
 - 4. EQUITY LIMITATIONS ON NON-DE INVESTORS LIMIT DEs' FINANCING OPTIONS**
 - 5. BANK WILL MORE LIKELY LEND TO DE IF BANK SEES ABILITY FOR DE TO ACHIEVE LIQUIDITY TO PAY OFF BANK FINANCING**
 - 6. PUT AND CALL OPTIONS AFFORD PARTIES THE REQUISITE MEANS TO DESIRED LIQUIDITY**
 - 7. IF THE FINANCIAL INSTITUTIONS WILL NOT PROVIDE CAPITAL, THEN BEFORE THE NON-DE INVESTOR WOULD BE WILLING TO STEP IN AS LENDER, IT WOULD BE CUSTOMARY TO SEEK A CALL OPTION BECAUSE OF THE INCREASED RISK OF A START-UP VENTURE**

C. ELEMENTS OF AN OPTION

- 1. DURATION (TIME WHEN EXERCISE IS POSSIBLE)**
- 2. EXERCISE PRICE**
 - (a) NOMINAL**
 - (b) FIXED IN ADVANCE BY DOLLAR AMOUNT**
 - (c) FIXED IN ADVANCE BY FORMULA**
 - (d) FIXED AT EXERCISE BY INDEPENDENT APPRAISERS**

D. COMMISSION SHOULD PERMIT PUT AND CALL OPTIONS

- 1. EXERCISABLE ONLY AFTER THE FIFTH ANNIVERSARY OF LICENSE AWARD**
- 2. OPTION PRICE IS FAIR MARKET VALUE AS DETERMINED BY INDEPENDENT THIRD PARTY APPRAISERS AT TIME OPTION IS EXERCISED**
- 3. AT TIME OF GRANT OF OPTION, IT WOULD NOT BE INEVITABLE THAT OPTION WOULD BE EXERCISED**

II. RIGHT OF FIRST REFUSAL ("ROFR") SHOULD BE PERMITTED

- A. PCS BIDDERS NEED CERTAINTY BEFORE AUCTION PROCESS BEGINS**
- B. ROFR IS NECESSARY SO EACH PARTNER CAN PREEMPT SALE TO OUTSIDER WHO MAY NOT BE A DESIRABLE PARTNER FOR STRATEGIC OR OTHER BUSINESS REASONS**
- C. ROFR WOULD BE TRIGGERED ONLY WHEN PARTNER HAS AN OFFER TO PURCHASE FROM A THIRD PARTY (NO PRE-ESTABLISHED PRICE EXISTS)**