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Cincinnati Bell Telephone®

P.O. Box 2301
Cincinnati, Ohio 45201

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September 13, 1994

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SEP 13 '94
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

RE: **Ex-Parte Presentation**
Cincinnati Bell Telephone's Petition for Waiver of Section 24.204 of the Commission's Rules to Permit Full Participation in Broadband PCS License Auctions

AND

Cincinnati Bell Telephone's Request for Stay in the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services: and Implementation of Section 309 (j) of the Communications Act - Competitive Bidding, Dockets 90-314/& 93-253

Dear Mr. Caton :

In accordance with Commission rules governing ex-parte presentations, please be advised that today, Mrs. Debby Disch, Vice-President-Marketing and Strategic Planning, William D. Baskett and Tom Taylor, Counsel for Cincinnati Bell Telephone, met with Donald H. Gips, Office of Plans & Policy. The discussions covered issues associated with the above referenced proceedings. Cincinnati Bell Telephone's position on such issues are of public record.

I am filing two copies of this letter and the corresponding documents in accordance with Section 1.1206 (a) of the Commission's rules. Please contact Mrs. Lynda Breen, Federal Docket Manager on (513)397-1265 if you have any questions.

Sincerely,

Debbie A. Disch

Attachments

No. of Copies rec'd 0
List A B C D E

Cincinnati Bell Telephone®

Cheryl N. Campbell
Director
Docket Management & Issue Analysis

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July 21, 1994

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

In the Matter of:)
)
Cincinnati Bell Telephone Company's)
Petition for Waiver of Section 24.204)
of the Commission's Rules to Permit)
Full Participation in Broadband PCS)
License Auctions)

Dear Mr. Caton:

Enclosed please find an original and six copies of the Cincinnati Bell Telephone Company's Petition for Waiver, in the above referenced proceeding.

Please date stamp and return the enclosed duplicate copy of this letter as acknowledgement of its receipt. Questions regarding this document should be directed to Ms. Lynda Breen at the above address or by calling (513) 397-1265.

Sincerely,

Cheryl N. Campbell

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Cincinnati Bell Telephone Company's	)
Petition for Waiver of Section 24.204	)
of the Commission's Rules to Permit	)
Full Participation in Broadband PCS	)
License Auctions	)

PETITION FOR WAIVER

Pursuant to Section 1.3 of the Commission's rules,[1] Cincinnati Bell Telephone Company ("CBT") hereby requests a waiver of the cellular eligibility restriction set forth in Section 24.204 of the Commission's rules.[2] Section 24.204 restricts entities holding "attributable cellular interests" from obtaining more than 10 MHz of broadband PCS spectrum in the same areas that they provide cellular service.[3] As applied to CBT, this restriction is completely unreasonable. Accordingly, CBT requests a waiver of Section 24.204 so that it may bid on and obtain the same amount of broadband PCS spectrum as any other entity without such attributable cellular interests.

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[1] 47 CFR § 1.3

[2] 47 CFR § 24.204

[3] An "attributable cellular interest" is defined as ownership of 20 percent or more in a cellular license that covers 10 percent or more of the population in a given PCS service area.

I. BACKGROUND

CBT currently holds a noncontrolling, minority limited partnership interest in the Cincinnati SMSA Limited Partnership (the "Partnership"), which was formed in 1982 to market, service and operate a cellular mobile telephone business in the geographic triangle bounded generally by the cities of Cincinnati, Columbus and Dayton, Ohio. The respective percentage interests of the general and limited partners in the Partnership as of the date of this Petition are as follows:

General Partnership Interests

Ameritech Mobile Phone Service of Cincinnati, Inc.	40.000%

Limited Partnership Interests

Ameritech Mobile Phone Service of Cincinnati, Inc.	12.723%
Cincinnati Bell Cellular Systems Company	45.008%
Sprint Cellular Company	1.200%
Champaign Telephone Company	.244%
GIT-Cell, Inc.	.825%

On June 13, 1994, the Commission released a Memorandum Opinion and Order in GEN Docket No. 90-314.[4] The Memorandum Opinion and Order was adopted in response to 67 petitions for reconsideration and/or clarification of the rules and policies adopted in the Commission's October 22, 1993 Second Report and Order.[5] Among the rules adopted in the

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[4] Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order, released June 13, 1994.

[5] Second Report and Order, GEN Docket No. 90-314, released October 22, 1993.

Second Report and Order was the cellular eligibility restriction set forth in Section 24.204 of the rules, which prohibits entities holding attributable cellular interests (i.e., an ownership interest of 20 percent or more in a cellular license that covers 10 percent or more of the population in a given PCS service area) from obtaining more than 10 MHz of broadband PCS spectrum in the same region as their attributable cellular interests.

On December 8, 1993, CBT and several other telephone companies filed a Joint Petition for Reconsideration[6] of the Second Report and Order asking the Commission to reconsider the cellular eligibility restriction. The joint petitioners argued that the cellular eligibility restriction should apply only to entities that *control* cellular operations; not to entities that merely hold *non-controlling*, *minority* interests in such operations. Notwithstanding the joint petitioners' arguments, the Memorandum Opinion and Order affirmed the 20 percent cellular attribution standard adopted in the Second Report and Order.[7]

II. PURPOSE OF THE ELIGIBILITY RESTRICTION

The Commission believes that PCS and cellular licensees serving the same area will compete on price and quality of service, and that competitive benefits might be reduced if cellular licensees are permitted to acquire PCS licenses within their service areas.[8] At the

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[6] See, Petition for Reconsideration of Chickasaw Telephone Company, Cincinnati Bell Telephone Company, Illinois Consolidated Telephone Company, Millington Telephone Company, and Roseville Telephone Company, GEN Docket No. 90-314, filed December 8, 1993.

[7] Memorandum Opinion and Order, at paragraph 111.

[8] Notice of Proposed Rulemaking, GEN Docket 90-314, at para. 63-64.

same time, the Commission recognizes the expertise that cellular licensees could bring to PCS markets and that many entities holding non-controlling interests in cellular licensees create little potential for anticompetitive behavior.[9] In order to balance its fear of anti-competitive conduct on the one hand, and its desire not to foreclose entities holding non-controlling, minority cellular interests from participating in PCS on the other hand, the Commission adopted an arbitrary 20 percent cross-ownership attribution standard, pursuant to which entities with 20 percent or greater ownership of a cellular operator will be limited to one 10 MHz BTA license for broadband PCS in the same region as their attributable cellular interests.[10]

III. SECTION 24.204 IS UNREASONABLE AS IT APPLIES TO CBT

As discussed above, CBT currently holds a non-controlling 45 percent limited partnership interest in the Cincinnati SMSA Limited Partnership (the "Partnership").[11] As a limited partner, CBT's investment in the Partnership is purely passive. Under the Partnership Agreement and Delaware law,[12] CBT has no right to participate in management and no voting power. Consequently, CBT has no ability to affect the Partnership's

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[9] Second Report and Order, at para. 107.

[10] Memorandum Opinion and Order, at para. 106.

[11] As a result of this minority limited partnership interest, Section 24.204 prohibits CBT from obtaining more than one 10 MHz Basic Trading Area ("BTA") license in the Cincinnati area, and renders CBT completely ineligible for any of the 30 MHz Major Trading Area ("MTA") licenses in the Cincinnati area. Without this restriction, CBT would be entitled to obtain up to 40 MHz of PCS spectrum in the Cincinnati area.

[12] The Partnership is a Delaware limited partnership and, therefore, is subject to Delaware law.

operations and no ability to engage in the type of anticompetitive conduct the Commission is trying to avoid through Section 24.204. This is especially true in CBT's case where the general partner (i.e., Ameritech) holds a 52.723 percent interest in the Partnership and, therefore, has total control over the Partnership's operations.

Application of Section 24.204 to CBT would be unreasonable under these circumstances. Whatever potential anticompetitive problems the Commission is seeking to avoid could result only from *control* of a cellular operation, not from holding a non-controlling, minority limited partnership interest in such an enterprise. There is no difference in terms of control between an entity with less than 20 percent ownership and an entity with greater than 20 percent ownership where both are limited partners and another entity holds the controlling general partnership interest. Yet Section 24.204, if applied to CBT, would afford CBT rights that are vastly inferior to those afforded other entities with less than 20 percent ownership. The 20 percent cellular attribution threshold is clearly an arbitrary standard which bears no relationship whatsoever to the actual degree of control exercised by CBT over the Partnership's operations. Moreover, it unfairly discriminates against CBT, does not serve the public interest, and is contrary to the Commission's goal of fostering competition in the wireless telecommunications market.

CBT notes that the Commission has seen fit to adopt more realistic attribution standards in other situations. For example, the Commission adopted a much higher attribution standard for determining when businesses owned by minorities and/or women

will be eligible to bid on spectrum in the Entrepreneurs' Blocks.[13] Under the Commission's rules, a minority and/or women-owned business remains eligible to bid in the Entrepreneurs' Blocks so long as it maintains ownership of at least 50.1 percent of the equity and 50.1 percent of the voting interests. Non-minority investors are permitted to own up to 49.9 percent of the company's equity and up to 5 percent of its voting interest.[14] If this same standard were applied to CBT for purposes of the cellular eligibility restriction, CBT would be well within its limits since CBT only owns 45 percent of the Partnership's equity and has no voting power whatsoever.

The Commission also adopted a higher attribution standard for the ownership of broadcasting stations by other broadcasting stations or newspapers. The broadcasting ownership rules bar only "cognizable" interests. Where a single entity holds more than 50 percent of the voting stock, no minority interest is cognizable.[15] CBT is within this limit as well since the sole general partner (i.e., Ameritech) owns more than 50 percent of the Partnership.

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[13] See, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, released July 15, 1994, at para. 160.

[14] 47 C.F.R. § 24.709

[15] 47 C.F.R. §73.3555, and notes.

IV. THE PUBLIC INTEREST

The public interest favors the grant of a waiver. The Commission has already acknowledged the benefits to consumers from permitting local exchange carriers like CBT to participate in PCS.[16] CBT has the resources and technological expertise to foster the rapid deployment of PCS in its service territory. Indeed, CBT may represent the best opportunity to bring PCS services rapidly to consumers. Moreover, CBT may well be able to offer a broader range of PCS services at a lower cost than any other potential licensee. Therefore, arbitrarily restricting CBT's entry into PCS would harm consumers by limiting the number of viable competitors in the wireless telecommunications market. In short, application of Section 24.204 to CBT would not promote competition.

In order to remain competitive, CBT must have the same opportunity to provide PCS as cable companies, competitive access providers and other entities. Without the opportunity to fully participate in PCS, CBT may not be able to offer its customers the full range of telecommunications services made possible by the wireless revolution. This would be detrimental not only to CBT, but to the public as well.

V. RELIEF REQUESTED

For all of the foregoing reasons, CBT respectfully requests a waiver of Section 24.204 of the Commission's rules so that CBT may bid on and obtain the same amount of

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[16] Second Report and Order, at para. 126.

broadband PCS spectrum in the Cincinnati area as it would otherwise be entitled to, but for its investment in the Cincinnati SMSA Limited Partnership.

Respectfully submitted,

FROST & JACOBS

By

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Dated: July 21, 1994

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