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Building The
Wireless Future™

September 30, 1994

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

CTIA

Cellular
Telecommunications
Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax

RE: Ex Parte Filing
GEN Docket No. 90-314 (Personal Communications Services)

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SEP 30 1994

Dear Mr. Caton:

On Friday, September 30, 1994, Mr. Randall S. Coleman, Vice President of Regulatory Policy and Law, Cellular Telecommunications Industry Association (CTIA), sent the attached letters to the following Commission personnel:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

- | | |
|--------------------------------|---------------------|
| Chairman Reed Hundt | Ms. Karen Brinkmann |
| Commissioner Andrew C. Barrett | Mr. James Coltharp |
| | Ms. Lisa B. Smith |
| Commissioner Rachelle B. Chong | Ms. Jill Luckett |
| Commissioner Susan Ness | Mr. David Siddall |
| Commissioner James H. Quello | Ms. Lauren Belvin |
| | Mr. Rudolfo Baca |
| Mr. Blair Levin | Mr. William Kennard |
| Dr. Robert Pepper | Mr. Donald Gips |
| Mr. Gregory Rosston | Mr. Andrew Sinwell |
| Mr. Anthony Williams | Mr. Michael Wack |
| Mr. Stanley Wiggins | |

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachments are being filed with your office.

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

Sincerely,


Robert F. Roche

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY



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Randall S. Coleman
Vice President for
Regulatory Policy and Law

September 30, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW - Room 814
Washington, D.C. 20554

Re: Broadband PCS Auction Rules,
PP Docket No. 93-253

Dear Chairman Hundt:

On behalf of its Small Operators Caucus, CTIA urges you to reconsider the current rules governing competitive bidding for licenses in broadband Personal Communications Services (PCS). In particular, these rules restrict unnecessarily the eligibility of small telecommunications companies to participate in the spectrum auctions specifically designated for small businesses and other entrepreneurs. Absent immediate changes, these rules will force small cellular companies and other experienced entrepreneurial companies to look elsewhere for investment opportunities. This would deny the American public the full benefits of competition by needlessly excluding experienced entrepreneurs from PCS. These rules also discourage participation by and investment in prospective PCS licensees owned or controlled by women and members of minority groups, two groups which traditionally have been under represented among FCC licensees.

We cannot believe this is what the Congress intended when it authorized the FCC to auction radio spectrum. Congress specifically mandated that rural telephone companies, small businesses and businesses owned by women and minorities (sometimes referred to as "designated entities") should be given special incentives to participate in the competitive bidding process. The FCC has implemented this mandate for broadband PCS by earmarking spectrum blocks specifically for entrepreneurs that have revenues and assets below certain thresholds. The financial and structural requirements established by the FCC are, laudably, intended to preclude shams and fronts from gaming the auction process. Unfortunately, and I believe inadvertently, the rules go too far in prohibiting small telecommunications businesses from competing for broadband PCS licensees.

In many instances, small cellular companies were formed with just a few key managers who possessed the experience and entrepreneurial spirit to acquire and build-out cellular systems in sparsely populated Rural Service Areas (RSAs). The managing entrepreneurs raised capital from private equity investors and other financial institutions and often chose to create limited partnership structures, under which the private and institutional investors received limited partnership units, while the managers received general partnership overrides. This structure provided the managers, as small business people, the opportunity to control and operate cellular RSAs, but at the price of retaining a relatively small amount of the company's total equity. Ironically this same structure disqualifies such enterprises from participating meaningfully in the spectrum auctions and from bringing new wireless services to the small and rural communities they serve.

The FCC's broadband PCS auction rules ignore the business realities these entrepreneurs have faced, in particular, the fact that successful small companies have had to sell equity to others to raise capital to build networks and expand into new markets. Although many such companies may meet the criteria for a "small business" under the Commission's broadband PCS rules, except that the entrepreneurs that manage and control the business retain less than the required 25% of the company's equity as a result of having to sell equity to get into the business in the first place. This aspect of the "control group" requirement for the entrepreneur's blocks is a nonstarter. Precluding successful and experienced small cellular companies from PCS is a loss to this Nation. Why preclude small service providers with a proven track record from employing their experience and expertise to expand their service areas and adding new applications?

Because small cellular companies have focused on smaller markets and rural areas, some have been approached by foreign telecommunications administrations with similar market challenges and opportunities. Some of these companies are, today, in negotiations with those countries and they will take their experience and resources abroad if the US Government leaves them no alternative. Would it not be better to harness the experience and resources of US companies to promote economic growth and technological innovation at home, rather than abroad? This outcome is still within reach, but first, the FCC must develop a more realistic approach to creating opportunities for small businesses to use their expertise to fulfill the Clinton-Gore Administration's ambitious goal of deploying the National Information Infrastructure.

Likewise, the 25% equity requirement for entrepreneurs inhibits the ability of firms owned by women and minorities to qualify as entrepreneurs and to raise capital. Like small cellular companies, successful female and minority entrepreneurs may have been unable to retain 25% equity in their companies. Given the enormous amounts of capital that will be required to win and build-out a broadband PCS license, such companies which currently retain the required control group equity may be unable to hold that amount of equity if they are to successfully partner with a larger firm or receive sufficient funds from a lending venture capital

firm or some other financial institution. Moreover, although women and minorities are free to create new companies which meet the letter of the FCC's control group requirements, these groups will face the same obstacles to capital formation which underlie the Congressional mandate which lead to the FCC's creation of the entrepreneur's blocks. Why not give these groups greater flexibility to raise capital through the sale of equity?

CTIA believes that small businesses and businesses owned by women and minorities, as well the FCC's goal of encouraging their participation in PCS, will benefit from the following changes to the rules for designated entities:

- Amend the rules governing attribution of gross revenues, total assets and personal net worth to establish an applicant's financial eligibility for the entrepreneur's blocks. Specifically, the Commission should permit non-attributable investors in all applicants for the entrepreneur's blocks to own up to 20-25% of the applicant's voting stock; and
- Lower the amount of equity required of the entrepreneur control group from 25% to 10%, provided that (as the rules would continue to require) the applicant's control group retains voting control (or at least 50.1% of the voting stock, if a corporation).

The first change would significantly enhance the ability of small companies to raise capital. As the Commission has recognized, investors will have little incentive to invest in an entrepreneur if they have no ability to protect their investment.¹ Nor is there any obvious reason to assume that a 20-25% interest in an entrepreneur block applicant will convey a significantly greater risk of control than a 15% interest would.² Likewise the requirement that the control group retain voting control (or at least 50.1% of the voting stock in the case of corporate applicants) remains as a barrier to the abuse of the auction process.

The second proposed change to the broadband auction rules would also help entrepreneur block applicants, whether they are small businesses or businesses owned or controlled by women or minorities. Lowering the control group equity requirement would permit participation by prospective applicants that fall within the revenue and total asset

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The importance of enhancing opportunities for designated entities cannot be overstated. Given the outcome of the first narrowband PCS auction (where designated entities were unable to win a single license) and the even greater financial resources that will be required to succeed in the broadband PCS auctions, the two rule changes proposed in this letter are modest, yet important steps toward achieving the intent of Congress and the Commission's own stated goals. Without the additional opportunities embodied in these proposals, the experience and enterprise small cellular operators can bring to broadband PCS in small communities and rural areas will be lost and those groups traditionally shut out of the telecommunications industry will remain so.

You can help to avoid this result.

Sincerely,



Randall S. Coleman

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September 30, 1994

The Honorable James E. Quello
Commissioner
Federal Communications Commission
1919 M Street, NW - Room 802
Washington, D.C. 20554

Re: Broadband PCS Auction Rules,
PP Docket No. 93-253

CTIA

Cellular
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Randall S. Coleman
Vice President for
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September 30, 1994

The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, NW - Room 844
Washington, D.C. 20554

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

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PP Docket No. 93-253

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, NW - Room 826
Washington, DC 20554

Re: Broadband PCS Auction Rules,
PP Docket No. 93-253

Randall S. Coleman
Vice President for
Regulatory Policy and Law

Dear Commissioner Barrett:

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¹ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Order on Reconsideration* in PP Docket No. 93-253, Federal Communications Commission 94-217, released August 15, 1994, at par. 10.

² For instance, although the Communications Act forbids control of radio licenses by foreign firms, a company may hold a license and still be directly or indirectly controlled by another corporation which has up to 25% of its voting stock owned by aliens. See 47 U.S.C. Section 310(b)(4). See other examples in CTIA's Petition for Reconsideration in PP Docket No. 93-253, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, filed August 22, 1994, at 4-8

process.³ Finally, although any lowering of the control group equity requirement will benefit prospective entrepreneur block applicants, a sizable reduction to 10% would provide significant incentives to prospective applicants and their potential investors or partners.

The importance of enhancing opportunities for designated entities cannot be overstated. Given the outcome of the first narrowband PCS auction (where designated entities were unable to win a single license) and the even greater financial resources that will be required to succeed in the broadband PCS auctions, the two rule changes proposed in this letter are modest, yet important steps toward achieving the intent of Congress and the Commission's own stated goals. Without the additional opportunities embodied in these proposals, the experience and enterprise small cellular operators can bring to broadband PCS in small communities and rural areas will be lost and those groups traditionally shut out of the telecommunications industry will remain so.

You can help to avoid this result.

Sincerely,



Randall S. Coleman

³ While the Commission might entertain safeguards to restrict the application of the lower control group equity requirement, the fact that applicants would still have to comply with the revenue and asset tests may render such safeguards unnecessary. *See id.* at 8-10.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY



**Building The
Wireless Future...**

September 30, 1994

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The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, NW - Room 832
Washington, DC 20554

Re: Broadband PCS Auction Rules,
PP Docket No. 93-253

CTIA

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

Dear Commissioner Ness:

On behalf of its Small Operators Caucus, CTIA urges you to reconsider the current rules governing competitive bidding for licenses in broadband Personal Communications Services (PCS). In particular, these rules restrict unnecessarily the eligibility of small telecommunications companies to participate in the spectrum auctions specifically designated for small businesses and other entrepreneurs. Absent immediate changes, these rules will force small cellular companies and other experienced entrepreneurial companies to look elsewhere for investment opportunities. This would deny the American public the full benefits of competition by needlessly excluding experienced entrepreneurs from PCS. These rules also discourage participation by and investment in prospective PCS licensees owned or controlled by women and members of minority groups, two groups which traditionally have been under represented among FCC licensees.

We cannot believe this is what the Congress intended when it authorized the FCC to auction radio spectrum. Congress specifically mandated that rural telephone companies, small businesses and businesses owned by women and minorities (sometimes referred to as "designated entities") should be given special incentives to participate in the competitive bidding process. The FCC has implemented this mandate for broadband PCS by earmarking spectrum blocks specifically for entrepreneurs that have revenues and assets below certain thresholds. The financial and structural requirements established by the FCC are, laudably, intended to preclude shams and fronts from gaming the auction process. Unfortunately, and I believe inadvertently, the rules go too far in prohibiting small telecommunications businesses from competing for broadband PCS licensees.

In many instances, small cellular companies were formed with just a few key managers who possessed the experience and entrepreneurial spirit to acquire and build-out cellular systems in sparsely populated Rural Service Areas (RSAs). The managing entrepreneurs raised capital from private equity investors and other financial institutions and often chose to create limited partnership structures, under which the private and institutional investors received limited partnership units, while the managers received general partnership overrides. This structure provided the managers, as small business people, the opportunity to control and operate cellular RSAs, but at the price of retaining a relatively small amount of the company's total equity. Ironically this same structure disqualifies such enterprises from participating meaningfully in the spectrum auctions and from bringing new wireless services to the small and rural communities they serve.

The FCC's broadband PCS auction rules ignore the business realities these entrepreneurs have faced, in particular, the fact that successful small companies have had to sell equity to others to raise capital to build networks and expand into new markets. Although many such companies may meet the criteria for a "small business" under the Commission's broadband PCS rules, except that the entrepreneurs that manage and control the business retain less than the required 25% of the company's equity as a result of having to sell equity to get into the business in the first place. This aspect of the "control group" requirement for the entrepreneur's blocks is a nonstarter. Precluding successful and experienced small cellular companies from PCS is a loss to this Nation. Why preclude small service providers with a proven track record from employing their experience and expertise to expand their service areas and adding new applications?

Because small cellular companies have focused on smaller markets and rural areas, some have been approached by foreign telecommunications administrations with similar market challenges and opportunities. Some of these companies are, today, in negotiations with those countries and they will take their experience and resources abroad if the US Government leaves them no alternative. Would it not be better to harness the experience and resources of US companies to promote economic growth and technological innovation at home, rather than abroad? This outcome is still within reach, but first, the FCC must develop a more realistic approach to creating opportunities for small businesses to use their expertise to fulfill the Clinton-Gore Administration's ambitious goal of deploying the National Information Infrastructure.

Likewise, the 25% equity requirement for entrepreneurs inhibits the ability of firms owned by women and minorities to qualify as entrepreneurs and to raise capital. Like small cellular companies, successful female and minority entrepreneurs may have been unable to retain 25% equity in their companies. Given the enormous amounts of capital that will be required to win and build-out a broadband PCS license, such companies which currently retain the required control group equity may be unable to hold that amount of equity if they are to successfully partner with a larger firm or receive sufficient funds from a lending venture capital

firm or some other financial institution. Moreover, although women and minorities are free to create new companies which meet the letter of the FCC's control group requirements, these groups will face the same obstacles to capital formation which underlie the Congressional mandate which lead to the FCC's creation of the entrepreneur's blocks. Why not give these groups greater flexibility to raise capital through the sale of equity?

CTIA believes that small businesses and businesses owned by women and minorities, as well the FCC's goal of encouraging their participation in PCS, will benefit from the following changes to the rules for designated entities:

- Amend the rules governing attribution of gross revenues, total assets and personal net worth to establish an applicant's financial eligibility for the entrepreneur's blocks. Specifically, the Commission should permit non-attributable investors in all applicants for the entrepreneur's blocks to own up to 20-25% of the applicant's voting stock; and
- Lower the amount of equity required of the entrepreneur control group from 25% to 10%, provided that (as the rules would continue to require) the applicant's control group retains voting control (or at least 50.1% of the voting stock, if a corporation).

The first change would significantly enhance the ability of small companies to raise capital. As the Commission has recognized, investors will have little incentive to invest in an entrepreneur if they have no ability to protect their investment.¹ Nor is there any obvious reason to assume that a 20-25% interest in an entrepreneur block applicant will convey a significantly greater risk of control than a 15% interest would.² Likewise the requirement that the control group retain voting control (or at least 50.1% of the voting stock in the case of corporate applicants) remains as a barrier to the abuse of the auction process.

The second proposed change to the broadband auction rules would also help entrepreneur block applicants, whether they are small businesses or businesses owned or controlled by women or minorities. Lowering the control group equity requirement would permit participation by prospective applicants that fall within the revenue and total asset thresholds but have preexisting capital structures which are at odds with the current control

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group rules. This amendment of the rules would also provide greater flexibility for businesses owned by women or minorities to attract new investors and offer equity to prospective partners. Here again, because such applicants would still have to demonstrate control at the lower equity threshold, this change would not create a loop hole for abuse of the auction process.³ Finally, although any lowering of the control group equity requirement will benefit prospective entrepreneur block applicants, a sizable reduction to 10% would provide significant incentives to prospective applicants and their potential investors or partners.

The importance of enhancing opportunities for designated entities cannot be overstated. Given the outcome of the first narrowband PCS auction (where designated entities were unable to win a single license) and the even greater financial resources that will be required to succeed in the broadband PCS auctions, the two rule changes proposed in this letter are modest, yet important steps toward achieving the intent of Congress and the Commission's own stated goals. Without the additional opportunities embodied in these proposals, the experience and enterprise small cellular operators can bring to broadband PCS in small communities and rural areas will be lost and those groups traditionally shut out of the telecommunications industry will remain so.

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