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PACIFIC TELESIS
Group-Washington

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 27, 1994

Mr. Andrew S. Fishel, Managing Director
William E. Kennard, Esq., General Counsel
Federal Communications Commission
1919 M Street, NW, Room 852
Washington, DC 20554

Dear Messrs. Fishel & Kennard:

Re: ET Docket No. 93-266, Review of the Pioneer's Preference Rules
Gen. Docket No. 90-314, Amendment of the Commission's Rules to Establish New Personal Communications Services

APC has filed what it terms a "preliminary response" to Pacific Telesis' letter of October 21, 1994. Because that response mischaracterizes Pacific's position and contains a number of misleading assertions, Pacific submits this reply to ensure that there is no confusion in the record.

Most importantly, APC is simply wrong in suggesting that Mr. Quigley's public speech constituted an impermissible ex parte presentation. The Commission's rules define "presentation" as a "communication directed to the merits or outcome of a proceeding." 47 C.F.R. Section 1.202(a) (emphasis added). As Pacific explained in its letter of October 21 (at 1), Mr. Quigley's speech was not directed to the merits of the pioneer's preference proceeding. It was directed to legislation now pending in Congress: Mr. Quigley was criticizing a rider, attached to implementing legislation for the General Agreement on Tariffs and Trade (GATT), that would bar the Commission from reconsidering the pioneer's preference awards, insulate those awards from judicial review, and give APC among others a much greater discount than the Commission has already provided.

If Pacific understands APC's current position correctly, it is that Mr. Quigley was barred from directing his comments to the legislation because certain aspects of that legislation -- particularly, the provisions that confirmed the awards for the three so-called pioneers and barred reconsideration and judicial review -- were related to the merits of a pending restricted proceeding. But there is no way to address the merits of the legislation without addressing the merits of the underlying awards. It is precisely because the underlying awards are suspect that the GATT provision confirming those awards and cutting off judicial review is offensive.

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What APC is suggesting is that the Commission's rules be interpreted to bar Mr. Quigley from presenting his view of the legislation pending before Congress because it overlaps in part with issues before the Commission. Such an interpretation of the ex parte rules, of course, would be entirely inconsistent with the First Amendment. As Pacific pointed out (and as APC does not deny), the right to comment on pending legislation is fundamental to our democratic form of government and, as a result, lies at the core of the First Amendment's protections. Despite APC's strenuous efforts to do so, the Commission's rules cannot be invoked to silence those with whom APC disagrees.

Moreover, as Pacific has already explained and APC does not deny, APC's view of the ex parte rules would place APC itself and the other so-called pioneers in violation of the Commission's rules as well. In public statements and advertisements directed at the legislation pending in Congress, APC and other pioneers repeatedly have discussed the merits of the Commission decisions on restricted issues -- including comments on the relative merits of their innovations and those created by their competitors. Those public advertisements and statements, no less than Mr. Quigley's speech, were "prepared beforehand, presumably with the knowledge that" FCC decision-makers "would be subjected to [them], and quite clearly dealt with the merits of a restricted proceeding." APC Letter of Oct. 17, at 3 n.5.[1]

Moreover, the implications of APC's argument extend far beyond this particular context. Just yesterday, for example, Decker Anstrom, president of NCTA, gave a speech to the Federal Communications Bar Association directly criticizing the Commission's recent decision on video dialtone -- which is still on the Sunshine Agenda and, therefore, restricted -- despite the acknowledged presence of a Commissioner and numerous staff members in the audience. Under the approach

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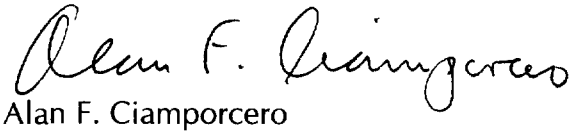
[1] See, e.g., "Let's Set the Record Straight About GATT and PCS Licenses," Advertisement, Washington Post, Wednesday Oct. 5, 1994 (full page advertisement by APC which touts the "especially significant innovations" made by the pioneers); "Congressional Debate on GATT stalls Cox Wireless Communications," Atlanta J. & Const., Oct. 13, 1994, at E7 (quoting Cox memorandum asserting that the FCC "couldn't justify an award to" Pacific and Bell Atlantic); Common Carrier Week, Aug. 15, 1994 (quoting Wayne Schelle of APC as stating that making APC pay did not correspond with "the grueling hours, sacrifice and ceaseless innovation" that APC allegedly contributed); "House Panel Probes Free FCC Licenses to 'Pioneer' Firms," Washington Times, May 6, 1994, at B12 (quoting letter from Wayne Schelle of APC to Congressman Sabo, in which Mr. Schelle asserts that the PCS auction will earn money because of APC's hard work and creativity); Common Carrier Week, July 11, 1994 ("Proposed discount of 10 percent wouldn't reflect the value of our work, Schelle said.").

suggested by APC, this would have been entirely improper. The approach APC is proposing would bring public debate in Washington to a standstill.

Finally, APC continues to press for an investigation despite the absence of any reasonable basis therefor. According to APC, the contents of Mr. Quigley's speech suggest that Pacific may have "thought" or "assumed" that it was permissible to discuss the merits of the proceedings in secret meetings with Commission personnel. APC Letter of Oct. 17, at 4. There is no basis for such an assertion. Pacific Bell has specifically denied that any such meetings occurred and APC cites no evidence to the contrary.

Sincerely,



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cc: All Parties in ET Docket No. 93-266 and Gen. Docket No. 90-314