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

In the Matter of:	)	
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding Narrowband PCS	)	PP Docket No. 93-253
and		
Amendment of the Commission's Rules to Establish New Narrowband Personal Communication Services	)	GEN Docket No. 90-314 ET Docket No. ~~92-100~~

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COMMENTS OF PCS DEVELOPMENT CORPORATION

I. INTRODUCTION

PCS Development Corporation ("PCSD"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, respectfully submits its comments in response to the Commission's Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking ("Further Notice") in the above-referenced docket and pursuant to Public Notice dated December 21, 1994 (DA 94-150) ("Public Notice") inviting comment.

PCSD is a Delaware corporation which recently submitted the winning bids for five 50/50 KHz paired regional narrowband Personal Communications Services ("PCS") licenses in the Commission's regional narrowband spectrum auction, which closed November 8, 1994. PCSD is a designated entity under the Commission's rules in that it is a small, minority and/or female owned business, as demonstrated on its application.

PCSD applauds the Commission's efforts to provide designated entities meaningful opportunities to participate in the provision

of PCS services. As set forth in more detail below, PCSD objects to the Commission's proposal to redesignate additional narrowband spectrum for auction on a regional basis. PCSD urges the Commission to create a level playing field for all designated entities. Also, PCSD requests relief for the entities negatively impacted by the Canadian Interim Sharing Arrangement for narrowband PCS frequencies. Finally, PCSD recommends that the Commission allow designated entities to retain their bidding credits and other incentives when bidding on frequencies not assigned to designated entities. In support, the following is shown:

II. DISCUSSION

A. The Further Notice's proposal to redesignate two BTA licenses as regional licenses would be unfair and unjustified.

The Further Notice proposes to redesignate two BTAs into regional spectrum, because the Commission states "there are companies that would be eligible for an entrepreneurs' block license that may desire larger license areas than MTAs and BTAs." Further Notice at 54, ¶ 35. The results of the recent regional narrowband PCS auction should help to illustrate that the Commission's continuing concerns over the successful participation of designated entities in its spectrum auctions are being met. In the regional narrowband PCS auction, one designated entity, PCSD, won five separate regional licenses which amount to a nationwide license and three other designated entities won licenses for one or more regions. These results show there were designated entities

interested in regional spectrum that not only participated in the auctions but also won spectrum in that auction. PCSD submits that designated entities had ample opportunity to bid on license areas larger than MTAs and BTAs during the regional narrowband auction. It was PCSD's experience that after about the third day of the regional auctions, only a few bidders remained, and most of those became winning bidders. If there were greater desire among designated entities for regional license areas, that interest did not manifest itself in the regional auction, which should have been the appropriate barometer for such an interest.

More importantly, any reallocation that increases the amount of narrowband spectrum assigned on a regional basis, would be totally inappropriate and unjustified. An allocation of new spectrum for regional licensing after the auction for such spectrum has been held and even before the licenses have been issued, would be fundamentally unfair to high bidders at the regional narrowband PCS auction. Any increase in regional narrowband spectrum now, after the auction has been completed, would reduce the value of the spectrum for which PCSD and the other high bidders just committed to acquire.

Like other successful bidders, PCSD tailored its bidding strategies and business plan on reliance of the Commission's allocation of regional spectrum. Such a reallocation would seriously undermine the underlying agreement with the Commission upon which the high bidders at the regional narrowband auction have relied. This in turn would pose grave public policy consequences

for future auctions. The public's perception of -- and confidence in -- the auction process would suffer from a post-auction reallocation of regional narrowband spectrum by the Commission. Inevitably, such inconsistencies on the Commission's part and the instability they would create in its rules and decisions would affect not only the quality, but also the availability of future investment.

Additionally, redesignating BTA-based narrowband PCS channels for licensing on a regional basis would preclude hundreds, if not thousands, of local paging companies from participating in the provision of PCS service. The limited capital of these small mom-and-pop type businesses, combined with a reallocation of BTA-based spectrum to regional licensing, could limit, if not prohibit altogether, their ability to ever participate in a PCS system.

B. If the revised broadband rules are applied to the proposed narrowband PCS entrepreneurs' blocks, the Commission should ensure similarly situated entities are treated the same.

In its Fifth Memorandum Opinion and Order in PP Docket No. 93-253,[1] ("Fifth MO&O") the Commission modified and clarified its rules governing competitive bidding for broadband PCS entrepreneurs' blocks. In the Public Notice, the Commission asked for comment on whether the decisions in the Fifth MO&O should be applied to the proposed entrepreneurs' blocks for future narrowband PCS auctions. PCSD supports the Commission's decision to revise

[1] Fifth Memorandum Opinion and Order, PP Docket No. 93-253, FCC 94-285 (Released November 23, 1994).

its rules to allow entrepreneurs' block applicants to structure themselves in a way that better reflects the realities of raising capital in today's markets, and to obtain the necessary management and technical expertise for their PCS businesses. Fifth MO&O at p. 3, ¶ 4. Specifically, PCSD endorses the Commission's revision of its rules to allow for longer interest-only payments of six years for successful licensees qualifying as small businesses owned by minorities and/or women and for greater flexibility in an applicant' ownership structure.

However, while the Commission's rule revisions for the broadband entrepreneurs' blocks will be of benefit to those bidding in those blocks, and PCSD supports their application to the proposed narrowband entrepreneurs' blocks, PCSD nevertheless is concerned about the inequities such provisions will have on designated entities that were successful bidders in the regional narrowband auctions.

PCSD and other successful designated entities in the regional narrowband auction will be competing for the same limited resources in the capital markets with broadband designated entities who are able to structure themselves in more financially effective ways than was permitted for bidders in the regional narrowband auctions. Additionally, qualifying small businesses owned by minorities and/or women -- a status shared by PCSD -- will be able to take advantage of up to six years of interest only payments, whereas PCSD and the other successful designated entity bidders in the regional narrowband auctions are permitted interest-only payments

for the first two years.

The first five years, which will be spent raising buildout funding, will be critical to the success of the winning bidders. If after the second year, winning bidders in the regional narrowband auction must also begin to make payments of principal to the Commission, such entities will be seriously handicapped in the capital markets when compared to similarly situated designated entities in the broadband PCS context.[2] PCSD and other successful bidders in the regional narrowband auction invested the necessary risk capital based upon what the Commission's rules required. Now, with the revision of its broadband rules, the Commission is regulating entities which relied on the Commission's processes and succeeded in the regional auctions by different standards than those applied to people with the exact same designated entity status. The only basis for such inconsistent and arbitrary treatment is the fact that one group of entities, the broadband applicants, will apply for their spectrum at a later point in time.

Part of the Commission's differing rules for narrowband

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[2] A successful designated entity bidder's problems in securing the necessary funding to construct its system will be further acerbated if it is required to incur the expense on its own of constructing a multitude of individual transmitters. As PCSD has petitioned in another proceeding, the Commission should allow the sharing of transmitter use by different licensees. See PCSD's Limited Petition for Reconsideration filed December 19, 1994 in the Part 22 revision proceeding. PCSD again asks the Commission to be sensitive to the effect that its prohibition against shared use of transmitters will have on designated entities. Being able to share the use of transmitters and the capital expense of constructing and maintaining such transmitters, would significantly benefit designated entities trying to find the necessary funding to become operational.

spectrum is based upon the Commission's assumption that narrowband spectrum would be sold for significantly less than that for broadband. In the aggregate, that assumption remains correct. However, it is fair to say that the amounts paid for narrowband spectrum in the recently completed nationwide and regional auctions surprised even the Commission. For example, nationwide winners ultimately bid in excess of $80 million for their licenses, and PCSD bid in excess of $90 million for its regional narrowband spectrum. Even now, after the thirty-fourth round of bidding in the ongoing broadband MTA auction, only six bids currently are higher than the amount bid by PCSD in the regional auctions. While the ultimate bid amounts for the broadband MTA auction cannot be known at this time, the amounts bid for specific regions in the regional narrowband auction (for example, PCSD's winning bids of $30 million for Region No. 2, and $38 million for Region No. 5) could very well be significantly higher than the amounts bid for most of the broadband entrepreneurs' block BTA markets.

Accordingly, PCSD requests that the Commission level the playing field for all similarly situated designated entities and reconsider the payment structure for narrowband licenses in light of the revised rules for broadband.

C. The Canadian Interim Sharing Arrangement warrants special treatment to affected entities.

The Commission's Public Notice also seeks comment on the effect the Canadian Interim Sharing Arrangement For Narrowband PCS has on its proposals in the Further Notice. PCSD's strategy in the

recently concluded regional narrowband PCS auction was always to establish a national presence. The day before the regional auction was to begin, the industry was told the United States Government in its negotiations with Canada had traded away the designated entity 50/50 KHz channel in Buffalo, New York. This action will seriously damage PCSD's ability to provide nationwide service. The map hereto attached as Exhibit 1 to these comments illustrates the magnitude of the service area taken away by the agreement.

It is unfortunate -- although PCSD believes certainly unintentional -- that the Canadian agreement penalizes only the designated entity channels. This limitation was not imposed on the winners in the nationwide auction or even on the other winner (which is not a designated entity) of five 50/50 KHz paired channels in the regional narrowband auction. Instead, it applies only to the designated entity channels, which leaves PCSD in a disadvantage economically.

When Congress gave the Commission its mandate to provide designated entities with the opportunity to participate in the provision of PCS service, it did limit that mandate by providing such designated entities with an opportunity to participate in what amounts to second-class spectrum. What PCSD recommends as the only equitable remedy to the situation would be for the Commission to take corresponding unpaired channel in the affected BTAs and give it to the affected parties.

D. The Commission should allow designated entities to retain bidding credits and other benefits when bidding on non-designated entity

spectrum.

PCSD supports the creation of frequencies for which only designated entities can bid, but at the same time, PCSD believes designated entities should be able to bid on non-designated entity channels as well and still take advantage of the bidding credits and other benefits. PCSD submits that the lesson learned from the regional narrowband PCS auction is that the 40 percent bidding credit extended to designated entities in that auction ended up being bid away, and ended up not being the deciding factor.[3] PCSD paid more than anyone else for each of its five regional markets.

By allowing designated entities to bid for all frequencies, the Commission would maximize benefits. It would increase the opportunities provided to designated entities, and it also would raise money for the government because the non-designated entities would be forced to compete with the designated entities at a higher level.

Accordingly, PCSD submits that the Commission should allow such designated entity bidding on non-designated entity specific frequencies on a test basis to see if more designated entities will indeed participate.

III. CONCLUSION

In conclusion, PCSD again commends the Commission for its efforts to provide designated entities meaningful opportunities for

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[3] However, PCSD is quick to point out that its ability (as a designated entity) to pay for the cost of the licenses in installment payments was crucial to its ability to bid the amount of money it did.

participation in the provision of PCS service. However, the Commission should strive to ensure that all similarly situated designated entities are afforded a level playing field in their ability to effectively compete with one another and are not handicapped in their need to find capital. Moreover, the Commission also should refrain from creating additional regional spectrum so as not to weaken the integrity of and public confidence in the spectrum auctions, which could negatively impact a designated entity's ability to raise capital. The Commission also must be aware of the differing discounts and credits and flexibility in ownership structure offered to the designated entities in the different auctions, and the inequities such differing treatment creates. Additionally, the Commission should provide relief to the affected designated entities whose ability to provide narrowband service was crippled by the Canadian Interim Sharing Arrangement for Narrowband PCS. In order to further participation of designated entities in the spectrum auctions, the Commission should allow designated entities to retain their bidding credits and other incentives when bidding on frequencies not assigned to designated entities.

Respectfully submitted,
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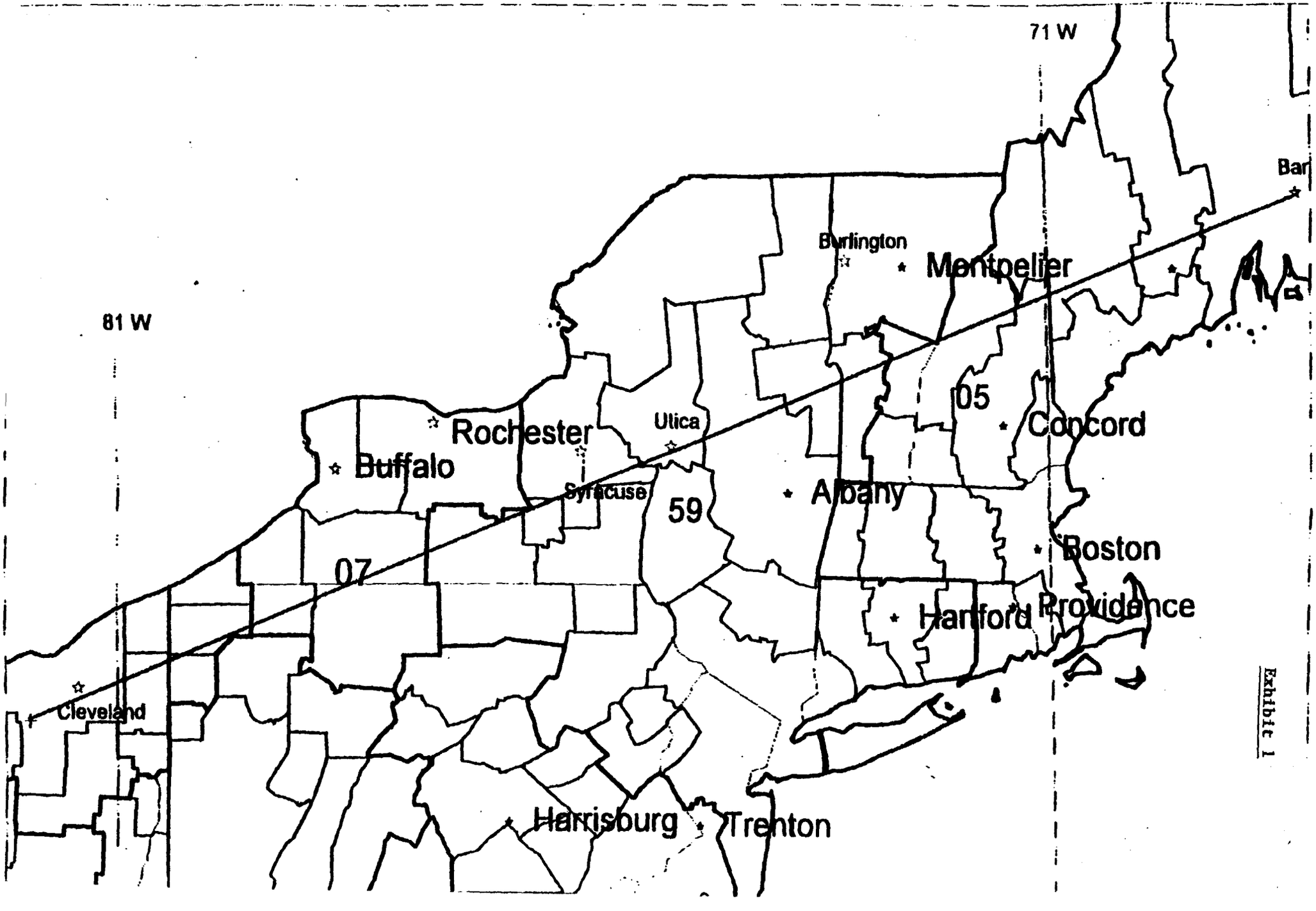
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Exhibit 1