

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act --)
Competitive Bidding) DOCKET FILE COPY ORIGINAL
Narrowband PCS)
)
and)
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules To Establish New Narrowband) ET Docket No. 92-100
Personal Communications Services)

**SUPPLEMENTAL COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") herewith submits its supplemental comments in response to the Commission's recent *Public Notice* in the above-captioned docket.¹ This *Public Notice* solicits additional comments to update the record

¹ See Additional Comment Sought on the Commission's Narrowband PCS Entrepreneur's Block Proposals, DA 94-1560 (Dec. 21, 1994). PCIA and the National Association of Business and Educational Radio, Inc. ("NABER") recently announced the decision to merge their two organizations and to operate under the PCIA name as a new legal entity. Pending final legal and regulatory approvals, the two organizations remain separate legal entities. This new PCIA is an international trade association created to represent the interest of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

developed in response to the *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*² in light of recent developments, including the auction of regional narrowband Personal Communications Services ("PCS") authorizations. As discussed below, PCIA believes that recent events have supported its view, expressed in its original comments in response to the *Further Notice*, that radical changes to the designated entity regulations are neither warranted nor necessary.

In those initial comments, PCIA recognized that the process of implementing competitive bidding procedures for the licensing of radio spectrum must be evolutionary as experience is gained in the conduct of the auctions. While PCIA believed that it was thus appropriate to reexamine the competitive bidding scheme adopted for narrowband PCS licenses generally in light of the then recent nationwide narrowband PCS auctions, PCIA argued that the nationwide auction experience was a poor indicator of the likely success of designated entities in the other more realistically sized service areas. Accordingly, PCIA suggested that, while there may have been some flaws in the original competitive bidding framework, radical alterations to the rules were not necessary.

Instead, PCIA suggested that any problems with the designated entity rules could be addressed by narrowly tailored relief that does not upset the industry's legitimate reliance on the basic rule provisions as adopted. Specifically, PCIA recommended that:

² Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Narrowband PCS, PP Docket No. 93-253, and Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100 (Aug. 17, 1994) [*Further Notice*].

- An expanded small business or entrepreneurial block definition would not accomplish its intended objectives since the eligible class would be so large as to defeat the Commission's objectives.
- The Commission could facilitate meaningful participation in narrowband PCS by designated entities if it would increase opportunities for partnering between designated entities and established carriers.
- If the Commission deems set-asides necessary, any entrepreneurial block allocations should be confined to channels 25 and 26, with licenses issued for Major Trading Areas. PCIA argued that Basic Trading Areas do not provide the optimum combination of coverage and construction costs for new entrants to be competitive in the messaging business and that use of such territories would burden designated entities with the additional complexity and transaction costs of aggregating licenses to achieve the minimum service area needed for a viable messaging operation.
- The Commission should not create new nationwide narrowband PCS allocations since reserving nationwide channels for designated entities would limit potential entry opportunities and retroactively establishing additional nationwide licenses would be inequitable given the reliance of the winning nationwide bidders on the established allocation plan.
- Since the Commission has already established sufficiently sound limitations to curb misuses, there is no reason to alter the transfer rules for designated entities.

These changes would facilitate meaningful participation by designated entities in narrowband PCS without entirely restructuring the narrowband allocation plan.

The recent events noted by the Commission in the *Public Notice* suggest that, as PCIA argued, radical rule revisions at this stage are neither necessary nor appropriate. Most importantly, in November, 1994, the Commission concluded the second series of narrowband PCS auctions, awarding 11 regional licenses to three different designated entities, including one regional license where designated entity preferences were inapplicable. Indeed, every regional license where bidding credits were permitted for designated entities was awarded to

a designated entity. The pattern of bidding, in fact, showed that the 40 percent bidding credit permitted for designated entities quickly placed the regional licenses where bidding credits were applicable beyond the financial reach of non-designated entity applicants, since no non-designated entities bid on those licenses after the initial rounds of the auction. Thus, with sufficient bidding credits, explicit set-asides of channels are unnecessary.

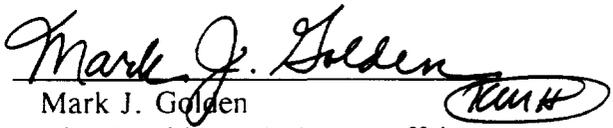
The recent regional auctions also demonstrate that creation of additional licenses larger than MTAs is contrary to the public interest. First, the auction showed that at least one designated entity applicant was successful in aggregating license regions to create a larger contiguous market area, resulting in a *de facto* nationwide authorization. Thus, to the extent that larger service areas may be more economically justifiable, the regional auctions have shown that allowing the marketplace to function in an unimpeded manner will result in the optimal allocation. Second, the auction also demonstrated that service providers believe there is a market for narrowband PCS services offered on a regional basis, since numerous entities bid for and received single regional licenses, and therefore that the highest public value accorded to the spectrum may, in fact, be realized with licenses awarded for non-nationwide territories. Accordingly, PCIA believes that the Commission should not create additional nationwide or regional channels and instead should follow through with its initial plan to auction the remaining authorizations using Major Trading Areas.

Under the circumstances, adopting extensive changes to the narrowband PCS spectrum allocations would be contrary to the public interest. The regional license auctions have demonstrated conclusively that the premise of the *Further Notice* -- that the lack of representation of designated entities as auction winners in the nationwide auctions is

indicative of the overall efficacy of the Commission's designated entity rules -- was flawed. In view of the foregoing, PCIA believes that the Commission should limit any reforms to: promoting opportunities for designated entities to partner with established carriers; relying upon Major Trading Areas as the optimum service area for designated entities; maintaining the current holding periods applicable to designated entities; and rejecting proposals to retroactively create additional nationwide narrowband PCS licenses. The regional PCS auctions provide convincing evidence that the existing regulations provide sufficient and meaningful entry opportunities for designated entities.

Respectfully submitted,

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Dated: January 13, 1995