



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

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PP Docket No. ~~FEDERAL~~ 93-253
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
Narrowband PCS)

and

Amendment of the Commission's)
Rules to Establish New Narrowband)
Personal Communication Services)
GEN Docket No. 90-314
ET Docket No. 92-100

REPLY COMMENTS OF PCS DEVELOPMENT CORPORATION

PCS Development Corporation ("PCSD"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, respectfully submits its Reply 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 additional comment.

I. INTRODUCTION

By these reply comments, PCSD again commends the Commission's efforts to provide designated entities meaningful opportunities to participate in the provision of PCS services. PCSD has reviewed the comments filed by the other seven parties in response to the Public Notice's request for additional comment. The comments evidence an overwhelming recognition of the success of designated entities in the recently concluded regional narrowband PCS auction, and in particular, PCSD's own success in submitting the winning

bids for five 50/50 KHz paired regional narrowband licenses.

After reviewing the comments, PCSD reasserts its continuing opposition to the Commission's proposal to redesignate additional narrowband spectrum for auction on a regional basis -- a position which enjoys almost universal support among the comments filed. PCSD, and at least one other commenter, recommends that the Commission allow designated entities to retain their bidding credits and other incentives when bidding on frequencies not assigned to designated entities. PCSD also supports retaining existing gross revenues and total assets limits for designated eligibility purposes, which were attacked by one commenting party. PCSD again urges the Commission to create a level financial playing field with broadband designated entities, and requests relief for the entities negatively impacted by the Canadian Interim Sharing Arrangement for narrowband PCS frequencies.

II. DISCUSSION

- A. **The Further Notice's proposal to redesignate two BTA licenses for regional licensing should be rejected.**

In its Further Notice, the Commission proposed 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. All but one of the comments filed which addressed the issue oppose a reallocation of narrowband spectrum at this time because it would be contrary to the public interest. See PCIA comments at 4. See also comments of PageMart

at 5, Mtel at 4-5, USIMTA/USIPCA at 6.

One commenting party, American Paging, requests the Commission to channelize and auction the one MHz of reserved narrowband PCS spectrum to supplement channel blocks 18 through 26 and the unpaired response channels. See American Paging comments at 1-3. PCSD strongly opposes such a reallocation of the reserve spectrum.¹ The Commission should postpone any final disposition on use of the reserve spectrum until after the completion of the auctions for the 26 frequencies in the original allocation. Narrowband PCS paging service has not even yet been provided, and as a result, it is too early to predict what will be the proper use of the reserve spectrum. Accordingly, the Commission should not reallocate the reserve spectrum at this time, but instead solicit comment from the industry after the completion of the auctions and after some period after service has begun being provided to the public.

- 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 the Public Notice, the Commission requested comment on whether the revised rules governing competitive bidding for broadband PCS entrepreneurs' blocks as contained in the Fifth

¹ As PCSD explained in its comments, any reallocation of narrowband PCS spectrum at this time would be fundamentally unfair to the high bidders at the regional narrowband PCS auction, which relied on the stability of the Commission's auction processes in tailoring their bidding strategies and business plans.

Memorandum Opinion and Order in PP Docket No. 93-253,² ("Fifth MO&O") should be applied to the proposed entrepreneurs' blocks for future narrowband PCS auctions. While PCSD maintains its support for the Commission's decision to revise its rules to allow entrepreneurs' block applicants to structure themselves and to pay for their licenses in a way that better reflects the realities of raising capital in today's markets, PCSD remains concerned about the inequities such provisions may create for designated entities that were successful bidders in the regional narrowband auctions. Specifically, PCSD is concerned with the revised rules which allow qualifying small businesses owned by minorities and/or women -- a status shared by PCSD -- 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.

PCSD estimates the cost of building out its system to be somewhere near \$200 million, which will likely be comparable to the costs of constructing a broadband system. The first five years will be spent raising funding to finance this buildout. In the capital markets, competition for such funding will be fierce. 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

² Fifth Memorandum Opinion and Order, PP Docket No. 93-253, FCC 94-285 (Released November 23, 1994).

entities in the broadband PCS context.

In attempting to correct what it saw as a lack of designated entity participation in the nationwide narrowband auction, the Commission decided to extend an experimental 40 percent bidding credit and two-year interest-only installment payment option to qualifying designated entities in the regional auction. While PCSD found that its 40 percent bidding credit was largely (up to 38 percent) bid away, the deciding factor in PCSD's ability to successfully compete as a designated entity was its ability to pay for its license in installment payments. Indeed, many of the comments filed recognized, if indirectly, PCSD's pioneering role in demonstrating (by its winning bids for the five 50/50 KHz paired regional licenses) that designated entities can succeed in the Commission's PCS spectrum auctions. See AirTouch Paging comments at 7-8. See also PCIA comments at 4.

PCSD's experience has proven the effectiveness of installment payments in ensuring meaningful participation by designated entities in the Commission's spectrum auctions. Based on its own experience, PCSD applauds the Commission's revised rules in the Fifth MO&O to offer qualifying designated entities in the broadband PCS context interest-only payments for six years. However, these entities will be competing for financing in the same capital markets as PCSD, which faces a significant disadvantage by its having to begin making principal payments to the Commission after the second year. It is inequitable that PCSD, when already facing significant construction financing, should be penalized because it

was the pioneer that proved the effectiveness of the installment payment option.

Accordingly, PCSD renews its request for the Commission to level the playing field for all similarly situated designated entities by reconsidering 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 sought comment on the effect the Canadian Interim Sharing Arrangement For Narrowband PCS has on its proposals in the Further Notice. As explained in PCSD's comments, the industry learned of the United States Government's trading away of the 50/50 KHz designated entity channel in Buffalo, New York, the day before the regional auction was to begin. The action has left PCSD at a disadvantage economically and has seriously damaged its ability to provide nationwide service.

Although other parties submitting comments did not address this issue, it should be pointed out that none of those parties are directly penalized by the Canadian agreement as is PCSD. Accordingly, PCSD maintains its position that 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.

As previously explained, PCSD saw most of its bidding credit being bid away in the regional narrowband auction, and ended up not being the deciding factor. As a result of its experience and in order to promote the goal of maximizing designated entity participation, 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. This position also finds support in the comments filed. See USIMTA/USIPCA comments at 5-6. Accordingly, while PCSD supports the creation of frequencies for which only designated entities can bid, it submits that the Commission should allow such designated entity bidding on non-designated entity specific frequencies.

E. Existing gross revenues and total assets limits for designated eligibility purposes should be retained.

In the Further Notice, the Commission proposed to define a small businesses as an entity having gross revenues not in excess of \$40 million and having less than \$500 million in total assets. Further Notice at 37, ¶ 79. One party filing comments requests that the Commission revise this small business standard and instead adopt the Small Business Administration guidelines for defining a small business. See USIMTA/USIPCA comments at 4. Under such guidelines as described by the commenting party, an entity would qualify as a small business if it had no more than a \$6 million net worth and, after income taxes, did not have in excess of \$2 million in annual profits for the previous two years. Id. PCSD estimates that the capital costs of building out a single MTA PCS license

could be in excess of \$6 million. Accordingly, PCSD maintains that the \$40 million financial cap set by the Commission is appropriate and sufficient for narrowband PCS.

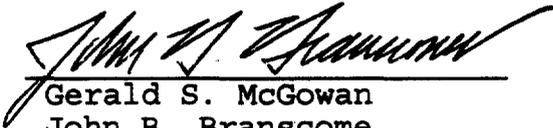
III. CONCLUSION

In conclusion, PCSD as successful bidder in the recently concluded regional narrowband auction, again congratulates the Commission for its efforts to provide designated entities meaningful opportunities for participation in the provision of PCS service. However, the Commission should strive to ensure that all similarly situated designated entities are afforded a level and equally competitive playing field financially. This is particularly true with respect to offering installment payments, which were instrumental to PCSD's ability as a designated entity to effectively participate in the regional auction. Unfortunately, when credits and discounts such as installment payments are offered in differing degrees in different auctions to similarly situated entities, inequities are created to which the Commission must be cognizant.

Additionally, as the overwhelming majority of the commenters agree, the Commission should refrain from creating additional regional spectrum, which would be fundamentally unfair to the high bidders in the regional narrowband auction. Moreover, 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. As recommended by commenting parties, the Commission should allow

designated entities to retain their bidding credits and other incentives when bidding on frequencies not assigned to designated entities in order to further participation of designated entities in the spectrum auctions. Additionally, the Commission should refrain from changing its small business eligibility requirements to match the Small Business Administration limits, which would be unrealistic in light of the estimated buildout costs for PCS systems.

Respectfully submitted,
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