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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 27 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Deferral of Licensing of)
MTA Commercial Broadband PCS)

PP Docket No. 93-253

To: The Commission

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REPLY TO PCS PRIMECO, L.P.'S SECOND OPPOSITION TO
EMERGENCY MOTION TO DEFER MTA PCS LICENSING¹

Communications One, Inc., by its attorney, hereby replies to
PCS Primeco, L.P.'s (PCS Primeco) March 24, 1995 Opposition to
Emergency Motion to Defer MTA PCS Licensing (Second Opposition).

In reply thereto, the following is respectfully submitted:²

¹ PCS Primeco filed its first opposition on March 23, 1994. See Letter from George F. Schmitt, President, PCS Primeco to Chairman Hundt. Communications One, Inc. filed a Reply to Mr. Schmitt's opposition on March 24, 1995. After undersigned counsel's office closed on Friday March 24, 1995, PCS Primeco's attorneys slid a copy of a second opposition under counsel's door. While procedurally defective, we do not object to Commission consideration of PCS Primeco's second opposition in conjunction with its first filed opposition. The Commission has a difficult decision to make and PCS Primeco's second opposition will ensure that as complete a record is obtained before the Commission decides. However, we do not think it appropriate for another of PCS Primeco's constituent companies to file comments on the Emergency Motion. Communications One, Inc. hereby incorporates by reference the comments contained in its March 24, 1995 Reply.

² In view of the urgency of the matters raised in the Emergency Motion, and in view of the Commission's silence on the matter, Communications One, Inc. is responding to PCS Primeco's Second Opposition within one business day of receipt. As noted in Communications One, Inc.'s March 24, 1995 Reply, Communications One, Inc. reserves the
(continued...)

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List A B C D E

1) PCS Primeco quotes one of Commissioner Barrett's record statements and raises the precise point the Commission should focus upon.³ Commissioner Barrett has stated that

clearly, time to market will be critical for PCS to compete against the headstart of existing cellular and ESMR players. Our decision today will permit the rapid deployment of PCS services. 8 FCC Rcd. 4957, 5091 (Comm'n 1994).

2) To the extent that Commissioner Barrett's comments relate to PCS ability to compete against cellular, we think the headstart concern is overstated. Cellular has already been available in the larger markets for more than 10 years and cellular has a substantial headstart over PCS. Thus, a delay in issuing licenses to the MTA PCS Broadband auction winners as sought in the Emergency Motion

²(...continued)

right to respond to other oppositions should additional ones be filed.

³ PCS Primeco asserts that it

intends to be a party to one or more C Block broadband PCS license applications through its participation in partnerships or joint ventures controlled by designated entities ("DEs"). PRIMECO is therefore keenly interested in having the C Block auction conducted at the earliest possible date. Second Opposition, p. 1.

The Commission must not accord any weight to PCS Primeco's claim of concern for the status of the Entrepreneur Block Auction. PCS Primeco can be no more than a non-controlling investor in the Entrepreneur Block Auction. As PCS Primeco's oppositions to the Emergency Motion make clear, PCS Primeco's interest in the Entrepreneur Block auction is secondary to its interests in the MTA Blocks. While PCS Primeco's perspective may be clouded by having interests in both the MTA and BTA auctions, Communications One, Inc. does not suffer from the same conflict. Communications One, Inc.'s interest is to have a level playing field for the Entrepreneur Block Auction winners. That goal can only be accomplished by deferring license grants to the MTA PCS Broadband Auction winners.

will not significantly disadvantage the MTA PCS Broadband auction winners vis-a-vis the existing cellular carriers; any disadvantage already exists.

3) Commissioner Barrett's concerns read in a different context provide a keen insight into the issue Communications One, Inc. raises. The Commission has touted PCS as enabling the provision of unique communications service offerings and devices. See e.g., Memorandum Opinion and Order, FCC 94-144, para. 3, (Comm'n June 13, 1994).⁴ It is in the area of new service and equipment offerings that the headstart issue is a significant concern.

4) If the Commission does not defer issuing MTA PCS Broadband licenses as requested in the Emergency Motion, the designated entities will not only have to contend with the already existing cellular headstart, the designated entities will be burdened with being the third company to offer unique PCS services. It is in the area of new services that the designated entities will be severely hamstrung if a deferral of MTA PCS Broadband licensing does not occur.

5) PCS Primeco does not point to any language in any Commission order which indicates that the Commission has considered what would happen to the economic opportunity of designated entities if

⁴ These new services will develop over time in response to market place dictates.

a large headstart were provided to the communications giants.⁵ Because the Commission has not considered the economic impact upon designated entities of a headstart provided to large communications conglomerates, the Commission has not fulfilled its statutory duties. 47 U.S.C. §309(j)(4)(C)(ii).⁶

6) Finally, PCS Primeco asserts that the Emergency Motion is untimely. Second Opposition, p. 2. That is incorrect. The Emergency Motion was filed on March 8, 1995, only a few days after the Commission's February 24, 1995 News Release in which the Chairman indicated that the Commission would delay the Entrepreneur

⁵ PCS Primeco states that "the Commission has for good reason expressly rejected 'headstart' arguments in the CMRS context." Second Opposition, p. 3. PCS Primeco's reliance upon the cellular headstart policy to support its position is misplaced. First, the cellular rules contained a "resale" rule which ameliorated the first carriers' headstart advantage. Cellular Communications Systems, 86 F.C.C. 2d 469, 511 (Comm'n 1981). We are not aware that a similar policy has been adopted for PCS. Second, while the Commission may not have granted any headstart petitions in the cellular context, our experience as counsel to wireline cellular carriers against whom headstart petitions were filed or threatened shows that the mere filing of the headstart petition slowed the licensing process for a number of months. Thus, the Commission's headstart concerns in the cellular context may have been satisfied by the mechanics of the headstart petition process. Third, we can find no indication that the Commission considered the PCS headstart issue in the context which exists today.

⁶ We note that PCS Primeco's Second Opposition is strangely silent on this provision of the Communications Act. PCS Primeco concentrates on speed to license issues. The Commission has met its statutory requirements to pass regulations and commence the PCS licensing process. No statutory mandate will be violated by deferring the issuance of the MTA PCS Broadband licenses as requested in the Emergency Motion. In fact, 47 U.S.C. §309(j)-(4)(C)(ii) requires deferral.

Block Auction pending appellate review of various designated entity provisions.⁷

7) The delay in licensing of the Entrepreneur Block is a significant and newly existing fact which directly affects the Commission's obligations under to 47 U.S.C. §309(j)(4)(C)(ii). As noted above, the Commission has not at all considered the impact of a licensing delay upon its obligations under 47 U.S.C. §309(j)(4)(C)(ii). Thus, the Emergency Motion was timely filed in response to a significant new set of circumstances which the Commission has not previously considered.⁸

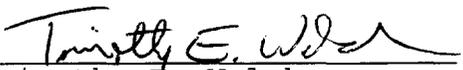
⁷ Rather than issue a quick decision as requested by the Commission, the court of appeals ordered the Commission that no Entrepreneur Block Auction was to be conducted until after the appeal were resolved. We understand the case will be scheduled for oral argument sometime after August 1995.

⁸ Communications One, Inc. seeks protection under the Communication Act because of the emergence of a new fact, i.e., significant licensing delay for Entrepreneur Block Auction winners. We note that the Commission's MTA PCS Broadband auction lasted more than three months with a mere 30 initial participants bidding for 99 MTA markets. There are hundreds of Entrepreneur Block licenses to be awarded and it is expected that hundreds of companies will participate. The Commission's auction procedure for the MTA's, if applied to the BTA's, will result in an extremely long Entrepreneur Block Auction process. Until the Commission announces that it will change the auction procedures to speed things along, Communications One, Inc. is concerned that a significant headstart will accrue to the large communications conglomerates. The Commission's recent experience shows that the Entrepreneur Block Auction will last for a very long time. Thus, merely beginning the Entrepreneur Block Auction in the near future will not alleviate Communications One, Inc.'s headstart concerns.

8) Communications One, Inc. applauds Chairman Hundt's statement as quoted in the March 27, 1995 Wall Street Journal that designated entities "'get an opportunity to participate in the communications revolution, and that they have access to capital.'" Wall Street Journal, A10. However, without a deferral to prevent a huge headstart from accruing to the benefit of large communications conglomerates, any opportunity provided to the statutorily protected class will be a hollow one.⁹ The Commission must ensure that designated entities are permitted an opportunity to board the PCS Broadband communications bus on reasonable terms.

WHEREFORE, in view of the information presented herein and in the Emergency Motion, it is respectfully requested that the issuance of the MTA Broadband licenses be deferred.

Respectfully submitted,
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⁹ In response to PCS Primeco's concern at footnote 3 of its Second Opposition, Communications One, Inc. seeks the licensing deferral until the 30 MHz Entrepreneur Block licenses are ready to be awarded. The Emergency Motion was filed in response to the Chairman's comments that the 30 MHz Entrepreneur Block Auction would be delayed. To the extent that portions of the Emergency Motion might be read to include the three 10 MHz blocks, this clarification is hereby submitted.

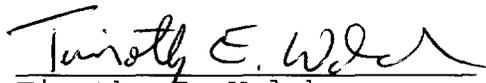
CERTIFICATION

I hereby certify that I have this 27th day of March 1995 sent a copy of the foregoing pleading, by first class United States mail, postage prepaid, to the following:

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