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

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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 WESTERN PCS CORPORATION'S OPPOSITION TO
EMERGENCY MOTION TO DEFER MTA PCS LICENSING

Communications One, Inc., by its attorney, hereby replies to Western PCS Corporation's (WPC) March 29, 1995 Opposition to Communications One, Inc.'s Emergency Motion to Defer MTA PCS Licensing (Opposition). In reply thereto, the following is respectfully submitted:

1) WPC asserts that "a headstart of some magnitude was purposefully contemplated by the Commission in its sequencing of the PCS auctions." Opposition, at 2. WPC misunderstands the context in which the Commission's headstart comments were made.¹

2) The headstart which the Commission was willing to accept involved administrative delay between the conduct of the Block A/B auction and the Entrepreneur Block auction which was caused by the level of the Commission's resources.² Thus, the Commission has

¹ Moreover, WPC seems to misunderstand Communications One, Inc.'s Emergency Motion. While Communications One, Inc. feels that Commission made a mistake in conducting the Block A/B auctions before the Entrepreneur Block Auction, Communications One, Inc. is not seeking a delay based merely upon sequencing.

² The Commission stated that

We agree with commenters, however, that auctioning the MTA blocks far ahead of the other blocks would give a

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indicated that a headstart is unfair, but that a headstart due solely to the Commission's staffing levels, etc., would not cause a delay in licensing the MTA Blocks.³

3) Communications One, Inc.'s Emergency Motion was premised upon the Chairman's comments that the Entrepreneur Block Auction would be delayed pending appeals court review of the case brought by Telephone Electronics Corporation.⁴ The Commission has never considered the impact of an indeterminate stay of the Entrepreneur Block Auction upon the economic opportunity of designated entities. Accordingly, a deferral of MTA PCS licensing is required in order for the Commission to fulfill its responsibilities to protect the economic opportunity of designated entities pursuant to 47 U.S.C. §309(j)(4)(C)(ii).

²(...continued)

head start to the winners in the MTA blocks that would likely afford them some competitive advantage over winners in later auctions. Consequently, we intend to hold the three broadband auctions as close together in time as possible give our administrative resources. We decline to delay finalizing the award to A and B block licenses, however, because of the overriding public interest in rapid introduction of service to the public. Fourth Memorandum Opinion and Order, 9 FCC Rcd. 6858, 6864 (Comm'n 1994) (emphasis added).

³ We can find nothing in the statute which instructs that rapid licensing of large communications conglomerates is to be given a higher priority than the Commission's responsibility to protect the economic opportunity of designated entities. Pursuant to 47 U.S.C. §309(j)(4)-(C)(ii), the Commission may not use the rapid introduction of new services and technologies as a reason to disadvantage the statutorily protected group of designated entities.

⁴ Since the filing of the Emergency Motion, the court of appeals has stayed the Commission from conducting the Entrepreneur Block Auction.

4) Finally, WPC argues that the Communications Act does not prohibit the Commission from taking into account monies collected in making public interest determinations. Opposition, pp. 3-4. WPC argues that the legal sufficiency of the Emergency Motion and the public interest concerns raised therein are to be determined, in part, by the size of cash payments WPC and other auction winners have made to the Federal government. Id.

5) WPC argues that the 1993 Budget Act instituted a fundamental change in the manner in which justice is dispensed in this country. WPC incorrectly asserts that the Commission may not make public interest determinations "solely on financial considerations," as if cash payments may be considered in conjunction with other factors in the calculus of making licensing decisions. Opposition, at 4 (emphasis added). We do not believe, and we cannot believe, that Congress intended the Commission to make public interest determinations based upon the amount of money one party pays to the Federal government.

6) The Communications Act specifically instructs the Commission to refrain from considering cash payments in making public policy determinations relating to protection of designated entities under 47 U.S.C. §309(j)(4)(C)(ii). 47 U.S.C. §309(j)(7)-(A) of the Communications Act commands that in prescribing auction regulations to advance the economic opportunity for designated entities pursuant to 47 U.S.C. §309(4)(C)

the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

7) The prohibition contained in 47 U.S.C. §309(j)(7)(A) is complete; consideration of cash payments may not even be a factor in the Commission's public interest determinations. WPC's use of the word "solely" at page 4 of its Opposition indicates that WPC has improperly applied the requirements of 47 U.S.C. §309(j)(7)(B) to the instant matter.⁵ "Justice for a price" has no place in our system of justice and we are surprised that WPC would argue on behalf of such a system.

WHEREFORE, in view of the information presented herein and in the other documents filed relating to the Emergency Motion, we respectfully submit that the MTA PCS licensing must be deferred.⁶

Respectfully submitted,
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April 3, 1995

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⁵ 47 U.S.C. §309(j)(7)(B) provides that the Commission may not base a decision "solely" upon anticipated revenues in determining whether alternative payment schedules should be utilized pursuant to 47 U.S.C. §309(j)(4)(A). Alternative payment schedules permitted under 47 U.S.C. §309(j)(4)(A) is not at issue in the instant matter.

⁶ In response to WPC's concern at footnote 3 of its 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

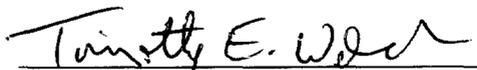
I hereby certify that I have this 3rd day of April 1995 sent a copy of the foregoing pleading, by first class United States mail, postage prepaid, to the following:

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