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

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In the Matter of	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	PP Docket No. 93-253
Amendment of the Commission's Cellular PCS Cross-Ownership Rule	GN Docket No. 90-314
Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services	GN Docket No. 93-252

COMMENTS OF MICHIGAN TELECOMMUNICATIONS GROUP, INC.

Michigan Telecommunications Group, Inc. ("MTG"), a minority-owned small business that intends to seek PCS licenses through the C-Block Auctions, files these comments in response to the Commission's further notice of proposed rulemaking (FCC 95-263), released June 23, 1995.

MTG's letter to Chairman Hundt, dated June 22, 1995, focused on the need for Commission action to neutralize the additional and unforeseen disadvantages that the Commission's C-Block auction process has imposed on small businesses and designated entities. In that larger and better financed businesses already have a "head start" advantage to access the PCS market well in advance of the small and economically disadvantaged C-Block participants, unless offset, the additional delays and legal

uncertainty surrounding the C-Block auction will effectively deny small businesses and designated entities a meaningful or realistic opportunity to participate in the PCS business. Consequently, in addition to the Commission's proposed modifications of the rules for the C-Block auction in deference to the Supreme Court's *Adarand Constructors, Inc. v. Pena* decision, 63 U.S.L.W. 4523 (U.S. June 12, 1995), the unique circumstances surrounding this auction also justifies the following additional modifications. (A copy of the June 22nd letter is attached hereto.)

As the Commission is aware, small businesses and designated entities face real challenges in raising business capital generally. Due to the extraordinary amount of capital needed to acquire a PCS license, build a PCS network, market and sell PCS services in a competitive market, the capitalization efforts of small businesses and designated entities have been particularly challenging. Therefore, modifications of the C-Block auction rules that are more "investor-friendly" are sorely needed.

More specifically, many of the potential investors who were genuinely prepared to invest in C-Block small businesses and designated entities are now reluctant to do so without some assurance that in the event of another unforeseen delay; a) their money won't be tied up for long periods of time without any return, and; b) in the case of extraordinary extended delays, and based upon reasonable conditions, withdrawals without penalties

will be permitted. Clearly, it is the "up-front deposit" and the five-percent post-award payment under Sec. 24.711 (a) that is of most concerned to investors.

In the penultimate paragraph of our letter of June 22nd, we suggested under point (iii) that these deposits be placed in interest-bearing accounts (pending issuance of the license). Such an approach would mitigate the risk to investors of long periods of time with no return at all. Payment of interest to small businesses and designated entities would be consistent with Section 309(j)(3)(B) of the Act, which directs the Commission to "promot[e] economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, . . . and businesses owned by members of minority groups and women." It would, of course, require a specific provision in Part 24 of the Rules to override the general provision in Section 1.2106 of the Rules ("No interest will be paid on upfront payments") in the case of small businesses and designated entities.[1] What sets apart the small businesses and designated entities from the general case is their lack of established revenue streams in proportion to the up-front and down payments.

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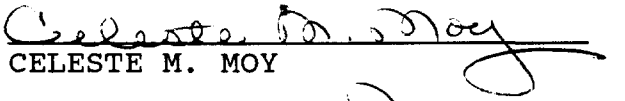
[1] The Commission stated in Competitive Bidding for Licenses, 9 F.C.C. Rcd 2348, 2380-81 n.142, 75 R.R. 1, 40 n. 142 (1994), that it would seek authority to pay interest on such deposits.

In addition, the Commission should modify its rules as we also suggested under point (iii) of our June 22nd letter, to permit withdrawals of the up-front and/or down payments if the C-Block auction is delayed again for an extended period of time.

Conclusion

For the foregoing reasons, the Commission should proceed posthaste to set up an interest-bearing account with the Department of Treasury, make provisions in its C-Block auction rules for the payment of interest on non-working deposits with the Commission by small businesses and designated entities, and for withdrawals of said deposits in the event of further extended delays of the C-Block auction or the issuance of C-Block licenses.

Respectfully submitted,



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OFFICE OF THE
SECRETARY

June 22, 1995

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Re: PCS C-Block Auctions

Dear Mr. Chairman:

This letter is written on behalf of Michigan Telecommunications Group, Inc. ("MTG"), a minority-owned small business that had intended to seek PCS licenses through the C-Block Auctions. MTG believes that continued delays in the auction will exacerbate the disadvantages to small businesses and other Designated Entities in participating in the PCS markets. Unless corrected by corrective Commission actions, these disadvantages will effectively deny small businesses and Designated Entities any realistic opportunity to participate in the PCS business.

The Supreme Court's recent decision in Adarand is only part of the problem. With hindsight it is obvious that the shunting of small businesses to a later auction gave the larger entities a "head start" advantage in preparing to access the market for personal communications services. The competitive marketing advantage mounts the longer the interval between award of the A and B Block licenses and the award of the C Block licenses becomes. At some point the interval becomes so long and the disadvantage becomes so great, that the small business applicants for C Block are effectively frozen out of the PCS market. Indeed, any attempt to rely upon Adarand to eliminate the bidding credits and installment payment advantages the Commission used to encourage women and minority-owned businesses to wait for the C-Block Auction instead of forming or joining consortia in order to participate in

the A and B Block Auctions, would only serve to increase the injury these small economically disadvantaged businesses have suffered, and to apply Adarand in a manner the Supreme Court never intended. Clearly, Adarand should not be used to discriminate against those the FCC's rules for Designated Entities are intended to help.

Accordingly, in the interests of (1) fairness to small businesses whose practical opportunity to enter the PCS market was deferred by the Commission until the C-Block Auctions, (2) full-blown competition in the marketplace, and (3) and in consideration of Adarand, MTG submits that the Commission should do the following: (i) continue to defer issuing authority to the A and B Block awardees until such time as the Commission is ready to issue comparable authority to the C Block awardees; (ii) extend the bidding credit and installment payment advantages to all C-Block Auction participants; (iii) deposit the down payments from C-Block Auction participants into interest bearing accounts and provide for withdrawals in the event of a court ordered stay of the Auction; and (iv) reschedule the C-Block Auctions to begin absolutely as soon as possible.

Deferring issuance of the A and B Licenses to foster competition is supported by the line of authority proceeding from the Commission's Guardband Decision, 12 F.C.C. 2d 841, 851-52, 13 R.R.2d 1508 (1968), recon. denied, 14 F.C.C. 2d 269, 13 R.R.2d 1725 (1968), aff'd sub nom., Radio Relay Corp. v. FCC, 409 F.2d 322, 329 (2d Cir. 1969).

Respectfully yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By Celeste M. Moy

Celeste M. Moy

cc: All Commissioners
William Kennard
Anthony Williams

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