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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

January 16, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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Dear Mr. Caton:

Re: *ET Docket No. 95-183, RM-8553 - Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; PP Docket No. 93-253 - Implementation of Section 309 (j) of the Communications Act - Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*

On behalf of Pacific Bell Mobile Services, please find enclosed an original and six copies of its "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

GINA HARRISON / AFC

Enclosure

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

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In the Matter of

Amendment of the Commission's
Rules Regarding the 37.0-38.6 GHz and
38.6-40.0 GHz Bands

Implementation of Section 309 (j) of the
Communications Act -- Competitive
Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz

ET Docket No. 95-183
RM-8553

PP Docket No. 93-253

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COMMENTS OF PACIFIC BELL MOBILE SERVICES

I. INTRODUCTION.

On December 15, 1995, the Commission released a Notice of Proposed Rulemaking and Order in the above-captioned proceeding regarding the licensing of spectrum for fixed point-to-point microwave operations in the 37.0-38.6 ("37 GHz") band and the 38.7-40.0 (39 GHz") band.¹ As the Commission indicates, these bands would support "backhaul" and "backbone" communication links for services including PCS, cellular radio, other commercial and private mobile radio operations and competitive access providers of digital communications. Pacific Bell Mobile Services has strongly supported efforts to license additional spectrum for PCS backhaul. Such links are an important part of our overall deployment for PCS in the Northern and Southern California Major Trading Areas ("MTAs"). We offer the following comments on selected issues raised in the Commission's NPRM.

¹ In the Matter of Amendment of the Commission's rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz bands and Implementation of Section 309(j) of the communications Act -- Competitive Bidding, 37.0-38.6 and 38.6-40.0 GHz, Notice of Proposed Rulemaking and Order, ET Docket No. 95-183, RM-8553 and PP Docket No. 93-253, released December 15, 1995, ("NPRM").

II. INTERMEDIATE LINKS SHOULD NOT BE SUBJECT TO AUCTION.

The Commission notes that in the past it concluded that intermediate links should not be auctioned. Now it proposes to auction these links.² Nevertheless, it solicits comments on how to license the spectrum if competitive bidding is not adopted.³ We continue to believe that auctioning is not appropriate for intermediate links.⁴ Demand is on a point-to-point basis. Demand arises out of a variety of considerations in the deployment planning process. One of the major considerations is whether there is an economical landline link available. An auction held in the near future would force interested parties to decide whether to participate at a time when they may not have a complete deployment plan for their service area in place.

The Commission proposes that the licensing area subject to auction be a Basic Trading Area ("BTA").⁵ Thus, under an auction, a party interested in only a few links would have to bid for an entire territory. Under the Commission's proposed auction design the upfront payment is \$2,500 or \$0.02 per pop per MHz for the largest combination of MHz-pops, whichever is greater.⁶ For us, this means the upfront payment to bid for one channel in the two California MTAs would be \$62 million. This is far too high.

Access to economical backhaul is critical to bringing reasonably priced PCS service to the market. An auction involving such sums for backhaul links would force many to forgo point-to-point microwave links in favor of landline links which are often costly themselves but not as costly as the microwave may be in an auction scenario.

² Id. at 27-28.

³ Id. at 102.

⁴ We supported the Petition for Rulemaking of the Telecommunications Industry Association that initiated this proceeding. Comments of Pacific Bell Mobile Services, January 3, 1995 and we have supported the use of above 40 GHz spectrum for point-to-point use in Docket No. 94-124. In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, Comments, January 30, 1995. In Docket No. 94-124, we have filed an ex parte on how to auction intermediate links if the Commission pursues auctioning of these frequencies. However, in all cases our preference is not to auction intermediate links.

⁵ NPRM, para. 22.

⁶ Id. at 54.

The Commission should keep in mind that when PCS providers were considering the value of PCS licenses, they assumed that they could use inexpensive point-to-point microwave links for backhaul. Under the Commission's auction proposal this may no longer be the case which means that the public will have to pay more for PCS services.

III. SHARING IS INCONSISTENT WITH PAYING FOR THE USE OF SPECTRUM.

The Commission requests comment on NTIA's request that the 37-38 GHz band be allocated to the space research service for Government use on a co-primary basis with the fixed and mobile services.⁷

This proposal is completely unworkable under an auction scenario. Existing rules decidedly favor the Government. The NTIA has complete control of whether the non-government user is allowed to construct. Moreover, protection areas for space-to-earth stations are very large because of their low interference objectives. Consequently, PCS users would be limited under existing rules even if they are co-primary.

The prospect of sharing would mean that bidders would have a great deal of trouble valuing the spectrum because they would have to determine the value of something that they may be denied the use of. If any sharing is permitted, the NTIA should be required to follow the same prior coordination practices of Part 21 users and adopt terrestrial interference standards as defined in Telecommunications Industry Association Bulletin 10.⁸

IV. IF THE COMMISSION DECIDES TO PROCEED WITH AN AUCTION, THE PROPOSED AUCTION DESIGN IS GENERALLY ACCEPTABLE.

The NPRM contains a detailed proposal for auctioning of spectrum in the 37 and 39 GHz bands.⁹ The auction design is similar to that used in the PCS auction. As we indicated in the foregoing, we believe that auctioning is not appropriate for intermediate links. However, if the

⁷ Id. at 14.

⁸ 47 CFR Section 21.100(d).

⁹ NPRM, paras. 29-95.

Commission concludes otherwise in its order, with the exception of the proposed upfront payment discussed above, we agree with the use of a simultaneous multiple round auction and the other attributes of the PCS auction that the Commission proposes to use.

V. A BTA IS AN APPROPRIATE LICENSE AREA FOR 37 AND 39 GHz.

The Commission has proposed a BTA as the license area for point-to-point operations regardless of whether the spectrum is auctioned.¹⁰ We support this proposal. The rectangular service areas under the current 39 GHz rules have not proven to be workable. While licensing on a per link basis is ideal because demand is on a per link basis, from an administrative perspective a per link licensing scheme is very burdensome. Consequently, we support the BTA as a service area. Since the PCS frequency blocks are licensed on an BTA and MTA basis, it is reasonable to license frequencies that provide backhaul for those services on a BTA basis.

VI. THE 50 MHz CHANNELING PLAN IS APPROPRIATE.

The Commission proposes to adopt a channeling plan for the 37 band based on 50 MHz channel blocks and a 700 megahertz separation between transmit and receive frequencies.¹¹ We support the 50 MHz channel plan but with the 800 MHz separation. The wider separation yields a slight advantage in filter response and makes two more paired channels available.

The Commission proposes to allow licensees to subdivide their channel blocks in the 37 GHz band as they so choose.¹² We strongly support this flexibility. We also support the ability to aggregate channel blocks up to the spectrum cap.¹³ The spectrum cap that the Commission proposes would permit a single licensee to acquire 700 megahertz in each BTA.¹⁴ This is a generous cap that should allow licensees to obtain the necessary spectrum while at the

¹⁰ Id. at 22.

¹¹ Id. at 19.

¹² Id. at 20.

¹³ Id. at 112.

¹⁴ Id.

same time protecting against one or two licensees dominating the spectrum in any geographical area.

VII. ONE OR TWO PAIRS SHOULD BE AVAILABLE FOR A LINK BY LINK ASSIGNMENT.

As we noted above, demand for this spectrum is on a link by link basis. However, licensing on a link by link basis is undesirable from an administrative perspective. While we support the BTA license area, we also support making one or two pairs available on a link by link basis. This is particularly desirable if the Commission decides that licensing will be done on the basis of auctioning. This would protect those users that only need a very small number of links and those that are uncertain of their needs for point to point links at the time of auction. It would also deter auction winners from charging exorbitant prices for use of the spectrum by those who need some links but did not win or participate in the auction. This type of set aside would be particularly valuable for small businesses and private users of point-to-point links. Even if, the spectrum is licensed on a BTA basis without an auction, a set aside of one or two pairs for a link by link assignment would be valuable for entities that simply do not need an entire BTA.

VIII. THE RULES SHOULD BE FLEXIBLE ENOUGH TO ALLOW USE OF SOME OF THE SPECTRUM FOR SERVICES OTHER THAN POINT-TO-POINT.

In the licensing proposal that the Commission offers in lieu of auctioning, the Commission states that Blocks 15-20 would be limited to broadband PCS licensees until three months after the last broadband PCS licensee is issued. Eligibility for Channel Blocks 21-28 would be limited to broadband PCS, cellular and wide-area SMR licensees for three years. At the expiration of three years, eligibility would be open to all parties. Channel Blocks 29 through 32 which the Commission proposes to be unpaired would be unrestricted.¹⁵ While we do not believe there is a need for unpaired channels, we do support some flexibility in the rules to allow the use of the spectrum for other fixed services such as point to multi-point. Consequently, as noted above,

¹⁵ Id. at 102.

we recommend that the Commission omit the unpaired channels in its plan but that it retain the open eligibility for some channel blocks. We are very pleased that the Commission is committed to ensuring that there is sufficient spectrum to support the backhaul needs of wireless providers. However, it is in the public interest to permit other fixed uses of spectrum. Designating several channels blocks with open eligibility is one way to achieve this flexibility along with licensing rules that permit uses other than point-to-point.

IX GEOGRAPHIC PARTITIONING SHOULD BE PERMITTED.

In its auction proposal the Commission proposed geographic partitioning similar to the scheme adopted in broadband PCS in order to increase the likelihood of rapid introduction of service to rural area.¹⁶ In the event that the Commission decides to auction 37 and 39 GHz spectrum, we support allowing geographic partitioning. Even, if the licenses are not auctioned but still licensed on a BTA basis, geographic partitioning should be considered.

X. PCS LICENSEES SHOULD HAVE A BUILD-OUT SCHEDULE THAT COINCIDES WITH THE PCS BUILD-OUT SCHEDULE.

The Commission seeks comment on the appropriate build-out requirement for auctioned microwave services.¹⁷ In its alternative licensing proposal that does not use auctioning, the Commission proposes an eighteen month construction period, except for PCS licensees.¹⁸ The Commission states: “We are not proposing construction requirements for broadband PCS licensees in any BTA for which they are licensed since these licensees already have a build-out schedule.”¹⁹ We agree with this position. In addition, the same rationale that supports not creating an additional build-out schedule for PCS licenses under traditional licensing is equally applicable to licensing done by auction. In either case, it is inappropriate to impose another build-out schedule on PCS licensees.

¹⁶ Id. at 89.

¹⁷ Id. at 98.

¹⁸ Id. 103.

¹⁹ Id. at n.177.

XI. CONSIDERATION OF NON-RADIO FREQUENCY SOLUTIONS MUST INCLUDE ECONOMIC FACTORS.

The Commission asks that as an alternative to competitive bidding in the 39 GHz spectrum if it should strengthen and codify the policy guidance given in its September 16, 1994 Public Notice.²⁰ One component the Commission proposes to include would be consideration of non-radiofrequency (“non-RF”) solutions. Specifically, “that the applicant has given detailed consideration to non-RF solutions for satisfying its communications requirements, including but not limited to fiber optic cable and wireline, and explaining why such alternatives are technically unacceptable, as opposed to merely less economically preferable.” This sets a standard that is virtually impossible to meet. In almost every case, wireline or fiber optics links will be available if a party is willing to pay any price. For example, if facilities are not available in a certain area, most providers are more than willing to provide special construction, if the purchaser will cover the costs. The advantage of microwave facilities is that they often provide an economic alternative to wireline facilities. If the need to use microwave facilities has to be justified on purely a technical basis, applicants will seldom be able to meet that requirement. If the Commission intends to codify the policy announced in its September 16, 1994 Public Notice, it should permit applicants to establish that the microwave links are desired for technical or economic reasons.

XII. CONCLUSION.

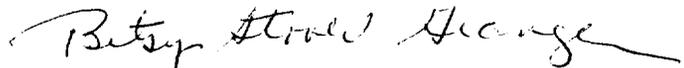
We are pleased that the Commission recognizes the need for additional spectrum for backhaul operations. We had assumed that inexpensive microwave links would be available as an alternative to landline links where appropriate for technical or economic reasons. Unfortunately, this has not proven to be the case because of the number of applications that have resulted in mutual exclusivity under the Commission’s current rules for 39 GHz. The Commission’s NPRM strongly supports auctioning these intermediate links. For reasons identified in the foregoing, we believe auctioning is inappropriate, particularly with the upfront payment proposed by the

²⁰ Id. at 111.

Commission. Under that structure, microwave links will no longer provide an economic alternative to landline facilities and the cost of bringing PCS to market will increase. Consequently, we urge the Commission to license 37 and 39 GHz spectrum on a BTA basis without auctioning. Given the number of channel pairs available, there should be sufficient spectrum for all interested parties.

Respectfully submitted,

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