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APR 15 1996

April 15, 1996

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Hand Delivered

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: WT Docket No. 96-59 and GN Docket No. 90-314

Dear Mr. Caton:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc., are an original and nine copies of its Comments of Telephone and Data Systems, Inc. in response to the Commission's Notice of Proposed Rulemaking (released March 20, 1996) in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,

George Y. Wheeler

Enclosures

cc (w/enc): Mark Bollinger
Dorothy Conway
Timothy Fain

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ORIGINAL

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

APR 15 1996

In the Matter of	)	
	)	
Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	)	WT Docket No. 96-59
	)	
Amendment of the Commission's Cellular PCS Cross-Ownership Rule	)	GN Docket No. 90-314

To: The Commission

COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys submits its comments in response to the Commission's Notice of Proposed Rulemaking released March 20, 1996 in the above-captioned proceeding ("NPRM").

BACKGROUND

TDS is a diversified telecommunications service company with cellular telephone, local telephone and radio paging operations and developing broadband personal communications services ("PCS") operations. TDS conducts cellular operations through its 80.8%-owned subsidiary, United States Cellular Corporation, which owns and operates cellular telephone systems representing approximately 24.5 million population equivalents in 201 markets in 34 states. It also conducts telephone operations through its wholly owned subsidiary, TDS Telecommunications Corporation, which currently serves through its 100 independent telephone companies a total of

425,900 access lines in 28 states. Its PCS operations are being implemented by its wholly owned subsidiary, American Portable Telecom, Inc. ("APT"). In March 1995, APT was the successful bidder for eight broadband PCS licenses. The six primary 30 MHz PCS licenses that are being developed cover the Major Trading Areas of Minneapolis-St. Paul, Tampa-St. Petersburg-Orlando, Houston, Pittsburgh, Kansas City and Columbus, and account for 27.3 million population equivalents in the continental U.S.

INTRODUCTION

TDS has actively supported the Commission's initiatives to encourage expanded and innovative public telecommunication service offerings through active participation in the FCC's PCS rulemaking efforts for more than five years. We support the continued implementation of policies promoting a broadly competitive PCS marketplace, opportunities for rural telephone companies to participate in the deployment of advanced technology in their service areas and competitive opportunities for cellular providers to hold PCS licenses within their cellular service areas.

We believe that the results of the broadband licensing in the A, B and C Blocks confirm that the Commission has been largely successful in optimizing and balancing four essential goals -- universality, speed of deployment, diversity of services and competitive delivery in its PCS licensing rules. The basic structure of the Commission's eligibility, cross-interest, attribution and spectrum set-asides for designated entity bidding have produced a diverse and competitive mix of industry participants and

should be retained. As discussed below, we continue to believe that an expanded role for rural telephone companies in broadband PCS is essential for early implementation of advanced wireless technologies in rural America as Congress intends. Specifically,

* We support the continued effectiveness of the Commission's 40 MHz broadband PCS cap, the "20/10" cellular-PCS cross interest restrictions, and the 20% attribution standard for the 45 MHz spectrum cap;

* We support adoption of the statutory definition of rural telephone company and extending the PCS designated entity and geographic partitioning options to these companies; and

* We oppose creating installment payment options for small business bidders in the D and E Block PCS auctions.

DISCUSSION

1. The 40 MHz Broadband PCS Cap, the "20/10" Cross-Interest Restriction and the 20% Attribution Standard for the 45 MHz Spectrum Cap Should be Retained.

The Commission should not adopt new or modified broadband PCS spectrum caps, cellular cross-interest restrictions or attribution standards for the 45 MHz spectrum cap. These requirements were some of the most contentious aspects of the complex balancing of competing interests which the Commission had to decide in establishing its PCS rules. They affect directly or indirectly equipment design/technical standards, projected equipment cost, competitive market conditions, microwave relocation strategies, competitive entry for incumbent cellular providers, deployment of advanced technologies in rural and underserved areas, among many other material features of PCS system deployment. The Commission has a voluminous record supporting its current rules and policies on these matters. The Commission has ample support in this

existing record for continued reliance on its existing rules and policies in these areas.

Nor do we believe that it is sound administrative policy for the Commission to revisit the foregoing cross-interest and spectrum cap restrictions at this crucial time in the deployment of new PCS systems. System planning, alliances, technology selection, marketing as well as other aspects of system implementation are linked directly or indirectly to factors influenced by these restrictions. By introducing needless uncertainty at this stage of PCS system implementation, the Commission will be undercutting one of its fundamental goals in these proceedings--early deployment of advanced PCS technologies.

Adoption of possible changes in the foregoing cross-interest and spectrum cap restrictions is also fundamentally inequitable to companies such as ours who selected PCS markets on which to bid, have paid into the U.S. Treasury their winning bid amounts for licenses and divested/restructured numerous cellular interests in compliance with these restrictions. We and other bidders have reasonably relied on the fact that these restrictions would shape the competitive opportunities for <u>all</u> entrants in this new industry. The Commission should not reverse or modify its current requirements. The unique circumstances of the disaffected parties in the Sixth Circuit remand[1] should be addressed in a manner which leaves these restrictions intact.

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[1] *Cincinnati Bell Telephone Co. V. FCC*, 69 F.3d 752 (6th Cir. 1995)

2. **The Commission Should Adopt the Statutory Definition of Rural Telephone Company for the Purpose of Defining Designated Entity Status, Installment Payment Options and Geographic Partitioning Rights.**

The provisions of the Telecommunications Act of 1996 contain a definition of rural telephone company in Section 153(37) of the Communications Act[2] which makes clear that telephone companies fitting this definition are intended to be covered under Section 309(j) of the Communications Act. The Commission has a specific mandate from Congress to adopt competitive bidding regulations which recognize and promote the central role of rural telephone companies in the development of advanced telecommunications capabilities for rural areas.

The foregoing definition when considered with the statutory objectives for competitive bidding in Section 309(j)(3) and guidelines for regulations implementing the statute in Section 309(j)(4) make clear that Congress recognized the central role of rural telephone companies in providing essential communications in rural areas. Section 309(j)(3)(A) states as a specific objective "...the development and rapid deployment of new technologies, products, and services for the benefit of the public, <u>including those residing in rural areas</u>, without administrative or judicial delays." In companion language, Section 309(j)(3)(B) cites the importance of "...promoting economic opportunity and competition and ensuring that new and innovative technologies are <u>readily accessible to the American people</u> by avoiding excessive concentra-

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[2] 47 USC 153(47)

tion of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." In Section 309(j)(4), the Commission is required to adopt regulations "...to ensure prompt delivery of service to rural areas," and "...[to] promote...economic opportunity for a wide variety of applicants, including... rural telephone companies. (Emphasis supplied).

The Congressional mandate in the Telecommunications Act reaffirms and extends its prior mandate to the Commission in Section 309(j). Congress intended in Section 309(j) to create statutory goals encouraging rural telephone companies to implement advanced wireless technologies like broadband PCS. Congress intended that the Commission would adopt regulations which create opportunities and extend preferences to rural telephone companies to encourage their provision of advanced service throughout rural America. This crucial aspect of the statutory mandate in Section 309(j) should now be addressed by extending the Commission's preference policies to all rural telephone companies qualifying under the definition in Section 153(47).

The Commission's current rules do not address these Congressional objectives. Unless a rural telephone company can qualify as an "entrepreneur" or "small business" applicant, it cannot take advantage of installment payments or bid credits. Rural telephone companies as a category are not even eligible to apply in the F Block PCS auction under Section 24.715 of the Commission's rules.

Carriers such as TDS Telecom who operate rural telephone companies in twenty-eight states are not permitted to hold geographically partitioned licenses for their own service areas under Section 24.714 of the Commission's rules. On their face, these provisions are plainly contrary to the Congressional mandate in Section 309(j) and should be changed.

Neither Section 309 (j) nor the 1996 Act contemplates restricting preferences for rural telephone companies by the size or nature of their affiliates. The interest of rural customers in rural telephone company participation in their service areas is not changed by other corporate involvement, except as provided in the Commission's cross-interest and spectrum cap restrictions.

Extending geographic partitioning rights to all qualifying rural telephone companies will promote prompt and cost-efficient development of broadband PCS systems in and around their established service areas. Congress clearly did not intend for the Commission to create the regulatory barriers to coordinated development of broadband PCS in rural areas which is prevented under the Commission's current geographic partitioning rules.

Nor do we see the availability of installment payments and bid credits for all qualifying rural telephone companies as diminishing the fair opportunities of other bidders in the F Block auctions. In the C Block auctions, thirty-one bidders were high bidders for service areas encompassing more than one million combined population. Ten of these bidders had aggregate high bids (net of bid credits) amounting to more than $140 million. Three had outstand-

ing high bids (net of bid credits) ranging from $1 billion to $3 billion. These bidders do not need to be "protected" by prohibiting rural telephone companies from obtaining installment payment options and bid credits which will directly benefit service to rural America. On the contrary, it seems likely rural telephone companies will need access to installment payments and bid credits in order to have realistic opportunities to bid competitively against bidders like those who have dominated the C Block auction.

3. Installment Payment Options Should not be Given to Designated Entity Bidders in the D and E Block Auctions.

We strongly object to any possible extension of installment payment options to small businesses in the D and E Block auctions. The Commission has set aside the C and F Blocks exclusively for designated entities. We see no reason to expand these opportunities by revisiting the contentious proceedings in which these matters were originally decided.

Bidders in the C Block auction have expressed concern about the influence of the Commission's open-ended low-interest U.S. Treasury loan arrangements because they appear to encourage bidders to assume high levels of financial risk[3] and provide no reasonable assurance of new broadband PCS service or of the collectibility of the winning bid amounts. The consequences particularly as they

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[3] This may be occurring because the interest rate structure adopted by the Commission under its preference policies establishes the applicable interest rate without regard to risk factors. Bidders implementing high risk/high reward business plans get the same rate as those implementing less aggressive business plans. Not surprisingly "high risk" bidders can afford to outbid all others.

impact deployment of PCS systems, may not be known for some months or possibly years.

Also, the "large company" and "small business" distinctions on which the Commission based its original preference policies for the C and F Block auctions no longer appear to apply. Extraordinarily large amounts, in one case exceeding $3 billion in aggregate high bids, have been submitted by C Block bidders who nominally qualify under provisions intended to benefit "small business."

Not enough is known about the C Block auction results for the Commission to confirm whether installment payment options are achieving or will achieve the Commission's objectives in the C and F Block auctions. Recent trade press reports suggest that the results of the C Block auction will be challenged and that there is at least some chance of protracted litigation.

In these circumstances it is neither justifiable nor necessary to extend installment payment options to the D and E Block auctions. Ample opportunity for competitive entry is already provided under the Commission's set-asides of all C and F Block licenses. The Commission's current procedures for the D and E Block auctions provide a workable, non-controversial framework which should be retained. This will permit these auctions to commence as promptly as possible after the close of the C Block auction which is clearly in the public interest.[4]

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[4] We have no objection to the D, E and F Block auctions being conducted together. For example, the Regional Narrowband auction combined designated entity channels and non-designated entity same auction. This procedure gave designated entities the (continued...)

CONCLUSION

The Commission has repeatedly confirmed that the early deployment of broadband PCS systems is a continuing priority in these proceedings and has tentatively indicated the D, E and F Block auctions should commence in July. We support this goal and this schedule. The Commission should retain its established rules and policies as discussed here because these rules (apart from the redefinition of rural telephone companies) contain a reasonable balance of incentives for rapid deployment/expanded service and for competitive new entry. The only area which requires change is the redefinition of rural telephone companies in the Commission's competitive bidding rules because it is mandated by Section 309 (j) and the Telecommunications Act of 1996. We strongly support prompt Commission action in response to this Congressional mandate.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By /s/ George Y. Wheeler
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April 15, 1996

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[4] (...continued)
right to bid credits and installment payment options on designated entity channels and gave them the same rights as non-designated entities on all other channels. We also request that in the event the Commission should decide it cannot proceed with its F Block auction because of litigation relating to the operation of the its preference policies in the C Block auction, the D and E Block auctions should not be delayed.