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APR 25 1996

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

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

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)
)
Amendment of the Commission's)
Cellular PCS Cross-Ownership Rule)

WT Docket No. 96-59

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GN Docket No. 90-314

**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

Mark J. Golden
Vice President of Industry Affairs
Robert R. Cohen
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street
Suite 700
Alexandria, Virginia 22314-1561
(703) 739-0300

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**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")¹ hereby submits its reply comments in the above-captioned Notice of Proposed Rulemaking.² In its opening comments in this docket, PCIA supported moving forward as rapidly as possible with the D, E, and F Block PCS auctions and setting aside the F Block for entrepreneurs and small businesses.

¹PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's federation of councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

²Amendment 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, (Mar. 20, 1996) ("Notice").

As discussed below, PCIA's position is endorsed by a large majority of commenters and PCIA urges the Commission to move forward expeditiously on the basis of that consensus. PCIA also agrees with many commenters that the Commission should retain its cellular-PCS cross-ownership restrictions and attribution rules.

I. THE COMMENTS DEMONSTRATE THAT THE COMMISSION SHOULD MOVE FORWARD RAPIDLY WITH THE FINAL BROADBAND PCS AUCTIONS USING RULES FOR THE F BLOCK PARALLELING THE C BLOCK

The comments in this proceeding support moving forward expeditiously with the 10 MHz PCS auctions using the framework outlined in the *Notice* and PCIA's original comments. The record demonstrates that the regulations for the F Block should be race- and gender-neutral to avoid the risks and consequences of delays and litigation.³ For example, Devon Mobile Communications states:

Although Devon, as a woman-controlled small business, would benefit from gender-based preferences, licensing outweighs the benefit of having to conduct an arduous and time-consuming rulemaking proceeding that, even if successful in establishing gender-based (or race-based) preferences, may nonetheless result in litigation and deferral of the auction.⁴

Similarly, PCS Development Corporation, a woman- and minority-controlled company,

³See, e.g., PCIA Comments at 2-3, 5-7; AT&T Wireless Services, Inc. Comments at 1, 2-4; Auction Strategy, Inc. Comments at 1; Conestoga Wireless Co. Comments at 3; DCR Communications, Inc. Comments at 2-4; Devon Mobile Communications, L.P. Comments at 2-3; National Telecom PCS, Inc. Comments at 1-2; National Telephone Cooperative Ass'n. Comments at 2; North Coast Mobile Communications, Inc. Comments at 3-5; PCS Development Corp. Comments at 2-3; Phoenix, L.L.C. Comments at 2-3; Point Enterprises Comments at 3; Sprint Corp. Comments at 2-3; U.S. INTELCO Wireless Communications, Inc. Comments at 2-3; Vanguard Cellular Systems, Inc. Comments at 2; Virginia PCS Alliance, L.C. Comments at 2-3.

⁴Devon Mobile Communications, L.P. Comments at 3. See also National Telecom PCS, Inc. Comments at 2 (a minority-owned business, stating if the Commission maintains the race-based preferences in the F block auction, it is a virtual certainty that litigation will occur, resulting in lengthy and, perhaps, fatal delays in the F block auction.)

"encourages the Commission to eliminate the provisions of the competitive bidding rules governing F Block licensing which are specifically based on meeting the definition of a minority/woman-owned business" in favor of "craft[ing] a definition of a small business which will provide actual assistance to individuals and entities which would otherwise be economically precluded from acquiring an FCC license."⁵ Such action, which is consistent with PCIA's position, "would better serve minority/women-owned businesses by furnishing greater opportunities in the telecommunications industry."⁶

The record in this proceeding also supports PCIA's view that the F Block rules should generally be based upon the prior C Block auction rules, including allowing applicants to utilize the 50.1 percent equity option and exempting from attribution the assets of affiliates that would themselves qualify as entrepreneurial companies.⁸ The commenters further agreed with PCIA that the smaller size of the 10 MHz licenses should not affect the extent of the preferences accorded to small businesses, whether by limiting the installment payment plans available, affecting the level of bidding credits, reducing the discount on upfront payments, or raising the downpayments due

⁵PCS Development Corp. Comments at 3-4.

⁶Id.

⁷See, e.g., PCIA Comments at 9; Ad Hoc Rural PCS Coalition Comments at 18; Airlink PCS, L.L.C. Comments at 14; Cook Inlet Region Comments at 3; Devon Mobile Communications, L.P. Comments at 6-7; Iowa L.P. 136 Comments at 4-5; National Telecom PCS, Inc. Comments at 3; North Coast Mobile Communications, Inc. Comments at 5-6; PCS Development Corp. Comments at 5; Sprint Corp. Comments at 3; U.S. INTELCO Wireless Communications, Inc. Comments at 4; Vanguard Cellular Systems, Inc. Comments at 2-3; WPCS, Inc. Comments at 1.

⁸See, e.g., PCIA Comments at 9-10; Antigone Communications, L.P. Comments at 7-8; Conestoga Wireless Co. Comments at 3; GO Communications Corp. at 1; North Coast Mobile Communications, Inc. at 5-6; Omnipoint Corp. Comments at 5-6; Sprint Corp. Comments at 3; Vanguard Cellular Systems, Inc. Comments at 2-3; Virginia PCS Alliance, L.C. Comments at 3; WPCS, Inc. Comments 3-4.

after the auction.⁹ In particular, many commenters agreed that the same tiered installment payment plans and other preferences used in the C Block auction should be used for the F Block for administrative simplicity and because the services provided on the 10 MHz spectrum blocks will generate commensurately lower revenues than the offerings that utilize the 30 MHz blocks.

The comments also support PCIA's suggestion that the D, E, and F Block auctions should be held as expeditiously as possible. For new entrants, any delays in the auctions postpone their entry into new wireless markets and may undermine their ability to compete with both wireless and wireline service providers for new customers. Licensing new entrants is critical to competition in the local loop. Commenters further agreed with PCIA that the D, E, and F Block auctions should be held concurrently,¹⁰ although PCIA and other commenters also noted that contingency plans should be made in the event litigation threatens to delay some aspect of the

⁹See, e.g., PCIA Comments at 11-12; Airlink PCS, L.L.C. Comments at 15; Antigone Communications, L.P. Comments at 8; Auction Strategy, Inc. Comments at 2-3; Coalition of New York Rural Telephone Cos. Comments at 5-6; DCR Communications, Inc. Comments at 8-9; GO Communications Corp. Comments at 1; Iowa L.P. 136 Comments at 6; Liberty Cellular, Inc. Comments at 7-8; Mountain Solutions Comments at 7; National Telecom PCS, Inc. Comments at 3-5; North Coast Mobile Communications, Inc. Comments at 10; Personal Connect Communications, L.L.C. Comments at 3; Sprint Corp. Comments at 3-4; U.S. INTELCO Wireless Communications, Inc. Comments at 3, 7; Vanguard Cellular Systems, Inc. Comments at 3; Virginia PCS Alliance, L.C. Comments at 7; WPCS, Inc. Comments at 4.

¹⁰See, e.g., PCIA Comments at 15; Ad Hoc Rural PCS Coalition Comments at 17; Airlink PCS, L.L.C. Comments at 17; Antigone Communications, L.P. Comments at 7; Auction Strategy, Inc. Comments at 4; Conestoga Wireless Company Comments at 3; DCR Communications, Inc. Comments at 10-11; Devon Mobile Communications, L.P. Comments at 16; GTE Service Corp. ("GTE") Comments at 13; Gulfstream Communications, Inc. Comments at 5; Iowa L.P. 136 Comments at 7; National Telecom PCS, Inc. Comments at 5; NextWave Telecom, Inc. Comments at 2-3; North Coast Mobile Communications, Inc. Comments at 19-20; Omnipoint Corp. Comments at 6; Personal Connect Communications, L.L.C. Comments at 1-2; Phoenix L.L.C. Comments at 4; Point Enterprises Comments at 3; U.S. INTELCO Wireless Communications, Inc. Comments at 2-4; U.S. West, Inc. Comments at 5-6; Vanguard Cellular Systems, Inc. Comments at 7; Virginia PCS Alliance, L.C. Comments at 10-11.

auctions.¹¹ In this manner, the Commission could ensure that the risk of delays for one part of the planned auction would not affect the remaining PCS licensing process.

Finally, commenters concurred with PCIA that the three year holding period for designated entity licenses should be eliminated.¹² Under this proposal, designated entities would be permitted to transfer control of or assign their PCS authorizations to other designated entities, subject to a recapture of small business benefits if the new licensee is not also a qualifying small business.

By adopting these consensus provisions, PCIA believes the Commission will be able to move forward rapidly and conclude the licensing of broadband PCS spectrum. The competitive bidding structure outlined above will allow participation by a wide range of companies, including businesses owned by women and minorities. PCIA also believes that this auction plan will expedite the offering of new services to the public and allow new licensees to enter the wireless marketplace as soon as possible. PCIA therefore urges the Commission to finalize the rules proposed in this proceeding, consistent with its comments, and complete the PCS licensing process.

¹¹See, e.g., PCIA Comments at 15; U.S. West, Inc. Comments at 7-8.

¹²See, e.g., PCIA Comments at 14; Airlink PCS, L.L.C. Comments at 16-17; Auction Strategy, Inc. Comments at 3; DCR Communications, Inc. Comments at 12; Devon Mobile Communications, L.P. Comments at 14-15; General Wireless, Inc. at 6-8; National Telecom PCS, Inc. Comments at 5; Personal Connect Communications, L.L.C. Comments at 4-5; Virginia PCS Alliance, L.C. Comments at 7-8.

II. THE RECORD SUPPORTS RETAINING CELLULAR-PCS CROSS-OWNERSHIP RESTRICTIONS AND ATTRIBUTION RULES

The Comments in this proceeding support retention of cellular-PCS cross-ownership rules.¹³ The record demonstrates and PCIA supports the retention of cellular spectrum caps, overlap restrictions, and attribution rules.¹⁴ As explained below, maintaining the rules is critical to the success of broadband PCS auction participants. For example, DCR Communications states:

The Commission should maintain the cellular-PCS ownership caps to protect fledgling PCS competition... If cellular companies are permitted to add significant amounts of PCS spectrum to their existing cellular licenses, there is little chance that PCS entrants--especially small companies--will have a meaningful chance of success. Using this additional spectrum, cellular companies will quickly be able to offer additional services and obtain more subscribers, leaving PCS licensees with little to offer. The name recognition alone would attract many subscribers that might otherwise experiment with new PCS systems. Moreover, cellular providers obtained their spectrum for free, and can easily build on their existing systems using new spectrum without amassing the costs that PCS licensees do and will face... The result would be that cellular companies, rather than new entrants would dominate PCS.¹⁵

Additionally, raising the cellular spectrum caps at this time would disadvantage A, B, and C block entities who made their business decisions in those auctions based on the existing spectrum cap structure. Any change at this late hour would be fundamentally inequitable to prior auction participants and would open the litigation floodgates.¹⁶ Past auction bidders have

¹³ Although the Court in Cincinnati Bell Telephone v. FCC, 69 F.3d 752 (6th Cir. 1995) found that the FCC did not adequately support its cross-ownership restrictions and remanded the issue to the FCC, the record now developed in this docket adequately supports retention of cross-ownership prohibitions and current attribution rules. As stated in these reply comments, PCIA believes that rational economic reasons exist for retaining the current rules.

¹⁴ See, e.g., Cook Inlet Inc. Comments at 11-12; Conestoga Wireless Co. Comments at 4; DCR Communications Inc. Comments at 11-15; Mountain Solutions Comments at 10-12; Sprint Corp. Comments at 1,9-10, Telephone and Data Systems, Inc. ("TDS") Comments at 3-4; Telephone Electronics Corp. Comments at 13-14.

¹⁵ DCR Communications, Inc. Comments at 12-13.

¹⁶ See, e.g., Sprint Corp. Comments at 9; TDS Comments at 4.

reasonably relied on these restrictions and the Commission should not change course at this time. A cellular licensee should be limited to obtaining only one additional 10 MHz block of broadband PCS spectrum in its service area.

Proposed increases in the cellular spectrum cap would allow cellular carriers to acquire both the D and E block BTAs in their service areas and monopolize the market.¹⁷ The Commission's mission under Section 309 (j)(3)(B) of the Communications Act is to avoid excessive concentrations of licensees and to promote economic opportunity for small businesses, rural telephone companies, women, and minorities.¹⁸ Both objectives would be undermined by increases in the cellular spectrum cap. Moreover, the Commission's rules already allow cellular carriers to obtain more spectrum, but appropriately restricts this relief until after PCS providers have an opportunity to establish themselves in the marketplace.¹⁹ Until that time, the Commission should continue to enforce its cross-ownership restrictions.

For similar reasons, PCIA and other commenters oppose any relaxation of the Commission's cellular attribution rules. The current twenty percent threshold is quite reasonable and supported by the record in this docket.²⁰ As Vanguard Cellular states in its comments:

¹⁷See, e.g., AT&T Wireless Services Inc. Comments at 9; Cellular Telecommunications Industry Ass'n. ("CTIA") Comments at 2; GTE Comments at 6-10.

¹⁸ See, e.g., DCR Communications, Inc. Comments at 13-14; North Coast Mobile Communications, Inc. Comments at 15; TDS Comments at 6.

¹⁹47 C.F.R. § 24.204(b)

²⁰See, e.g., DCR Communications Inc. Comments at 14; Mountain Solutions Comments at 12; North Coast Mobile Communications, Inc. Comments at 18; TDS Comments at 3-4; Vanguard Cellular Systems Inc. Comments at 6.

The Commission elsewhere employs attribution standards of lower levels.²¹ ...Moreover, most of the principal cellular companies are now publicly traded and therefore a 20% interest held by a single shareholder clearly would create the possibility of at least de facto control. The 20% attribution standard should not be relaxed.²²

As the Commission and other commenters have noted, the current cellular attribution standards are quite generous.²³ In most other cross-ownership contexts, including broadcast and cable, the attribution threshold is considerably lower--five percent.²⁴ Additionally, in the recently enacted Telecommunications Act of 1996, Congress found that a ten percent investment was sufficient to establish an affiliation.²⁵ As a consequence, to guard against anti-competitive concentrations in the wireless industry, the Commission has a sufficient basis to retain its cellular attribution rules and also adhere to the Cincinnati Bell decision. A twenty percent threshold is economically reasonable and legally supportable by the record in this proceeding. Therefore, the Commission need not relax its standards by raising its attribution threshold or creating a "controlling interest test." Simply put, retaining the current cellular attribution standard makes good public policy.²⁶

III. CONCLUSION

As discussed above, PCIA believes there is broad consensus on the *Notice's* plan for moving ahead with the 10 MHz PCS auctions as soon as possible. PCIA urges the Commission

²¹ See Review of the Commission's Regulations Governing Attribution of Broadcast Interests, 10 FCC Rcd 3606, ¶¶ 26-27 (1995).

²²Vanguard Cellular Systems, Inc. Comments at 6.

²³ Notice at ¶¶ 72-73. See also DCR Communications, Inc. Comments at 14-15; Vanguard Cellular Systems Inc. Comments at 6.

²⁴See supra note 21.

²⁵Public L. No. 104-104, § 3(a)(2)(33), 110 Stat. 56 (1996)

²⁶47 C.F.R. § 24.204(d)(2)(ii).

to rapidly conclude this proceeding consistent with its recommendations for F Block rules generally mirroring the C Block, and to expeditiously commence the D, E, and F Block auctions. PCIA also urges the Commission to retain its cellular-PCS cross-ownership and attribution rules.

Respectfully submitted,

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

By: Mark J. Golden /RRC
Mark J. Golden
Vice President of Industry Affairs
Robert R. Cohen
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street
Suite 700
Alexandria, Virginia 22314-1561
(703) 739-0300

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