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January 29, 1997

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20054

Re: GN Docket No. 96-~~288~~ 228, Ex Parte Presentation -- Delay of WCS Auction

Dear Mr. Caton:

The Rural Telecommunications Group ("RTG"), by its counsel, hereby requests that the Federal Communications Commission ("FCC" or "Commission") delay the commencement of the auction and the collection of auction proceeds in the above referenced proceeding to establish the new Wireless Communication Services ("WCS"). RTG also requests that the following facts and arguments be included in the record in this proceeding.

Pursuant to the Omnibus Consolidated Appropriations Act of 1997 ("1997 Appropriations Act"), the Commission must commence the WCS auction by April 15, 1997 and collect all revenues therefrom by September 30, 1997. The 1997 Appropriations Act specifies however, that the WCS auction must be conducted in accordance with the mandates of Section 309(j) of the Communications Act of 1934, as amended ("the Act").

As discussed below, the 1997 Appropriations Act deadlines are irreconcilable with the mandates of the Act and contrary to the public interest. The Commission, as the ultimate expert in national communications policy and guardian of spectrum, should take whatever action is necessary to modify these deadlines. Failing to do so will cause irreparable harm to the public, especially to those persons residing in rural areas.

Specifically, the 1997 Appropriations Act deadlines: (1) grossly deflate the value of WCS spectrum; (2) undermine and jeopardize the value of currently authorized and licensed Commercial Mobile Radio Services ("CMRS") spectrum; (3) create an "aftermarket" for WCS spectrum depriving the public of the full value of the spectrum; (4) preclude participation by

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a wide variety of entities including small businesses, rural telephone companies and minority owned businesses; (5) create needless uncertainty about WCS, stifling innovation and production of equipment; (6) lead to service rules based on limited short-term gain rather than the public interest; and, (7) force the Commission to violate the letter, spirit and intent of the Act.

The arbitrary statutory deadlines contained in the 1997 Appropriations Act will drastically limit the number of entities that can compete in the WCS auction. As RTG and numerous other commenters in this proceeding have noted, under the current deadlines and currently proposed licensing rules, most entities will not have time to prepare business plans, consolidate investors or secure the capital necessary to participate in the WCS auction. The deadlines will limit WCS to a few large companies and effectively preclude small businesses, minority owned businesses and rural telephone companies from participating in the WCS auction in direct conflict with the mandate of Section 309(j) of the Act. Ultimately, the reduction in potential bidders will decrease the revenue that the WCS auction will generate.

The 1997 Appropriations Act deadlines also force the Commission to base WCS licensing and service rules on limited short-term gain rather than sound public policy. For example, the deadlines force the Commission to propose licensing WCS on the basis of large geographic areas not because such areas best serve the public interest, but only because the Commission cannot complete an auction of smaller areas and collect the revenues by the collection deadline. The deadlines also force the Commission to reject the use of installment payments for small businesses and other designated entities despite the Commission's recognition that the use of installment payments is one of the most effective tools for encouraging participation by designated entities.

RTG filed Comments and Reply Comments in this proceeding which, among other things, explain the harm that the proposed use of large geographic areas will cause rural America and designated entities. RTG will not reiterate those arguments here. In summary, however, licensing WCS on the basis of large areas will deny most designated entities the opportunity to participate in WCS, will deny WCS to rural America, will drastically limit the number of auction participants, and will further decrease the potential value of the WCS spectrum. As RTG noted in its comments, smaller geographic areas tend to generate a higher value per megahertz per population.

At this time, WCS is a completely undefined service. No one knows for certain how this spectrum will be used. It is not even clear that there is market demand for additional spectrum for wireless services at this time. The record in this proceeding makes clear that equipment manufacturers are reluctant to invest in such a nebulous service. The deadlines and uncertainty threaten the sound development of WCS, and encourage speculation in WCS spectrum rather than innovation. As noted above, small businesses -- often the source of experimentation and innovation -- will be excluded from participating. In addition, the "dumping" of spectrum and speculation therein may undermine the value and development of currently licensed services such as Personal Communications Services ("PCS").

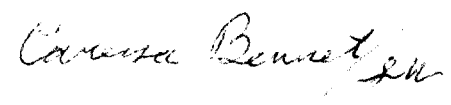
Additionally, faced with the uncertainty about "what is WCS," the Commission is reluctant to impose performance requirements on WCS licensees. While this reluctance may be understandable in light of the 1997 Appropriations Act deadlines, the failure to impose such requirements once again violates Section 309(j) of the Act which, among other things, requires the Commission to prescribe "performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas..., and to promote investment in and rapid deployment of new technologies and services." 47 U.S.C. § 309(j)(4)(B).

Ultimately, the congressionally imposed deadlines drive down the value of the WCS spectrum. The deadlines in effect force the Commission to sell the spectrum at a "fire sale." The exclusion of most potential bidders, the large service areas, and the uncertainty about the service all act to drive down the potential value of the spectrum. Speculation in WCS will create an aftermarket in WCS in which speculators may achieve a windfall while the public will be deprived of the true value of the spectrum.

By imposing the hasty statutory deadlines of the 1997 Appropriations Act, Congress intended to quickly generate revenue for the U.S. Treasury. Surely, the members of Congress did not envision or intend the overwhelmingly adverse consequences that would result from the arbitrary statutory deadlines, nor must Congress have recognized the irreconcilable conflicts between the 1997 Appropriations Act deadlines and the Act. The Commission should apprise Congress of these adverse results and secure relief so that the public interest can best be served. Finally, faced with an irreconcilable conflict between the two statutes, the Commission should seek to comply with the mandates of the Act and request an extension from Congress to conduct the WCS auction.

The public interest would best be served by delaying the commencement of the WCS auction and by delaying the collection date for the auction proceeds.

Sincerely,



Caressa D. Bennet

cc: Chairman Reed Hundt
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Commissioner Rachelle Chong
Commissioner James Quello
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Jonathan V. Cohen, Auctions Division (on detail)

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