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

MAY 6 1997

In the Matter of	)	
	)	
Rulemaking to Amend Parts 1, 2, 21 and 25	)	
	)	
of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	)	CC Docket No. 92-297
	)	
Petitions for Reconsideration of the Denial of Applications for Waivers of the Commission's Common Carrier Point-to Point Microwave Radio Service Rules	)	
	)	
Suite 12 Group Petition for Pioneer's Preference	)	PP-22
	)	

BELL ATLANTIC REPLY COMMENTS

Bell Atlantic Corporation submits these Reply Comments on the Fifth Notice of Proposed Rulemaking in this proceeding,[1] to oppose the Comments of WebCel Communications, Inc.

In the guise of filing comments, WebCel actually seeks reconsideration of the Commission's decision permitting limited participation by local exchange carriers in the auctions

[1] Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, FCC 97-82 (released Mar. 13, 1997) ("Second Report" or "Fifth NPRM" as appropriate).

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for the new Local Multipoint Distribution Service ("LMDS"). WebCel's comments on this point are irrelevant to the post-auction issues raised by the Fifth Notice and should not be considered. Moreover, WebCel's arguments are entirely speculative and are an obvious attempt to limit the number of bidders WebCel would compete against in the LMDS auction. The Commission should therefore dismiss this effort to suppress bidding competition.

I. WEBCEL IMPROPERLY ATTEMPTS TO REARGUE LEC ELIGIBILITY.

The Second Report decided to permit geographic partitioning and spectrum disaggregation of LMDS licenses, consistent with Commission decisions and proposals in numerous other proceedings. The Fifth NPRM concerned only the mechanics of implementing partitioning and disaggregation after the auction of LMDS spectrum, and sought comment on how build-out and other obligations of LMDS licensees should apply when a licensee partitions or disaggregates a portion of its authorized service area or spectrum. See Fifth NPRM, ¶¶ 407-24.

Rather than confine its Comments to these issues, WebCel has improperly used the Fifth NPRM as a pretext to reargue the entirely distinct issue of LEC eligibility to participate in LMDS auctions. WebCel demands that the Commission "reexamine" and repeal its rule permitting LECs to bid on the 1150 Mhz license blocks subject to bringing themselves into compliance with the LMDS cross-ownership rules within 90 days. Comments at 14-15.

These arguments have no place in this phase of the proceeding. They are completely irrelevant to the Fifth NPRM, and instead seize on the comment process as a vehicle for seeking

reconsideration. WebCel's attempts to reopen that issue in this new comment round must be rejected, and its Comments on this point stricken or ignored.

II. WEBCEL'S ATTEMPT TO EXCLUDE LECs FROM LMDS BIDDING IS UNSUPPORTED AND CONTRADICTS FCC AUCTION POLICIES.

In the Second Report, the Commission barred incumbent LECs from holding an 1150 Mhz LMDS license that significantly overlaps their service area, but permitted them to bid on these licenses as long as they bring themselves into compliance within 90 days of obtaining the license. See Second Report, ¶¶ 162, 193-95. While the Commission's overly broad eligibility restriction is itself unjustified, WebCel seeks to broaden it even further.

WebCel argues that LECs could bid on licenses for which they are not otherwise eligible with a commitment to cure their ineligibility, and thereby "game the process in order to drive up license prices and deter potential competition."[2] This is fanciful speculation designed to suppress bidding at the LMDS auction.

First, WebCel's theory that some parties may participate in the auction merely to "drive up prices" has been fully addressed by the Commission's existing auction rules. From the outset of the spectrum auction process, the Commission has designed and refined its rules to limit participation to those parties who intend to develop the licenses they purchase. Nothing in WebCel's comments shows why LMDS is somehow unique so that those rules are now ineffective for LMDS. Nor has WebCel showed that its claimed concern has in fact occurred in

[2] WebCel Comments at 15.

any of the Commission's spectrum auctions.

Second, WebCel piles speculation on top of speculation to suggest that LECs might engage in "anticompetitive abuse of the auction process" and "evasion of the Commission's eligibility rules" and therefore must be completely barred from bidding on certain LMDS licenses. Comments at 4. The fact that these actions are already proscribed by the Commission's rules and the antitrust laws is a complete answer to WebCel's argument. See, e.g., 47 C.F.R. § 1.2108 and new Section 101.1110. There is simply no reason to adopt more rules where the theoretical concern can easily be addressed through enforcement of existing rules and statutes.

Third, WebCel's position that LECs must be excluded from bidding for 1150 Mhz licenses contradicts the Commission's efforts to promote a robust market for LMDS. The Commission has found that LMDS will benefit from LEC participation, and nothing in WebCel's Comments challenge that finding.

CONCLUSION

WebCel's proposed restriction on LEC eligibility to participate in LMDS auctions is procedurally improper, factually unsupported, and inconsistent with the Commission's existing auction rules and policies. It must be rejected.

Respectfully submitted,

BELL ATLANTIC CORPORATION

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