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

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS	)	GEN Docket No. 90-314 ET Docket No. 92-100
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Narrowband PCS	)	PP Docket No. 93-253

To: The Commission

COMMENTS

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SUMMARY

CONXUS Communications, Inc., a small business which is implementing a nationwide narrowband PCS system, asks the Commission to treat all PCS licensees, whether narrowband or broadband, in a similar manner, especially as it relates to financial preferences for Designated Entities. Further, it opposes the redesignation of MTA/BTA channels for nationwide or regional licensing. Business plans were implemented in reliance on the Commission's long standing rules. Change at this late date will undermine the confidence of incumbent licensees, potential licensees, and their investors in the auction process and the Commission's commitment to the narrowband PCS industry. CONXUS recommends that the Commission commence a separate rule making to determine the how and when to channelize and license the reserve narrowband PCS spectrum. CONXUS also requests that the Commission eliminate the geographic spectrum aggregation limit because is may reduce the competitiveness of narrowband PCS service among the various CMRS providers.

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COMMENTS

CONXUS Communications, Inc. ("CONXUS"),[1] pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission") and by counsel, respectfully submits its comments in response to the Further Notice of Proposed Rulemaking ("Further Notice") adopted by the Commission on April 17, 1997 in the above-styled proceeding.[2]

I. Introduction

CONXUS is implementing a nationwide narrowband Personal Communications Service ("PCS") system, which will provide two-way messaging to the public. Its product is a portable "answering machine" or "voice mail" device. It is an economical means for voice messaging with an acknowledgement feature by which the sender will know whether the message was received. It currently has several major markets

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[1] CONXUS was formerly known as "PCS Development Corporation."

[2] Report and Order and Further Notice of Proposed Rulemaking (FCC 97-140), GEN Docket No. 90-314, 12 FCC Rcd __ (1997).

constructed and will commence commercial operation on September 1, 1997. It intends to have its nationwide buildout completed in 1998.

CONXUS, though its subsidiary, holds five regional 50/50 kHz narrowband licenses which it acquired through the competitive bidding process. CONXUS was considered a minority-/woman-owned, small business for purposes of the competitive bidding process and was afforded certain financial benefits in acquiring its licenses. In addition, CONXUS holds (through its subsidiary) 24 900 MHz Specialized Mobile Radio ("SMR") Major Trading Area ("MTA") licenses which it also acquired through a competitive bidding process. In the 900 MHz SMR auction, CONXUS was eligible for financial preferences based on its status of a small business. CONXUS also holds several 900 MHz SMR Designated Filing Area ("DFA") licenses which were purchased from incumbent licensees.

CONXUS, therefore, has extensive experience in the FCC's competitive bidding process, is an incumbent narrowband PCS licensee, and is one of the only small businesses which has initiated development of a narrowband PCS system.[2] Its business plan, however, is dependent on the FCC's regulatory treatment of narrowband PCS. Thus, CONXUS asks that the Commission carefully consider its proposal which would dramatically alter the allocation and structure of the narrowband PCS service. Many of the Commission's proposed changes may harm CONXUS and

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[2] CONXUS believes that only three of the nationwide narrowband PCS licensees have begun construction and operation of their systems: CONXUS, MTEL, and PAGENET. Thus, CONXUS as a start-up company is going head to head with well financed, well established, incumbent wireless players.

other small business narrowband PCS licensees and limit CONXUS' ability to compete with other CMRS providers in the marketplace or may reduce the amount of competition in a marketplace.

II. Discussion

The Commission has adopted differing regulatory treatment for narrowband PCS and broadband PCS. Typically, the Commission has distinguished the differing treatment based on the amount of capital which will be required to develop and implement a broadband PCS system as compared to a narrowband PCS system. CONXUS submits in part the FCC based its rules on the premise that narrowband PCS was going to be a relatively low cost service, or at least significantly less expensive than broadband PCS. CONXUS contends that this underlying premise is faulty in regard to the capital needs of narrowband PCS. Narrowband PCS requires substantial capital investment which cannot be met without competing for the same capital funds as the entrepreneurial broadband PCS licensees. CONXUS, therefore, asks that the Commission re-visit its conclusions that narrowband PCS will not be as capital intensive as broadband PCS and that the Commission adopt parallel regulations in the two services.

CONXUS, as a small business, paid more for its narrowband PCS licenses than did the majority of the entrepreneurial broadband PCS licensees -- either on an individual license basis or on a licensee basis, i.e. aggregate licenses acquired by the

same licensee.[3] Based on the current design of its nationwide system, CONXUS' buildout of its nationwide system will require at least $500 million in new capital to cover operational costs, payment of its obligations to the FCC for licenses, and the cost of the infrastructure. This capital need for implementation of the system is proportionally comparable or greater than that which will required by a majority of C and F Block broadband PCS licensees for their system implementation. Narrowband PCS is more cost intensive than other non-PCS CMRS services such as the SMR and 220 MHz services. Thus, contrary to the Commission's prior conclusions, narrowband PCS will require substantial capital investment which cannot be obtained from small business loans or family investment. Wall Street money will be required to implement and develop a competitive offering to the public.

If entrepreneurial broadband PCS licensees are afforded more flexibility in developing their systems and service offerings[4] or afforded better financial preference terms (for example, lower interest rates on installment payments or timing of installment payments), the pool of capital funds available for wireless offerings may be directed at broadband PCS offerings rather than narrowband PCS. The Commission therefore could competitively disadvantage narrowband PCS licensees as a result of its differing regulatory treatment of the two PCS services. Accordingly, CONXUS'

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[3] Based on the closing results of the C and F Block broadband auctions, CONXUS paid more for its licenses than did 90% of the C and F Block broadband PCS licensees.

[4] Broadband PCS will provide voice messaging and paging as a part of its bundled broadband service offerings and will target the same customers as narrowband PCS.

position on the Commission's proposals to amend the narrowband PCS rules is focused on ensuring comparable regulatory treatment between the two PCS services to allow the licensees to compete on an equal playing field and permit the service offerings of the individual licensees and marketing forces to determine the fate of the services.

A. CONXUS opposes the redesignation of the remaining narrowband PCS channels for licensing by larger geographic areas.

1. The Commission's redesignation will harm the public interest as narrowband PCS may be unable to compete with other CMRS providers.

In response to the previous Notice of Proposed Rule Making which the Commission proposed to re-allocate the two Basic Trading Area ("BTA") licenses to regional licenses,[5] CONXUS took issue with such a dramatic alteration of the Commission rules.[6] Like other successful bidders, CONXUS tailored its bidding strategies and business plan on reliance of the Commission's allocation of the narrowband PCS spectrum. Reallocation of narrowband PCS spectrum with little experience relating to operational systems, at this late date, may seriously undermine licensees and potential licensees, perception of -- and confidence in -- the auction process and the Commission's commitment to encouraging competitive narrowband PCS offerings.

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[5] Competitive Bidding Third Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 175 (1994).

[6] See Comments of PCS Development Corporation (the former name of CONXUS) dated January 13, 1995.

More importantly, investors on whom the narrowband PCS licensees may rely to acquire the capital to participate in the Commission's auction process and actually implement an operational system, may be reluctant to invest in a service where it appears that service rules can be changed on a spur of the moment. Inevitably, inconsistencies on the Commission's part and the regulatory instability they would create in its rules and decisions would affect not only the quality, but also the availability, of future investment. The potential risk of a start-up business (as most small, entrepreneurial business are) is substantially increased when there can be no dependence on a consistent regulatory structure. The ever-changing rules relating to the broadband PCS C Block licenses may have had an impact on the number of businesses that actually competed in the auction and may be one reason for the difficulties that such providers are having convincing Wall Street investors that small businesses can succeed in the PCS environment.

The uncertainty of regulatory structure is further exacerbated by the Commission's stated goal of its spectrum policy:

> [t]he goal of our spectrum policy is not to preserve the value of the licenses that auction winners acquire, but to promote competition and service in the public interest.[7]

The Commission apparently is unaware that the public has a vested interest in the value of previously issued licenses retaining their value. Investment is dependent on a company having value and being able to grow the value. Thus, if an investor believes that its equity will be devalued based on the Commission's goals, the investor

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[7] Further Notice, ¶ 32.

will choose other services or areas to invest. Consequently, competitive services are delayed or derailed based on a lack of capital to acquire licenses necessary to provide the service. The public is harmed because of a lack of competitive service offerings which may provide more service offering choices at more economical prices. Moreover, the public is harmed as the monies raised by auctions will be substantially reduced as potential licensees are unable to raise sufficient capital to participate in auctions or the value of the spectrum is depressed by the Commission's policies.

2. The Commission's proposal to redesignate MTA/BTA Channel Licenses will adversely affect entrepreneurial small businesses and smaller, incumbent paging companies.

a. The MTA/BTA Channels will allow incumbent narrowband PCS licensees to acquire additional capacity as needed to provide competitive service offerings.

CONXUS has tailored its business plan on reliance on the Commission's allocation of the narrowband PCS spectrum. One facet of its business plan is the need for additional capacity in certain of the major metropolitan areas where one 50/50 kHz license will not be sufficient to provide quality service to CONXUS' subscribers in the future. The Commission's allocation of the MTA/BTA licenses will provide CONXUS the ability to bid and acquire the additional capacity in those areas where it is economically feasible to have access to the additional capacity. As CONXUS' system is based on a 50/50 kHz technology, the additional narrowband capacity which it requires will be obtained by acquiring remaining 50/50 kHz paired channels. CONXUS made its business decision in bidding and acquiring a nationwide license based on the availability of 50/50 kHz pair channels available on an MTA/BTA basis in the future.

The Commission proposes to license the two remaining 50/50 kHz paired channels on a nationwide basis. The Commission's proposal is contrary to the Congressional mandate to promote the entry of small businesses into the wireless telecommunications industry. Moreover, it may provide the means for the large entrenched telecommunications companies to manipulate the development and competitiveness of narrowband PCS.

CONXUS, as a small business, would be competitively disadvantaged should the Commission adopt this proposal. Currently, of the entities which hold nationwide licenses -- CONXUS is the only small business which obtained a nationwide license through the auction process. CONXUS does not have the economic ability to compete for the additional capacity on a nationwide basis based on the capital requirement for payment of the license and the cost of the infrastructure to construct the system to retain the license. CONXUS suspects that most start-up, small businesses do not have financial ability to compete against the large entrenched companies for a nationwide license. The Commission's provision for two additional nationwide licenses, therefore, would increase the dominance of large entrenched telecommunications companies in narrowband PCS and prevent the entry of small businesses into the next age of paging services.

Nor would the Commission's proposal to permit partitioning be an effective means to permit CONXUS either to acquire its additional capacity through auction or obtain the necessary capacity from the winning bidder. The Commission considers the ability to partition large geographic licenses a means by which it can encourage

entry of small businesses into the wireless telecommunications industry.[8] CONXUS, however, believes that the Commission may be too trusting in its reliance on dominant industry players to parcel out portions of a geographic license in a manner which will create competition. From CONXUS' perception, the geographic areas which may be offered will not be those lucrative areas where additional capacity may be required. Or, if such areas are offered, the price of such acquisition will not be economically feasible for the smaller, entrepreneurial start-up businesses.

Conversely, from CONXUS' business analysis, the acquisition of a nationwide license, even with the ability to partition, has substantial risks to a business. The amount of capital that may be raised by such partitioning may not be sufficient to warrant the capital expenditure for the license. Accordingly, CONXUS contends that adoption of partitioning does not justify redesignation of the MTA/BTA channels to nationwide or regional.

b. The Commission will foreclose entry into narrowband PCS by smaller, incumbent paging companies which will further decrease competitive services to the public.

Additionally, redesignating PCS channels for licensing on a regional or national basis may preclude local paging companies from successfully participating in the provision of PCS service. The limited capital of these smaller businesses could limit, if not prohibit altogether, their ability to ever participate in a PCS system.

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[8] See Competitive Bidding Further Notice of Proposed Rule Making, PP 93-253, 9 FCC Rcd 6775 (1994).

As discussed previously, it is not only the capital required to obtain a license to operate the narrowband PCS system which may cause smaller companies to be unable to enter the narrowband PCS service, but the cost of the infrastructure which is required to operate the system. Based on CONXUS' experience, to implement a regional system to meet the Commission's coverage requirements, for infrastructure alone, a licensee would need capital of approximately $50 million -- this is in additional to any administrative costs and the cost of the FCC license. In the existing capital environment, there are few small businesses which have the ability to compete for such regional licenses.

On the other hand, infrastructure for a typical MTA is approximately $10 million and a BTA would be proportionally smaller. As the costs for the smaller areas are reduced, a larger number of businesses are able to implement narrowband PCS technology. Additionally, many paging companies have a localized subscriber base which dictates that amount of area which a company may wish to serve so that its administrative and marketing costs are not substantially increased. The Commission, if it wishes to increase competition within narrowband PCS and with other CMRS services, will promote such goal by licensing the remaining allocated narrowband PCS spectrum as currently codified.

3. CONXUS supports a limited amendment to licensing of the paging response channels.

The Commission proposes to lift all eligibility restrictions as they apply to paging response channels, to redesignate the BTA-based response channels to a regional basis, and to remove the restriction of mobile-to-base transmissions. For the reasons

set forth above, CONXUS opposes the redesignation of the BTA-based response channels to regional licenses. CONXUS also opposes the removal of the restriction of the mobile-to-base transmission.

CONXUS opposes the complete elimination of the eligibility restrictions as they apply to the paging response channels, but submits that the eligibility for the channels should be amended to include incumbent narrowband PCS licensees. The paging response channels will provide not only the ability of incumbent paging licensees to convert existing paging channels to the two-way paging technologies, but also may provide incumbent narrowband PCS licensees additional capacity on the response side of it system in areas as required. As the spectrum is dedicated to encourage and promote narrowband PCS offerings, incumbent narrowband PCS licensees should not be precluded from acquiring this spectrum.

B. The construction periods should be amended, but the coverage requirements should be retained.

1. CONXUS opposes the "substantial service" proposal.

The Commission proposes to adopt a more flexible approach to coverage requirements similar to those adopted in other CMRS services. The rules would be amended to permit a licensee to demonstrate at the end of five years from the date of the license grant date that it is providing "substantial service" as an alternative to meeting the coverage requirements under the existing rules. No further coverage benchmarks would be required, other than demonstration of "substantial service" for renewal purposes. CONXUS opposes the proposal because it may harm the consumer

and may encourage speculation and encourage the continue flourishing of fraudulent "application mills" which the Commission has sought to deter.

In other CMRS services where the Commission has adopted or proposed adoption of "substantial service" requirements,[9] except for the Wireless Communications Service for which unique circumstances exist,[10] there have been incumbent licensees which the newly-licensed geographic licensee must protect. For example, in the 900 MHz SMR service, it became apparent that with the number of incumbents in the larger, more lucrative MTAs, a newly-licensed geographic licensee could be precluded from meeting the coverage requirements. The Commission, therefore, adopted a "substantial service" criteria to increase the value of the licenses and ensure that persons outside the major metropolitan markets in an MTA had an opportunity for more CMRS service offerings.

Unlike these other CMRS services, narrowband PCS licensees are not required to deal with incumbent licensees providing the same or similar service to narrowband PCS. The spectrum had no prior users. Thus, the reasons which dictated a need for a "substantial service" criteria does not exist for narrowband PCS. CONXUS is concerned that reducing the coverage benchmarks which a narrowband PCS licensee is required to meet, will increase speculation in the spectrum. The public interest is harmed because there will be less service offerings in certain markets and there may

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[9] See Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 96-18, FCC 97-59 (rel. February 29, 1997); Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 267 (1995).

[10] Report and Order, GN Docket No. 96-228, FCC 97-50 (rel. March 3, 1997).

be an increase in the "application mill" offerings which have plagued the wireless industry for the past several years.

Additionally, in those services where the "substantial service" benchmark was adopted, CONXUS notes that the alternative coverage benchmarks for the services are based on a final benchmark at five years. Thus, all the licensees are required to demonstrate coverage requirement to retain a license at the same point in time. The Commission's proposal would subject narrowband PCS licensees to differing, and perhaps less onerous, criteria for the retention of their license. The lack of an objective criteria for retention of these licenses provides an opportunity for speculation, warehousing of spectrum, and anti-competitive behavior. CONXUS, therefore, urges the Commission to decline to adopt a "substantial service" benchmark.

2. The Commission should amend the time at which the construction "clock" is started for benchmark purposes.

CONXUS asks that the Commission retain the current coverage requirements under the existing rules. CONXUS believes that the requirements are equitable and ensure that each licensee implements service to the overall public as opposed to only the major metropolitan markets or small niche markets. However, because of the delay in the availability of equipment to implement the two-way paging technology, CONXUS urges the Commission to amend the rules to start the "clock" on which the benchmarks are set to provide for the technology delays.

As the Commission is aware, the manufacturers of the infrastructure necessary to implement the two-way paging technologies have encountered substantial delays

in being able to provide the equipment on a commercial basis to narrowband PCS licensees. CONXUS is aware of only three nationwide narrowband PCS licensees which have begun construction and commenced operation of their systems:[11] MTEL, PAGENET and CONXUS. Equipment to construct CONXUS' narrowband PCS system was not available until February 1997 -- almost two years after issuance of the licenses. CONXUS, however, will begin commercial service on September 1, 1997.

The availability of the equipment has delayed implementation of the initial narrowband PCS licenses. The parties obtaining licenses in the next auction will benefit from the first licensees' efforts in de-bugging the equipment and its development. Therefore, CONXUS proposes that the Commission amend the rules so that the five year benchmark, for all narrowband PCS licensees, including current narrowband PCS licensees, be established from the date by which the last narrowband PCS license under the existing allocation (the date would not be affected by the licensing of the reserve spectrum) is granted. The coverage requirement at the end of the first term of the license would remain the same.

C. The Commission should eliminate the geographic spectrum aggregation limit in the narrowband PCS rules.

CONXUS contends that the Commission should eliminate the geographic spectrum aggregation limit in Section 24.101(a) of the FCC's rules. The Commission has eliminated or not imposed geographic spectrum aggregation limits for geographic

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[11] Instacheck operates a narrowband PCS system in Puerto Rico.

licenses for other CMRS providers, such as broadband PCS,[12] SMR and 220 MHz services. The Commission has found that aggregation limits in a particular sector of CMRS is not required to promote competitiveness between CMRS providers. Instead, the Commission has determined that competition is protected in CMRS by the general spectrum cap codified in Section 20.6 of the FCC's rules.

The broadband CMRS providers are able to offer service similar to narrowband PCS as a subset of the broadband offerings. CONXUS submits that aggregation restrictions within the narrowband PCS rules may limit the flexibility that narrowband PCS licensees may have in competing against the broadband CMRS offerings. Thus, CMRS competition may be reduced and narrowband PCS licensees may be harmed because of such limitations on spectrum aggregation. CONXUS, therefore, asserts that the spectrum aggregation limit should be eliminated to encourage CMRS competition.

D. CONXUS supports further study on allocation of the narrowband PCS reserve spectrum.

The Commission proposes to channelize and license the reserve narrowband PCS spectrum as part of this proceeding. CONXUS is concerned that the Commission is premature in channelizing and licensing this reserve spectrum. CONXUS foresees needing additional capacity for its narrowband PCS offering, but cannot predict the

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[12] C and F Blocks broadband PCS licensees are limited to acquiring, aggregately, more than 98 licenses available in the C and F Blocks. They, however, are not precluded from aggregating C and F block licenses in the same geographic area. The aggregation of the licenses in the same geographic area is governed by the CMRS spectrum cap in Section 20.6 of the FCC's rules.

amount of spectrum or the areas in which it may be needed for its, or other narrowband PCS licensees or potential applicants, provision of quality service. CONXUS submits that a separate rule making should be initiated to determine how and when to channelize and license the reserve spectrum.

Currently, there are only 41 narrowband licenses issued. The technology to support narrowband PCS offerings are evolving and just recently become commercially available. MTEL, which initiated its system two years ago, has only recently perfected its technology. PAGENET is encountering similar difficulties in rolling out its narrowband PCS offerings. CONXUS will become commercially operational in September 1997 and has used the prior implementation experiences to design its systems so that it will not encounter similar difficulties in commencing its commercial offerings. Nevertheless, it is apparent that the future needs of the narrowband PCS licensees may not be subject to prediction at this time. Thus, attempting to determine a proper channelization of the 1 megahertz of spectrum may limit the flexibility and evolvement of the narrowband PCS industry.

Moreover, from the capital market perspective, the availability of additional spectrum for wireless services may further depress the paging/narrowband PCS offerings. In the past year while stock prices have been rising generally on Wall Street, paging stocks have declined like other wireless telecommunications stock. However, the decline in the stocks of paging entities is even more substantial than the other wireless service providers. CONXUS is concerned that the Commission's decision to place more spectrum available for narrowband PCS (especially when a

portion of the existing allocation has not been licensed) will result in continued reluctance to invest in paging/narrowband PCS offerings as the value of the spectrum because suspect. CONXUS, therefore, asks that the Commission initiate a separate rule making which addresses the future licensing of the reserve spectrum.

E. The Commission should not adopt partitioning/disaggregation as a substitute for small business preferences or as a substitute for licensing smaller geographic areas.

CONXUS does not oppose adoption of the Commission's proposed partitioning/disaggregation rules. In order for narrowband PCS licensees to be treated similarly to other CMRS licensees, especially broadband licensees, the narrowband PCS rules should provide the same flexibility to partition and disaggregate as provided other CMRS licensees. CONXUS, however, does not support the adoption of partitioning/disaggregation rules, if the Commission uses the availability of such rules to demonstrate that it is meeting the mandates of Congress by providing preferences to small businesses to enable them to enter and compete in the narrowband PCS industry. Partitioning cannot be used as the only mechanism to promote small business entry into the narrowband PCS industry. The Commission, in effect, relies on dominant telecommunications companies to equitably and fairly re-distribute the spectrum to their competitors. CONXUS does not have the same faith as the Commission is such distribution occurring. The Commission, therefore, should not base it decisions to alter the licensing of narrowband PCS spectrum relying on the availability of partitioning/disaggregation in the service rules, especially as the

Commission is unable to demonstrate that partitioning/disaggregation will have an impact on entry of small business into the wireless telecommunications industry.

F. The Commission should adopt competitive bidding rules which mirror those adopted in broadband PCS.

The Commission, as it has become more experienced with the conduct of auctions, has modified competitive bidding rules to make the process more effective and efficient. CONXUS certainly encourages the Commission's efforts. Nevertheless, CONXUS submits that competitive bidding rules must be similar for all PCS licenses. Therefore, narrowband PCS licensees should be governed by the same competitive service rules as enjoyed by the broadband PCS licensees. To do otherwise, may provide a competitive advantage to the broadband PCS licensees.

1. CONXUS agrees that the Commission should eliminate race and gender criteria in the Designated Entity definitions and eliminate the control group structure.

CONXUS contends that the definition of, and financial preferences provided to, Designated Entities in the two PCS services should be comparable. The Commission proposes to define Designated Entities as small business only and eliminate minority-/woman-owned businesses as a class of Designated Entities. CONXUS agrees that pursuant to the Adarand decision[13] that the Commission is not currently able to support race and gender preferences. It also has been CONXUS's experience that the narrow definition of minority-/woman-owned businesses in the narrowband PCS rules effectively have disadvantaged that very segment which the Commission was

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[13] Adarand Constructors, Inc. v. Pena, 115 S.Ct. __ (1995).

attempting to assist. CONXUS found that, typically, members of minority groups and women and business which they control meet the small business definitions that the Commission proposes, but such businesses which were controlled by minorities or woman did not meet the FCC's definition of minority-/women-owned businesses. Thus, if these businesses choose to invest in CONXUS, their participation was limited to passive investment. Accordingly, CONXUS supports elimination of the minority-/woman-owned business classification as a Designated Entity.[14]

CONXUS does not oppose the Commission's proposal to adopt a two-tier approach to small businesses, particularly as this is the approach taken by the Commission for the F Block broadband PCS licenses. CONXUS agrees that the personal net worth requirement under the existing narrowband PCS rules should be eliminated. CONXUS concurs with the Commission's proposal to eliminate the "control group" concept and attribute the gross revenues and assets of only the controlling principals to determine small business eligibility.

2. The amount of bidding credits is irrelevant unless the credits may be applied to all licenses being offered in the auction.

The Commission proposes to afford very small businesses a 15% bidding credit and small businesses a 10% bidding credit which may be applied to only a portion of the licenses being offered. The Commission asks for comment on the bidding credits

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[14] CONXUS reads the Commission proposal to define all narrowband PCS licensees, either new or incumbent, on the basis of small business. CONXUS asks the Commission to clarify that incumbent licensees may restructure themselves to meet the newly-adopted Designated Entity rules without penalty.

proposed. In the F Block broadband PCS rules, the bidding credits provided were 15% for small businesses, and 25% for very small businesses. CONXUS submits that the Commission must afford similarly-situated applicants in narrowband PCS the same financing options. As discussed, the two services offer the same service, target the same consumer, compete in the same capital markets, and have need for the equivalent capital funding to implement the service offerings. The slight difference in regulatory treatment of these two similar services may harm a narrowband PCS licensees ability to compete with it broadband PCS competitor purely by reason of the regulatory treatment of the two, which would be contrary to Congressional mandate and the Commission's goals.[16]

More importantly, however, is that if the Commission limits the licenses to which a Designated Entity may apply its bidding credits, the amount of bidding credit becomes irrelevant. The results of the regional narrowband PCS auction exemplifies the results of limiting bidding credits to specific channels. Designated Entities only were able to acquire the frequencies to which the credits applied. However, the availability of bidding credits did not result in any "discount" to the market value of the license. CONXUS was able to acquire the licenses at approximately market value when compared with the price paid by the other winning bidder for the exact same

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[16] See Omnibus Budge Reconciliation Act of 1993, Pub.L. No. 103-66, Title VI, § 6002(b), 108 Stat. 312, 392 (1993) ("Budget Act), *codified at* 47 U.S.C. § 332; CMRS Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988, para. 177 (1994).

licenses. When compared, however, to the comparable nationwide narrowband PCS winning bids, CONXUS paid approximately $10 million above "market price."

Conversely, in the 900 MHz SMR auction in which CONXUS participated, bidding credits could be applied to all the available licenses. The auction bidding was vigorous and small businesses were able to acquire a substantial number of the available licenses. Even though CONXUS was afforded only a 10% credit in the 900 MHz SMR auction, it believed that the bidding credit was more useful to it than the 40% bidding credit it received in the regional narrowband PCS auction. Accordingly, CONXUS urges the Commission to eliminate its proposal to restrict the licenses on which the bidding credit may be applied. The Commission, in effect, creates an entrepreneurial block, which it stated that it was declining to do in the Report and Order,[17] by selecting specific licenses to which bidding credits may be applied.

3. The Commission should conform installment payment rates for all small business PCS licensees.

CONXUS again reiterates is position that all PCS licensees which are afforded financial preferences based on their classification as a Designated Entity should receive such preferences on the same terms and conditions. Commission's rules or policies which favor one licensee over another which affects the financial risks of the company will result in the capital market funneling funds to that technology rather than competing technologies -- based on rate of return and relative risk factors rather than on service offerings. The Commission, therefore, must afford the same terms and

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[17] Further Notice, ¶ 19.