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

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

REPLY COMMENTS OF NARROWBAND PCS COMPANIES

The law firm of John D. Pellegrin, Chartered, on behalf of several Narrowband PCS clients/entities, respectfully submits the following Reply Comments as invited by the Commission in the above-captioned proceeding.[1]

The Commission's lengthy, 80 page Report and Order and Further Notice of Proposed Rulemaking (FNPRM) of April 23, 1997 deals specifically with Narrowband PCS issues. The Commission took various actions and proposed others. It is these proposals which are of potential concern to most Narrowband PCS companies/applicants..

1. Reallocation of **all BTA** channels and some MTA channels to create new and additional

[1] This firm has participated in previous FCC rulemaking proceedings on behalf of would-be Narrowband PCS applicants/clients, including PP Docket 93-253, GN Docket 90-314, GN Docket 93-252, and WT Docket 97-82. The thrust of those submitted Comments/Reply Comments is that both Congress and the FCC have recognized the importance of smaller companies and entrepreneurial spirit, and should foster their potential ability to fully participate in these new telecommunications fields. This will be aided by maintaining their ability to develop focused approaches in markets realistically configured/sized along with their ability to finance and quickly develop, thereby providing competitive services to the subscribing public.

Regional and National Narrowband PCS licensing opportunities. The FCC's comparison channelization plan shows that currently there are 493 BTAs, with 6 channels to be auctioned -- 2958 total. These would all be eliminated under the Commission's current proposal. Even licenses in the 51 MTAs would be reduced from 11 in each (total: 561), to 7 in each (total: 357). The Commission would reallocate these MTA/BTA licenses to Nationwide licenses (increasing them from 11 to 14, and the five Regionals from 30 to 65 licenses) to accomplish this wider-area consolidation.

2. This proposal alone is of vital concern to smaller and mid-size entrepreneurial companies and flies in the face of the Commission's and Congress' mandate to promote smaller businesses and competition in telecommunications, particularly the emerging PCS industry. The Commission should maintain the current number of MTA licenses being available for auction, as well as the BTA licensing opportunities.

2. As to auctioning these licenses (reconfigured on an MTA, Regional and Nationwide basis), at one time, either in one auction, or simultaneously-conducted separate auctions, it is suggested the Commission maintain efficiency but also the ability of smaller and mid-size companies to have a reasonable chance at successful participation without having to compete against very large companies in the auction process.

3. Elimination of restrictions on paging response channel eligibility only for incumbent paging licensees would free up channels to bid on for **all** would-be bidders and should be adopted.

4. Releasing the 1 MHZ being held in reserve would result in more licensing opportunities and potentially more auction revenue for any given market. This proposal should be adopted.

5. Changing the build-out requirements from specific percentage build-outs by specified

dates to a "substantial service" benchmark seems appropriate. It is assumed licensees will want to build out as rapidly as possible to generate revenue service. Continued unavailability of equipment supports this change.

6. Allowing license partitioning so winning bidders may negotiate with others to divide their licensed service areas makes sense, since those entities not securing a license in an auction could still negotiate for targeted markets or portions of markets.

7. Simplification of ownership disclosure requirements. This is appropriate, since some applicants may have numerous equity holders/participants, no one of which would be in control of the applicant in any event. The FCC should focus on control.

8. Establishment of bidding credits for small businesses on a tiered basis; i.e., a new category of "very small businesses" (those with average gross revenues not more than $15M in preceding 3 years) would receive a 15% bidding credit; those with up to $40M would receive a 10% credit. This seems appropriate. Individual equity holders' personal net worth would not be counted in a consortia context, which will benefit small business consortia formation. General partnerships should be treated similar to corporations for FCC attribution and control purposes; i.e., no one general partner should be considered in "control" of the applicant/partnership, since generally a partner only has one vote per unit in the partnership. This would hold true for a consortium of individual auction participants also.

9. Maintain installment payment plans (plus bidding credits) for small businesses only, by continuing the current interest-only payment schedule of two years. Interest would be set at 1.5% above the U.S. Treasury rate for "very small businesses," and 2.5% above Treasury rate for "small businesses." The Commission should be careful not to constrict new entrants too much because

they will have substantial build-out and related initial costs. The Commission is well aware of this problem in the Broadband C, D, E & F installment payment context and should be very sensitive to this for future auction payment plans.

10. Auctions need to commence in the not-too-distant future. After first auctioning Nationwide and Regional PCS licenses in 1994, no narrowband PCS auction has been held or even scheduled. Entities formed almost three years ago in anticipation of these MTA and BTA auctions. It is time to move ahead with them, essentially as originally configured and as Congress and the Commission have envisioned. These entities have gathered their resources together to start a telecommunications business based on this new PCS technology, but cannot even get to the auctions as the FCC continues to delay their start once again. This is particularly unfair as both Nationwide and Regional Narrowband PCS licenses were awarded in 1994, giving them a tremendous head-start. Why should the FCC make this situation worse by continuing to delay these other Narrowband PCS auctions?

11. Again, the proposed changes, particularly the elimination of BTAs with little or no basis in the record for doing so -- are most troublesome. The Commission should maintain BTAs as smaller market areas which will be more easily obtained by smaller entities and thus more bidding on them and higher total revenues potentially realized.

12. The Commission has been very successful in auctioning other spectrum on a BTA vs. larger market basis. Obviously, BTAs maintain their attractiveness to would-be bidders/licensees. While entities have been able to aggregate additional resources in the interim, plans have been made and based on both an MTA and BTA basis, all to take advantage of then-announced and established rules. Federal policy in turn has been based in large part on having smaller businesses be a

significant part of the licensing process and licenses available for less than very large, state-sized MTA areas. In discussing the Entrepreneur's Block elimination, parties pointed out that smaller-sized service areas (MTAs/BTAs) will be less expensive and thereby less capital intensive to acquire. Bidders will also have the ability to aggregate markets, while concentrating on more local service, and the ability to interconnect, so that full, multi-market service may be provided. This should be encouraged by the Commission and makes good policy sense.

13. Despite the fact the Commission has **successfully** auctioned other spectrum including Broadband PCS and wireless cable (MMDS)) on a **BTA** basis, it is tentatively deciding to **eliminate all BTAs** and the channels/licenses originally assigned to them (6 per BTA; 2,958 total). Even the number of licenses in the state-size MTAs currently allocated would be significantly reduced (from 11 to 7), making it just that much more difficult for smaller or mid-size entrepreneurs to have a fair chance at winning even one of these MTA licenses. Although the Commission states it will also allocate some additional spectrum to PCS, this is fairly meaningless since the overall number of licenses for both MTAs and BTAs would be drastically reduced under the Commission's proposal -- the new spectrum effectively going towards huge Regional and National allocations -- in and for which only very large companies can realistically participate.

14. The Commission offers as its only reasoning for elimination of the BTAs a totally unsupported conclusion that reallocation to create larger service areas "will create additional flexibility for narrowband PCS service providers. . .and promote competition in the wireless services market." The Commission claims "we share the concern of [some] commenters that the BTA service areas in particular are too small to provide a viable narrowband service." No record support nor factual analysis is supplied for this vaguest of guesses. Yet many other wireless

services (including paging, with which narrowband PCS have been specifically compared), has been authorized on a similar BTA-sized market basis, and they are successful and provide additional, significant new employment/business/service/competition opportunities for many. Just because some smaller companies may have won MTA-size licenses in the past is no answer to allowing the current MTA/BTA mix of channel allocations to be changed so dramatically. Small entities have actively participated in the FCC's process, using precious resources to file formal Comments in the past, urging the Commission to keep on its original course of promoting **small businesses**. Further, the FCC has a **Congressional** mandate to promote small business.

15. Rather than the FCC seeing more competition by adopting this consolidation/larger market concept, as the FCC naively seems to think, just the opposite will undoubtedly occur--there will be fewer entities effectively being able to bid and fewer channels available for more concentrated manageable-size service areas--i.e., primarily the BTAs, but the MTAs too.

16. The Commission just released another Report on implementing the recently passed Telecommunications Act of 1996, specifically Section 257, which deals with Congress' requirement that the FCC **promote small businesses/entrepreneurs**.[2] In this Report, the Commission itself noted the "crucial role that small businesses play in the U.S. economy. Despite their important role, small businesses represent only a small portion of the businesses in telecommunications. It is the Commission's goal, . . .to deliver to the telecommunications industry the attributes and benefits that small businesses have brought to other sectors of the economy." The Commission claims it is implementing Section 257 through initiatives "to eliminate market entry barriers for small businesses and enhance their participation in the telecommunications market." Among those

[2] In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113, released May 8, 1997.

"initiatives" is that it has "used small business licensing incentives in spectrum auctions. . ."

17. What could be more appropriate, then, in the context of this Congressional mandate than the FCC maintaining the very manageable size BTA markets for smaller businesses? Indeed, the BTAs are a very appropriate market-size for various reasons, and should be kept. Technological development has been slow with respect to Narrowband PCS as manufacturers have concentrated on the Broadband market. Manufacturers will not devote much effort or resources until the Commission auctions the Narrowband frequencies and there is a groundswell of activity. This will be generated from smaller, **focused**, entrepreneurial companies looking to build out and enter into roaming-like arrangements with other adjacent BTA market area licensees to provide a seamless service (similar to present-day cellular service).

18. Finally, having conducted several successful BTA auctions in the recent past, with many applicants and bidders, the U.S. Treasury stands a much better chance of realizing **significantly more auction revenues** by keeping that many more bidders eligible to bid on realizable, obtainable markets. Compare this to some auctions where the markets were so large that only a relatively few bidders participated, and those auctions closed after only a comparatively few rounds, with poor overall bid results. By leaving in place attractively sized markets (i.e., primarily BTAs), as well as a sufficient number of MTA licenses with no reduction in their numbers as now proposed, there is every likelihood that bidders will remain in the auctions longer and the overall bid totals for the auction will be higher with more licenses available.

19. While there have not been all that many Comments filed with respect to the Narrowband PCS auction issue, the above seeks to preserve the realistic best for would-be licensees while maximizing auction revenue for the FCC and national budget purposes. We hope and trust the Commission will remember its promises and mandates with respect to these new

PCS opportunities and maintain the present MTA/BTA dichotomy.

Respectfully submitted,

John D. Pellegrin

Law Offices of
John D. Pellegrin, Chartered
1140 Connecticut Avenue, N.W.
Suite 606
Washington, D.C. 20036

(202) 293-3831

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