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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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	)	

To: The Commission

REPLY COMMENTS

CONXUS Communications, Inc. ("CONXUS"), pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission") and by counsel, respectfully submits its reply comments after review of the comments filed in response to the Further Notice of Proposed Rule Making adopted by the Commission on April 17, 1997 in the above-styled proceeding.<sup>1</sup>

I. Introduction

CONXUS is implementing a nationwide narrowband Personal Communications Services ("PCS") system, which will provide advanced two way messaging to the public. It is vitally interested in this rule making proceeding as any changes or modifications which the Commission may adopt to the existing rules will affect CONXUS' business.

<sup>1</sup> 47 C.F.R. § 1.415; Report and Order and Further Notice of Proposed Rulemaking, FCC 97-140, 12 FCC Rcd \_\_ (rel. Apr. 23, 1997). The time for filing reply comments in the proceeding was extended to July 21, 1997. Order, DA 97-1308, 12 FCC Rcd \_\_ (CWD, rel. June 23, 1997).

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CONXUS advocates the Commission's retention of the existing allocation of narrowband PCS channels to maintain regulatory consistency which will benefit the growth of the narrowband PCS industry. Regulatory uncertainty undermines the financial communities' confidence in the ability of entrepreneurial businesses to succeed and reduces the confidence of users of new technologies of their viability.

Additionally, CONXUS is concerned that differential regulatory treatment between entrepreneurial, small business in the narrowband and broadband PCS services will provide a competitive advantage to the broadband PCS carriers, which may provide, in part, a similar service to the narrowband PCS carriers. CONXUS, therefore, reiterates its request that the Commission, in adopting or modifying rules for narrowband PCS, ensure that narrowband PCS rules conform with, or are similar to, the rules governing the competitive bidding procedures for broadband PCS. These two PCS services will be competing against each other in the marketplace, providing, in part, the same services and targeting many of the same customers. The two PCS services, therefore, should be regulated similarly.

## **II. Discussion**

### **A. The Commission should eliminate the spectrum aggregation limit for narrowband PCS channels.**

Several of the commenters urged the Commission to retain the aggregation limit for narrowband PCS channels.<sup>2</sup> CONXUS urges the Commission to eliminate the

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<sup>2</sup> See, e.g., Merlin Telecom, Inc., Arch Communications Group, Inc. ("Arch") and Benbow PCS Ventures, Inc. ("Benbow"). Arch and Benbow propose modifications to the attribution rules.

aggregation limit for narrowband PCS as the FCC has done in other Commercial Mobile Radio Services ("CMRS") in which competitive bidding rules have been implemented, or proposed.<sup>3</sup> Most recently, in the 800 MHz SMR proceeding, the Commission found that the

800 MHz SMR service is just one of many competitive services in the CMRS marketplace...we conclude that the marketplace, not our rules, should determine whether these channels will be used on an aggregated or disaggregated basis.<sup>4</sup>

Similarly, in the paging proceeding, the Commission found that "a cap could arbitrarily limit a carrier's capacity to provide services that may require multiple channels."<sup>5</sup>

Narrowband PCS also will compete in the broad CMRS marketplace. Broadband PCS, cellular, and geographic-licensed SMR carriers may provide, as part of their bundled services, the same or similar service to narrowband PCS, *i.e.*, voice messaging and two-way paging. Therefore, it is critical that a narrowband PCS licensee be allowed the flexibility to aggregate sufficient spectrum to provide competitive services to the broadband CMRS licensees. For example, in the major

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<sup>3</sup> Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532 (1994)(Broadband PCS); Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18, FCC 97-59, 12 FCC Rcd 2732 (1997)(Paging 2d R&O); Second Report and Order, PR Docket No. 93-144, 12 FCC Rcd \_\_\_ (rel. July 10, 1997)("800 MHz 2d R&O"); Second Order on Reconsideration and Seventh Report and Order, PR Docket. No. 89-553, 11 FCC Rcd 2639 (1995)(900 MHz SMR); Third Report and Order; Fifth Notice of Proposed Rulemaking, PR Docket No. 89-552, FCC 97-57, 12 FCC Rcd \_\_\_ (rel. Mar. 12, 1997)(220 MHz); Report and Order, GN Docket No. 96-228, FCC 97-50, 12 FCC Rcd \_\_\_ (rel. Feb. 19, 1997)(WCS).

4 800 MHz 2d R&O at ¶ 25 (footnote omitted).

5 Paging 2d R&O at ¶ 88.

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markets, a narrowband PCS carrier may need additional capacity to offer a competitive wireless voice messaging service with a broadband CMRS competitor which offers such service as part of its bundle of services. Even after allocation and licensing of the reserve narrowband PCS spectrum, the most spectrum which a licensee could aggregate is 3 megahertz -- far less than the 45 MHz aggregation limit for broadband CMRS providers.

Moreover, narrowband PCS will compete with incumbent paging companies for the same subscribers. The Commission has found that the paging industry is highly competitive and that paging channels are highly dispersed among numerous licensees. Narrowband PCS is an extension of the paging industry and will provide additional competition in a market in which there are a diverse number of licensees. Therefore, permitting aggregation of the remaining narrowband PCS will not result in a reduction of competition in the CMRS marketplace. Accordingly, the Commission should eliminate the aggregation limit for narrowband PCS channels.<sup>6</sup>

**B. The Commission should not re-designate any remaining narrowband PCS channels for licensing by regions or nationwide.**

A number of commenters supported elimination of BTA-based channels.<sup>7</sup> CONXUS does not concur with their position because BTA-based channels will foster diversification of licensees in the narrowband PCS by providing small businesses,

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<sup>6</sup> Elimination of the aggregation limit would moot the requests for changes to the attribution limits proposed by Arch and Benbow.

<sup>7</sup> See, e.g., Comments of Airtouch Paging; Arch; Benbow; Metrocall, Inc.; Pagemart, Inc. and Paging Network, Inc.

(which encompass a majority of incumbent paging company) an opportunity to acquire narrowband PCS spectrum to augment their existing operations and prevent the concentration of narrowband PCS licenses in larger, incumbent telecommunications companies. As discussed in CONXUS' comments, the establishment of partitioning rules is not sufficient to permit such small businesses to acquire narrowband PCS licenses. The larger geographically-based licenses, such as MTA-based licenses, will be more costly. There is a substantial risk that a small business which may acquire the larger geographic area will be unable to attract potential partitionees to acquire portions of the license to recoup the monies spent. Alternatively, larger businesses may be unwilling to partition portions of their license to a competitor regardless of the money offered.<sup>8</sup> Thus, CONXUS urges the Commission to retain BTA-based licenses.

Of the fourteen comments filed in response to the Further Notice, ten of the commenters opposed the re-designation of any of the MTA-based or BTA-based narrowband PCS channels for nationwide licensing. For the most part, the majority of parties filing comments are members of PCIA, which represents the narrowband PCS industry. As a member of PCIA's Paging and Narrowband PCS Alliance, CONXUS is familiar with, and participated in, the efforts which produced the

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<sup>8</sup> In the past several years, there has been a consolidation of companies which has created large wide-area networks. The FCC's licensing decision also have created the need for such consolidation. Nevertheless, the FCC should not foreclose, by its decisions, new entrants into the narrowband PCS industry which may not have the financial backing as the larger, incumbent telecommunications companies. Partitioning has been used, but primarily by the larger telecommunications companies parceling areas to other established, well-financed telecommunications companies. In theory, the availability of partitioning may be beneficial to small companies; however, in practice, it may have no effect.

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consensus opinions which PCIA's comments reflect. The parties involved in reaching the consensus to oppose re-designation of narrowband PCS channels for nationwide licensing consisted of both incumbent PCS licensees and incumbent paging licensees which are potential narrowband PCS licensees. In light of the overwhelming opposition to additional nationwide licenses, and no demonstration that additional nationwide channels are needed or desired, the Commission should decline to adopt this proposal.

Further, CONXUS opposes the re-designation of the remaining narrowband PCS channel for regional licensees. Unlike the re-designation of the remaining narrowband PCS channels for nationwide licensing, there industry does not agree that further regional licenses are necessary. The sparse support for the Commission's proposal to create additional regional licenses demonstrates that there is little need or desire for such channels which would warrant such re-designation. The Commission must carefully weigh any benefit to the public as reflected by a lack of overwhelming support by the industry or any demonstrated requirement for the larger geographic area with the harm which could be incurred to the further growth and development of the nascent narrowband PCS industry as a result of continued changes to spectrum allocation.

Moreover, the Commission should consider that an allocation for regional licenses was made and the auction held. All parties had an opportunity at that time to participate in the auction and acquire regional spectrum, with the knowledge that no further regional licenses would be offered unless an allocation was made from the

reserve spectrum. If such persons failed to participate in the auction, or determined during the auction that the regional licenses were not valuable enough to continue bidding, then this was a business decision made by each individual. The Commission's MTA-based licensing plan will permit these parties to aggregate the MTA-licenses for a regional system. Therefore, the Commission should not re-structure its rules because business plans of a few individuals have changed, when a majority of industry has made business plans and participated in the auctions in reliance that the Commission's allocation would not be modified. CONXUS, therefore, asks that the Commission not allocation additional regional licenses from the remaining allocated narrowband PCS channels.

Additionally, one of the channels which was proposed in comments to be re-designated was a 50/12.5 kHz channel. As the Commission is aware, there are only two 50/12.5 kHz channel remaining for licensing. For technology compatibility and to augment capacity of its existing system, CONXUS will require a 50/12.5 kHz channel, but not necessarily on a regional basis. Unless significant financial preferences are offered small businesses, like CONXUS, most likely, CONXUS would be unable to compete for the licenses against larger, well-financed companies. Thus, the Commission limits the opportunities that a small business has to develop in the narrowband PCS industry. If the Commission does re-designate any narrowband PCS channels for regional licensing, such channel should be a 50/25 kHz channel pair, of which there are a greater number.

CONXUS urges the Commission to retain the existing geographic licensing scheme. After the auction of the MTA- and BTA-based narrowband PCS channels and the initiation of operations of a majority of these systems, if there is a demonstrated need for regional licenses, the Commission may designate channels in the reserve spectrum to satisfy those additional needs.

- C. The Commission should not adopt a "substantial service" criteria for meeting construction/coverage benchmarks to retain narrowband PCS licenses.**

The comments overwhelmingly rejected the Commission's proposal to adopt an alternative criteria to the existing construction/coverage requirements in the narrowband PCS rules. In a service in which there are no incumbent licensees on the spectrum being auctioned, permitting a licensee to meet minimal, non-objective benchmarks encourages speculation and hoarding of the spectrum. It does not promote rapid deployment of services to the public. Therefore, based on the rejection of this proposal by the majority of the commenters, many of which are incumbent narrowband PCS licensees, the Commission must decline to adopt this performance standard.

- D. Allocation and licensing of the reserve spectrum is premature and should be deferred until further study of the future needs for narrowband PCS is conducted.**

Most parties commenting in this proceeding agree with CONXUS that allocation and licensing of the reserve spectrum is premature and should await the conclusion of further studies to determine the future needs of the service. The narrowband PCS spectrum has been allocated for over three years and 65% of the spectrum has been

licensed. As the narrowband PCS is a new technology, there have been delays in the deployment of service.<sup>9</sup> Until the technology has been more fully developed, the public becomes more familiar with the advantages of the service, and other competitive new technologies are offered to the public, it is impossible to predict the spectrum amount and the geographic areas which will be needed to further enhance the provision of the narrowband PCS offerings to the public. Thus, it is clear that the Commission should allow narrowband PCS to mature prior to making decisions.

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<sup>9</sup> CONXUS will commence its commercial operations on September 1, 1997. Delay in the initiation of service was caused by lack of equipment availability until January 1997. CONXUS has constructed and is testing systems in a number of major markets, but it unable to commercially offer the service until the termination of an exclusive agreement in connection with the subscriber units.

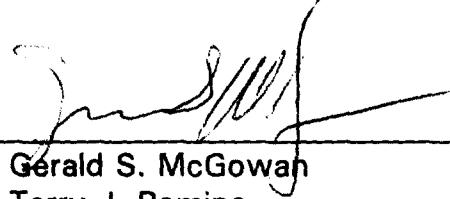
### **III. Conclusion**

To meet the Commission's object to promote competition in the marketplace, the Commission should retain existing MTA- and BTA-based licenses and conform the narrowband PCS rules governing competitive bidding to those adopted for broadband PCS. The Commission should take expeditious action in this proceeding to permit the continued licensing of narrowband PCS so that both incumbent licensees and potential licensees may pursue their business plans.

Respectfully submitted,

CONXUS COMMUNICATIONS, INC.

By: \_\_\_\_\_

  
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Date: July 21, 1997

**CERTIFICATE OF SERVICE**

I, Patricia E. Edwards, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 21st day of July, 1997, caused to be hand carried a copy of the foregoing REPLY COMMENTS to the following:

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