

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

In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 97-82
Regarding Installment Payment Financing for)	DA 00-197
Personal Communications Services (PCS))	
Licensees)	

COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association (NTCA) respectfully submits these comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in this proceeding. For the reasons set forth below, NTCA respectfully opposes the Commission's plan to reconfigure the C block spectrum and license the spectrum according to a tiered approach.

1. INTRODUCTION

NTCA is a national trade organization representing approximately 500 rural telephone companies. Most of NTCA's members hold wireless licenses, using them to provide service in rural America. In addition to cellular, MMDS and LMDS licenses, NTCA's members hold and provide service with PCS C and F Block spectrum. More than 65 NTCA members applied or were in some way affiliated with an entity that applied to participate in the initial PCS C Block

auction.¹ Several members also obtained F block licenses. NTCA members have a strong interest in this proceeding. Many of NTCA's members are contemplating participating in the upcoming C and F Block PCS reauction that is the subject of the FNPRM.

II THE COMMISSION SHOULD NOT RECONFIGURE THE C BLOCK SPECTRUM AND ELIMINATE ELIGIBILITY RESTRICTIONS

The Commission's proposal to break the 30 MHz of C-block spectrum into three blocks of 10 MHz and then eliminate the eligibility restriction on some of the 10 MHz blocks is contrary to prior Commission policy and Congressional directives. The FCC has an obligation to design auction procedures that provide rural telephone companies and other designated entities an opportunity to participate in auctions and provide new spectrum-based services. The designation rules of the C and F PCS blocks were specifically crafted to meet the requirements of Section 309(j). The Commission has, on three separate occasions reaffirmed its commitment to its providing entrepreneurs meaningful opportunity to participate in the wireless future.

Several large carriers have asked the commission to reverse its well-reasoned and thoughtful prior rulings so that they can expand their spectrum services. Large carriers' requests and increased pressures are the only things that have changed since the Commission last reaffirmed its "set aside" for entrepreneurs. The Commission should not bow to the pressures applied by large carriers and should continue to reserve this valuable spectrum for the entrepreneurs for which it was originally intended.

¹In addition to applying to bid themselves, NTCA's members were affiliates, partners and shareholders of applicants and others that formed bidding consortium in an attempt to secure licenses.

A. Changing the Auctions Rules to Permit Large Carriers to Participate is an Unjustified Policy Reversal that Would Contravene the Communications Act of 1934

The Commission does not adequately explain how it may abandon its C and F block eligibility restrictions in view of the clear Congressional mandates that form its underpinnings. The only rationale the Commission provides for its policy reversal is that large carriers have requested it and the belief that the reconfiguration will promote wider auction participation and license distribution.² There is no mention of **how** the reconfiguration will promote wider auction participation and license distribution. In fact, as the Commission has previously concluded, the reconfiguration will simply put more spectrum into the hands of a select few large carriers. The same few parties that have been asking for this valuable spectrum for several years have finally wore the Commission down and convinced the Commission to let them have it.

²FNPRM at ¶ 16.

The Communications Act of 1934 mandates that the Commission “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.”³ To achieve this goal, the statute requires the Commission to “consider the use of tax certificates, bidding preferences and other procedures.”⁴ Congress thus ordered the Commission to design its auction procedures to ensure that entrepreneurs and the designated entities have opportunities to obtain licenses and provide service. In adopting the rules for the competitive bidding design of broadband PCS, the Commission concluded that the use of any such procedure is “mandated where necessary to achieve Congress’s objective of ensuring that designated entities have the opportunity to participate in broadband PCS.”⁵

In 1994, the Commission stated,

We do not accept . . . that we should do away with the entrepreneurs’ blocks and instead offer bidding credits . . . [I]n our judgment we do not anticipate designated entities to realize meaningful opportunities for participation in broadband PCS unless we supplement bidding credits and other special provisions with a limitation

³47 U.S.C. § 309(j)(4)(D)

⁴*Id.*

⁵*In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5523 (July 15, 1994).

on the size of the entities designated entities will bid against. Without the insulation of the entrepreneurs' block, the record strongly supports the conclusion that measures such as bidding credits will prove ineffective for broadband PCS.⁶

⁶*Id.*

The Commission reaffirmed its position in 1997⁷ and again in 1998.⁸ The Commission recognized that small carriers cannot prevail at auction against large companies. The Commission found that to fulfill Congress's mandate of increasing competition, it must assure designated entities have access to PCS spectrum. The Commission saw that bidding credits would be insufficient to compensate for the large sums of money that PCS licenses would likely command. Therefore the Commission set aside PCS spectrum for exclusive access by entrepreneurs, including designated entities.

Experience has proved the Commission right. PCS spectrum continues to hold value and attract large carriers who are already free to and do own the remaining PCS spectrum.⁹ The

⁷*Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82 (1998).

⁸*Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communicatiosn Services (PCS) Licenses*, Fourth Report and Order, WT Docket No. 97-823 (1998).

⁹The A, B, D, and E PCS blocks were open to all carriers. The A and B blocks cover 30 MHz of spectrum each and the D and E PCS blocks cover 10 MHz of spectrum each.

Commission has continuously found that designated entities must have exclusive access to the C and F blocks, if they are to have any opportunity to compete to provide PCS services.¹⁰ The Commission should not abandon its C and F block eligibility restrictions, for any market.

B The Commission's Proposed Rules do not Provide Adequate Opportunity for
Small Carriers

¹⁰*See Installment Payment Financing for Personal Communications Services (PCS) Licenses, Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82 (1988). See also, Installment Payment Financing for Personal Communications Services (PCS), Second Report and Order, WT Docket No. 97-2 (1987); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order, PP Docket No. 93-253 (1994).*

The Commission proposes to reconfigure each 30 MHz C block license into three 10 MHz C block licenses. It will divide BTAs into two tiers according to the population size of the BTA. Under the proposal, Tier 1 would comprise BTAs at and above a 2.5 million population threshold; and Tier 2 would comprise BTAs below that population threshold. The Commission plans to remove the auction eligibility restrictions and allowing “open” bidding for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2.¹¹

The Commission previously concluded that small carriers, including designated entities, stand little chance of competing against large carriers in auction.¹² Therefore, the Commission’s proposal would virtually guarantee that large carriers would claim two out of the three licenses in Tier 1 areas. As evidenced by comments in related proceedings, large carriers are primarily interested in adding this PCS spectrum to spectrum they already have. A small carrier that is able to obtain 10 MHz of spectrum stands little chance of competing in a market against a large carrier with far more spectrum. Not only would the Congressional directives of 309(j) be frustrated by the tiered approach, the Commission would defeat its own stated goal of promoting competition in the PCS market.

In Tier 2 markets, instead of obtaining 30 MHz of spectrum at auction, a small carrier will have an opportunity to obtain up to two blocks of 10 MHz of spectrum. Two blocks of 10 MHz of spectrum is obviously less valuable than one block of 30 MHz. However, due to the scarcity of

¹¹NPRM at 4.

¹²*Supra.*

spectrum and the limited opportunities for small carriers the new auction configuration would create, the 10MHz spectrum blocks are likely to cost as much as a 30 MHz spectrum block. Therefore, small carriers will get less for more. Less money will be available for developing viable systems, and more money spent on obtaining the spectrum. Again, the large carriers that are aggregating spectrum will enter the market at a tremendous competitive advantage. If a large carrier seeks to serve a Tier 2 market, it will have the opportunity to drive the small carrier competition out of the market.

Further, there is evidence that 10 MHz of PCS spectrum, by itself, is insufficient to create a viable business plan. 10 MHz of spectrum is not enough for a company to offer the full range of services. 10 Mhz may be used to offer voice or data service. Barring the development of a revolutionary spectrum technology however, 10 MHz of spectrum is not enough to provide **both** voice and data service. Offering a small company 10 MHz of spectrum with virtually no prospects for additional set aside spectrum, is worthless. Any company that provides service using just 10 MHz of spectrum is condemned to soon becoming obsolete, especially when faced with competitors in the same market with at least 30 MHz of spectrum. The fact that there may be two qualified entrepreneurs in a market with just 10 MHz of spectrum each further ensures the failure of this auction. The Commission's proposal does nothing to promote the Commission's stated goals in this proceeding.

III IF THE COMMISSION FEELS THAT IT MUST RECONFIGURE THE SPECTRUM, IT SHOULD CREATE A 20 MHz BLOCK AND LIMIT ACCESS TO DESIGNATED ENTITIES

While NTCA in no way endorses reconfiguration as proposed or suggests that the Commission is justified in opening the spectrum to large carriers, it suggests that if it is going to

happen, there is a better way.

If the Commission determines that it must open a portion of the PCS C and F block spectrum to large carriers, it should divide the spectrum into only two blocks. One block of 10 MHz of spectrum should be open to all carriers, with additional bidding credits for entrepreneurs, and a second block of 20 MHz should be created with continued restricted eligibility in all markets. This proposal ensures that small and rural carriers and other designated entities in all markets have an opportunity to obtain enough spectrum to create a viable business plan, while at the same time providing additional spectrum to the large carriers. The Commission reaches the same goals it seeks in this proceeding and provides slightly more opportunities for designated entities.

CONCLUSION

For the above mentioned reasons, NTCA respectfully submits that the Commission should abandon its proposed reconfiguration of the C and F block PCS spectrum. The Commission's stated goals are promoted only if entrepreneurs, including designated entities, are given meaningful opportunity to compete in the auction and in the provision of PCS service. If the Commission determines that it must yield to the pressures of the large carriers and provide them with additional spectrum, it

should open up only 10 MHz of spectrum in all markets and reserve another block of 20 MHz for carriers that qualify as entrepreneurs.

Respectfully submitted,

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National Telephone Cooperative Association
June 22, 2000

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 97-82, DA 00-197 was served on this 22nd day of June 2000 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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