

ORIGINAL

Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of the Commission's Rules )  
Regarding Installment Payment Financing for )  
Personal Communications Service (PCS) )  
Licenses )

WT Docket No. 97-82

To: The Commission

Comments of BellSouth Corporation

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## Summary

The Commission should open the reauction of C and F block PCS licenses to all bidders and should not apply the spectrum cap. The Commission should subdivide the 30 MHz C block licenses into three 10 MHz licenses and use tiered bidding credits for entrepreneurs. The combination of open eligibility, disaggregation of the 30 MHz C block licenses and tiered bidding credits will permit the Commission to exceed its statutory obligation under section 309(j)(3)(B) of the Communications Act of 1934, as amended. This combination should apply to Auction No. 35 and any future reauction of C and F block licenses.

An open auction coupled with spectrum disaggregation and tiered bidding credits will permit the Commission to achieve each of the four goals it has set for itself. Closing the auction for any of the licenses will prevent the accomplishment of those goals and defeat the public interest.

BellSouth disagrees with the Commission's tentative conclusion that the licenses should be tiered on the basis of any arbitrary population gradation. Geographic stratification of the markets is counterproductive.

The "grandfather" exception is not appropriate for an open eligibility auction. Otherwise, the Commission will foster a situation in which certain entities that previously qualified as entrepreneurs will receive the benefit of bidding credits even though they are publicly traded entities with market capitalizations in excess of \$1 billion.

As to the levels of bidding credits for entrepreneurs in an open reauction, BellSouth encourages the Commission to leave the two percentages alone. Given that 15%/25% worked for small and very small businesses in the D and E block auction, there is no reason to make an adjustment to the levels of the bidding credits for entrepreneurs in the upcoming reauction.

The Commission should adopt its proposal to permit a C or F block license acquired in a closed auction to be alienable once the licensee has complied with the first construction benchmark. The suggested adjustment to the rules encourages "the likelihood of early build-out," which is in keeping with Congress's goals for competitive bidding.

The license cap was appropriate when the Commission limited eligibility for C and F block licenses. There will be more than enough competition for the spectrum to alleviate unwarranted concerns about concentration of licenses. Section 24.710 of the Commission's rules should be eliminated.

BellSouth is one of the parties that has sought reconsideration of the Commission's most recent order continuing the existence of the spectrum cap. The Commission promises to address in the near future the issues raised by BellSouth and the other petitioners of the *Biennial CMRS Spectrum Cap Order*. BellSouth encourages the Commission to act promptly so that Auction No. 35 can proceed without the unnecessary restriction of the spectrum cap.

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Licenses )

To: The Commission

**Comments of BellSouth Corporation**

BellSouth Corporation ("BellSouth") hereby submits these comments in response to the *Further Notice of Proposed Rulemaking*, FCC 00-197, released June 7, 2000, in the captioned proceeding (the "*FNPRM*").<sup>1</sup> Among other things, the Commission should open the reauction of C and F block PCS licenses to all bidders and should not apply the spectrum cap. The Commission should subdivide the 30 MHz C block licenses into three 10 MHz licenses and use tiered bidding credits for entrepreneurs. The combination of open eligibility, disaggregation of the 30 MHz C block licenses and tiered bidding credits will permit the Commission to exceed its statutory obligation under section 309(j)(3)(B) of the Communications Act of 1934, as amended (the "Act").<sup>2</sup> BellSouth disagrees with the Commission's tentative conclusion that the licenses should be tiered based on the basis of any arbitrary population gradation.

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<sup>1</sup> 65 Fed. Reg. 37,092 (2000).

<sup>2</sup> 47 U.S.C. § 309(j)(3)(B). By this subsection, the Commission, in designing systems of competitive bidding, is directed to promote certain objectives, including, "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses

**I. Open Eligibility, C Block License Disaggregation and Tiered Bidding Credits Will Allow The Commission To Accomplish The Goals It Has Set.**

The Commission sets forth the policy goals it is trying to meet in the upcoming reauction: “to provide meaningful opportunities to small businesses, to speed the deployment and development of new services to the public, to encourage the efficient use of spectrum, and to recover for the public a portion of the value of the spectrum.”<sup>3</sup> These goals are best achieved: (i) by eliminating all eligibility restrictions on the C and F block PCS licenses that have been noticed for reauction,<sup>4</sup> and all other C and F block licenses that will be noticed for reauction in the future, (ii) by disaggregating each 30 MHz C block license to be reauctioned into three 10 MHz licenses, and (iii) by employing tiered bidding credits for entrepreneurs.

**A. Bidding credits will afford the requisite opportunities to designated entities.**

The first goal can be readily met by affording bidding credits to qualified small and very small businesses. The Commission has used bidding credits, standing alone, to meet its statutory obligations in all auctions, except those of C and F block spectrum.<sup>5</sup> In the 700 MHz auction, the Commission recently determined again that bidding credits are the appropriate accommodation for entrepreneurs.<sup>6</sup> Therein, the Commission adopted “tiered

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and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.” *Id.*

<sup>3</sup> *FNPRM*, at ¶ 24.

<sup>4</sup> “Auction of C and F Block Broadband PCS Licenses, Notice of Auction Scheduled for July 26, 2000,” *Public Notice*, DA 00-49 (rel. Jan. 12, 2000).

<sup>5</sup> *FNPRM*, at ¶ 8.

<sup>6</sup> *In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476 (2000) (“700 MHz R&O”).

bidding credits for small and very small businesses,” in the amounts of 15 percent and 25 percent, respectively.<sup>7</sup>

The Commission reconfirmed for the 700 MHz and the 700 MHz Guard Band auctions its belief that “this approach will provide adequate opportunities for small businesses of varying sizes to participate in spectrum auctions.”<sup>8</sup> In the 700 MHz Guard Band order, the Commission also stated its conviction that bidding credits “for small businesses will further Congress’s objective of disseminating licenses among a wide variety of applicants because minority- and women-owned entities, as well as rural telephone companies, are small businesses and will therefore qualify for these special provisions.”<sup>9</sup>

The Commission took the same approach for Auction No. 26-929 and 931 MHz Paging. In an order released May 24, 1999, concerning that auction’s structure, the Commission again made a system of tiered bidding credits available only to entrepreneurs.<sup>10</sup> The Commission reiterated its earlier determination in that docket that “although bidding credits do not guarantee the success of small businesses, . . . they provide such bidders with an opportunity to successfully compete against larger, well-financed bidders.”<sup>11</sup> The

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<sup>7</sup> *Id.* at 530.

<sup>8</sup> 700 MHz R&O, at 530; and *In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, *Second Report and Order*, FCC 00-90, 15 FCC Rcd \_\_\_\_ (rel. Mar. 9, 2000), at ¶ 109 (“700 MHz Guard Band R&O”).

<sup>9</sup> 700 MHz Guard Band R&O, at ¶ 110.

<sup>10</sup> *In the Matter of Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, FCC 99-98 (rel. May 24, 1999) (“Paging Systems Recon”).

<sup>11</sup> *Paging Systems Recon*, at ¶ 112 (footnote omitted); see also *In the Matter of the Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, RM-8117, RM-8030, RM-

Commission went on to find the availability of “tiered bidding credits furthers [its] mandate under Section 309(j) of the Communications Act to disseminate licenses to a variety of applicants.”<sup>12</sup>

In establishing the same framework in these two upcoming auctions (Auction Nos. 31 and 32) and the recently concluded Auction No. 26,<sup>13</sup> the Commission relied on its earlier determination in this very same docket. On December 31, 1997, the Commission released an order “intended to establish a uniform set of provisions for all auctionable services” that would allow the Commission “to conduct future auctions in a more consistent, efficient, and effective manner.”<sup>14</sup> In adopting its current bidding credit levels for entrepreneurs, the Commission then stated that such an approach “will provide adequate opportunities for small businesses of varying sizes to participate in spectrum auctions.”<sup>15</sup>

The foregoing demonstrates absolute consistency on the Commission’s part when addressing the sufficiency of bidding credits to afford small and very small businesses “adequate opportunities . . . to participate in spectrum auctions.” Yet, despite the acknowledged fact that other than C and F block auctions and reactions, the Commission

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8029, *Second Report and Order*, 12 FCC Rcd 19079, 19170 (¶ 277) (“While bidding credits do not guarantee the success of small businesses, we believe that they at least provide such bidders an opportunity to successfully compete against larger, well-financed bidders”) (1997).

<sup>12</sup> *Paging Systems Recon*, at ¶ 112..

<sup>13</sup> See “929 and 931 MHz Paging Auction Closes Winning Bidders of 985 Licenses Announced,” Public Notice DA 00-508 (rel. Mar. 6, 2000).

<sup>14</sup> *In the Matter of Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 377 (1997) (“*Part 1 R&O*”).

<sup>15</sup> *Part 1 R&O*, at 404.

has conducted no other auctions on a closed basis,<sup>16</sup> the Commission suggests it may be appropriate now to veer from this established course to balance two competing interests: “the need for additional unrestricted spectrum is greatest in the largest markets” and “the track record for success for smaller entities is strongest in mid-sized and smaller markets.”<sup>17</sup>

Assuming *arguendo* the validity of both interests, BellSouth is confident that they can be balanced properly by combining open eligibility for all licenses in the reauction with disaggregation of each 30 MHz C block license into three 10 MHz licenses and tiered bidding credits for small and very small businesses.

BellSouth agrees that there is a critical need for unrestricted spectrum in the larger markets. Obviously, as nationwide or near-nationwide wireless voice and data providers expand their coverage footprints, some existing carriers, such as the pending SBC-BellSouth wireless joint venture, will need spectrum in larger markets. In addition to that source of demand, there is the growing demand for spectrum for wireless data, which is only now beginning to manifest itself. That need for additional spectrum will be, if it is not already, extant in markets of all sizes; it also will increase, as third generation wireless equipment becomes available. Implementation of third generation data applications with its attendant higher speeds and broader bandwidth requirements will be achieved only through the Commission’s allocation and assignment of additional spectrum or private parties’ acquisition of existing assigned spectrum. Thus, the demand for spectrum is not limited to larger markets; it is and will be pervasive.

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<sup>16</sup> *FNPRM*, at ¶¶ 8 and 26.

<sup>17</sup> *FNPRM*, at ¶ 26.

As for the track record of smaller entities, there is limited evidence that some have made some gains in smaller markets.<sup>18</sup> On the other hand, the reason there is no mention of a record of success by C and F block licensees in larger markets is because virtually all of the holders of the licenses for the larger markets are in bankruptcy. This fact cannot be ignored. It means that critically needed spectrum remains unused more than four years after the end of the initial C block auction.<sup>19</sup>

The Commission notes that it “cannot overlook the difficulties that followed the original C block spectrum auction and [its] commitment . . . to promote opportunities for designated entities.”<sup>20</sup> BellSouth argues with neither observation. The commitment to entrepreneurs can be met by the approach taken in, among other actions, the *Part 1 Order*, the *Paging Systems Recon*, the *700 MHz Band R&O* and the *700 MHz Guard Band R&O*. The Commission, as it did in those cases, can make bidding credits available to small and very small businesses. There is no statutory or public interest requirement that the Commission do more than that. Indeed, the record to date in this proceeding evinces no such dictate.

The difficulties previously encountered and still being visited upon the Commission and the American public in the aftermath of the original C block auction also militate in favor of this approach. Faced with the prospect of competing against established providers for clearly valuable spectrum, entrepreneurs hopefully will insure this time that their business

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<sup>18</sup> See e.g., *FNPRM*, at ¶ 2, n.7, ¶ 18, n.61, and ¶ 19, nn.64 and 65.

<sup>19</sup> See “Entrepreneurs’ C Block Auction Closes, FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas,” Public Notice DA 96-716 (rel. May 8, 1996).

<sup>20</sup> *FNPRM*, at ¶ 25.

plans and likely success in the capital markets will support their bids. Obviously, those concepts did not factor into the bidding of some of the original C block winners.

To the extent that bidding credits are only an “adequate opportunity” for entrepreneurs, the Commission can change that into a “meaningful opportunity,” in the event that there is a difference between the two concepts, by disaggregation of each 30 MHz C block license into three 10 MHz licenses. The Commission has found that 10 MHz of PCS spectrum offers a bidder a basis on which to compete.<sup>21</sup> Indeed, that finding was the lynchpin of the creation of the PCS D, E and F block licenses.<sup>22</sup> There is no suggestion in the *FNPRM* that the Commission’s view in this regard has altered.

Limiting the original C block auction to entrepreneurs did not result in the capital markets becoming more accessible to the auction winners. Hopefully, this approach will.

**B. Bidding credits afford designated entities meaningful opportunities.**

The Commission’s use of the term “meaningful opportunities” in its first goal suggests that small businesses, and presumably very small ones as well, in this reauction are to be accorded dissimilar treatment from that would be visited upon them in other auctions, unless meaningful opportunities are the same as adequate opportunities. In adopting the C and F block set asides and installment payment plan, the Commission described the

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<sup>21</sup> *FNPRM*, at ¶ 16.

<sup>22</sup> See *In the Matter of Amendment of the Commission’s Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, 7726 (“We conclude that a 10 MHz allocation can support viable and competitive PCS services” and “10 MHz is sufficient for viable operation of many forms of PCS services”) and 7733 (“the combination of these [10 MHz] frequency blocks and BTA service areas will minimize the start-up cost likely to result from competitive bidding, and therefore provide greater opportunity for participation in a variety of PCS by small businesses, female and minority entrepreneurs, rural telephone companies, and others”) (1993).

opportunities it would provide to small businesses, rural telephone companies and businesses owned by minorities and women, variously as “meaningful,” “significant” and “genuine.”<sup>23</sup>

As shown herein, tiered bidding credits have been determined by the Commission numerous times to be “adequate” for entrepreneurs bidding on all other licenses. What is missing from the Commission’s tentative conclusions in this part of the docket is a demonstration that there is a difference between “meaningful” and “adequate.” If the terms are equivalent, and precedent shows they are, tiered bidding credits are sufficient for entrepreneurs in the upcoming reauction. If the terms are otherwise, the Commission has not explicated the public interest basis for the disparate treatment to be accorded entrepreneurs who may bid in the reauction of these and other C and F block licenses versus entrepreneurs who have and may participate in competitive bidding for other spectrum licenses.

**C. BellSouth’s proposal will speed the deployment of services to the public.**

Keeping this reauction open only to a select group of bidders will not “speed the deployment and development of new services to the public.” The C and F block licenses have been auctioned, in whole or in part, on four different occasions to date (Auction Nos. 5, 10, 11 and 22). In certain smaller markets, some licenses are now being employed to provide service.<sup>24</sup> It is recognized that there are entrepreneurs who, had they won C and F block licenses, might have utilized them by now. Nevertheless, the fact remains that so far the American public has realized precious little benefit from the C and F block spectrum. The

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<sup>23</sup> *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5572 (¶ 96), 5589 (¶ 129) and 5625 (¶ 218) (1994).

<sup>24</sup> *See*, n.18, *supra*; *compare*, *FNPRM*, at ¶ 20, n.69.

most likely way to insure that the spectrum will be deployed and developed promptly is to open the auction to all bidders.

**D. Open eligibility will promote the efficient use of spectrum.**

The efficient use of the spectrum is not promoted by continuing to close off certain licenses only to small and very small businesses. Existing providers who desire the spectrum to meet capacity constraints can certainly make efficient use of the spectrum. Open access to all of the licenses will mean that each license goes to the bidder that values it the most highly. Presumably, the one who pays the most will be encouraged, if not required by the amount of its expenditure, to make efficient use of the spectrum.

**E. Recovery of a portion of the value of the spectrum can be achieved by implementation of BellSouth's proposal.**

The last goal has yet to be achieved. The four previous closed auctions of C and F block licenses have realized for the U.S. Treasury only a small measure of the full value of the spectrum. An open auction for each license means that the bidder that values the spectrum the most highly is the one most likely to prevail, with or without bidding credits.

Small and very small businesses still will be afforded "adequate opportunities . . . to participate in [the] spectrum auctions" through the use of bidding credits. The discount the entrepreneurs will enjoy will still mean "a portion of the value of [the] spectrum" will be realized.

**F. Geographic stratification of the markets is counterproductive.**

The foregoing approach also precludes the need to stratify markets based on population. Entrepreneurs will be given meaningful opportunities through the use of bidding credits and spectrum disaggregation—subdividing the 30 MHz C block licenses. Market

stratification runs counter to what the Commission has done in all other auctions.

Entrepreneurs deserve the opportunity to bid and to have access to funding. The Commission can promote the former but it cannot, and is not obligated to, guarantee the latter.

Furthermore, as to the former, the Commission no longer sets aside licenses for entrepreneurs.<sup>25</sup>

This reauction of reclaimed and returned spectrum gives the Commission the chance to pursue the well-founded policy it has followed with respect to all other licenses. The population differentiation simply would present another opportunity for this spectrum to continue to be undeveloped and not deployed.

## **II. The “Grandfather” Exception Is Not Appropriate For An Open Eligibility Auction.**

The Commission seeks comment on whether it should revise or clarify the “grandfather” exception codified in section 24.709(a)(3) of the Commission’s rules.<sup>26</sup> The rule permits an entity that was eligible to bid in any of the prior C and F block auctions or reauctions to retain its eligibility for five years from the time it became a C or F block licensee despite increases in its revenues or assets that, otherwise, would render the entity ineligible in a subsequent auction or reauction.

As shown above, the currently proposed reauction of reclaimed and returned C and F block licenses should be open to all bidders. This re-opening should be accompanied by a requalification of entities that claim to be small and very small businesses. Otherwise, the Commission will foster a situation in which certain entities that previously qualified as entrepreneurs will receive the benefit of bidding credits even though they are publicly traded

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<sup>25</sup> *FNPRM*, at ¶ 8.

entities with market capitalizations in excess of \$1 billion. For example, Leap Wireless, Inc., holds certain set aside licenses as a result of successful bidding in Auction No. 22. It is a publicly traded company with a market capitalization in excess of \$1 billion. TeleCorp PCS holds C and F block licenses; it is a publicly traded company with a market capitalization in excess of \$3 billion. Neither company would presently qualify *ab initio* as an entrepreneur. Given their obvious ability to access the capital markets, neither warrants the benefit of a bidding credit.

There may be numerous entities that will qualify as small or very small businesses. Those are the entities that deserve and need the “leg-up” that is provided by the Commission’s system of bidding credits. “Grandfathering” is inappropriate for those that are no longer entrepreneurs and inequitable if continued for them vis-à-vis entities that truly are small and very small businesses. The Commission’s rules should be amended accordingly.

### **III. The Current Levels Of Bidding Credits Should Remain In Effect.**

The Commission seeks comment on whether it should retain the existing levels of bidding credits or increase them to 25% and 40% for small and very small businesses, respectively.<sup>27</sup> The Commission also is asking for guidance about what it should do with bidding credits if it keeps some or all of the licenses closed to non-entrepreneur bidders.<sup>28</sup>

BellSouth hopefully has made its position clear in support of open eligibility for this reauction. There is no public interest rationale for continuing to foreclose C and F block licenses to all bidders.

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<sup>26</sup> *FNPRM*, at ¶ 37.

<sup>27</sup> *FNPRM*, at ¶ 41.

<sup>28</sup> *FNPRM*, at ¶ 42.

As to the levels of bidding credits for entrepreneurs in an open reauction, BellSouth encourages the Commission to leave the two percentages alone. The 15%/25% gradations worked to the benefit of the entrepreneurs in the D and E block PCS auction where entrepreneurs garnered 141 of the 986 licenses won at auction.<sup>29</sup> In that auction, the entrepreneurs were competing against well-financed entities, many of which were established carriers, and their aggregate success rate was impressive. In the other auctions cited by the Commission in the *FNPRM*, entrepreneurs, armed only with bidding credits, more than held their own against non-entrepreneurs.<sup>30</sup> Thus, bidding credits have proven to be a true and effective equalizer for entrepreneurs when competing against entities larger than they are.

An increase from the 15%/25% levels to 25%/40% is not warranted based on the experience the entrepreneurs had in the D and E block auctions. Moreover, the success entrepreneurs had in other auctions with various levels of bidding credits cannot necessarily be translated on a one-for-one basis to the impending reauction. Thus, given that 15%/25% worked for small and very small businesses in the D and E block auction, there is no reason to make an adjustment to the levels of the bidding credits for entrepreneurs in the upcoming reauction.

**IV. C And F Block Licenses Acquired In Open Bidding Should Be Freely Alienable;  
C And F Block Licenses Acquired in Closed Bidding Should Be Freely  
Alienable Once Compliant With The First Construction Benchmark.**

The Commission should adopt its proposal to permit a C or F block license acquired in a closed auction to be alienable once the licensee has complied with the first construction

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<sup>29</sup> *FNPRM*, at ¶ 40.

<sup>30</sup> *Id.*

benchmark. The limitations on alienation were imposed to preclude unjust enrichment.<sup>31</sup>

The Commission did not want entrepreneurs to take advantage of the various benefits conferred on them in the closed C and F block auctions and then turn around and dispose of the license without developing it. The suggested adjustment to the rules is in keeping with that concept. It also encourages “the likelihood of early build-out,”<sup>32</sup> which is consistent with Congress’s goals for competitive bidding.<sup>33</sup>

If a license is won in an open auction, there is no need for a limitation on alienation. Any entity qualified to hold a license as a result of a transfer or assign pursuant to section 310(d) of the Act<sup>34</sup> would have been eligible to compete for it in competitive bidding. Thus, there can be no unjust enrichment issue associated with a license acquired in an open auction. The rules applicable to C and F block licenses should be amended accordingly.

#### **V. The Commission Should Remove The License Cap.**

The license cap was appropriate when the Commission limited eligibility for C and F block licenses. There was no way for the Commission to predict prior to those auctions the number of qualified bidders and the degree of dissemination resulting from the auctions. As noted by the Commission, it “has achieved . . . a fair distribution” of those licenses.<sup>35</sup> The numerical limitation of 98 licenses set forth in section 24.710 of the Commission’s rules seems misplaced in an auction open to bidders of all sizes. There will be more than enough

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<sup>31</sup> See 1.2111(b) of the Commission’s rules, 47 C.F.R. §1.2111(b).

<sup>32</sup> *FNPRM*, at ¶ 44.

<sup>33</sup> 47 U.S.C. § 309(j)(3) and (4).

<sup>34</sup> 47 U.S.C. § 310(d).

<sup>35</sup> *FNPRM*, at ¶ 47.

competition for the spectrum to alleviate unwarranted concerns about concentration of licenses. Section 24.710 of the Commission's rules should be eliminated.

#### **VI. The Spectrum Cap Should Be Eliminated.**

The Commission seeks comment on its "tentative" conclusion to retain the spectrum cap for the scheduled reauction of C and F block licenses.

BellSouth is one of the parties that has sought reconsideration of the Commission's most recent order continuing the existence of the spectrum cap.<sup>36</sup> In its petition for reconsideration filed on November 8, 1999, BellSouth sets forth why the Commission's rationale for retaining the spectrum cap is flawed and the detrimental impact that continuation will have on the U.S. wireless industry as it tries to implement third generation wireless services and products.<sup>37</sup> There is no need to recapitulate the arguments here. The Commission promises to address in the near future the issues raised by BellSouth and the other petitioners of the *Biennial CMRS Spectrum Cap Order*.<sup>38</sup>

BellSouth believes that careful analysis by the Commission of the arguments presented in BellSouth's petition and those made by the Cellular Telecommunications Industry Association in its reconsideration request<sup>39</sup> will result in an elimination of the

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<sup>36</sup> *In the Matter of 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205, *Report and Order*, FCC 99-244 (rel. Sept. 22, 1999), summarized 64 Fed. Reg. 54654 (Oct. 7, 1999), 17 Comm. Reg. 404 (1999) ("*Biennial CMRS Spectrum Cap Order*").

<sup>37</sup> See "Petition for Reconsideration of BellSouth Corporation," filed Nov. 8, 1999, in WT Docket No. 98-205.

<sup>38</sup> *FNPRM*, at ¶ 49, n.124.

<sup>39</sup> See "Petition for Reconsideration of the Cellular Telecommunications Industry Association," filed Nov. 8, 1999, in WT Docket No. 98-205.

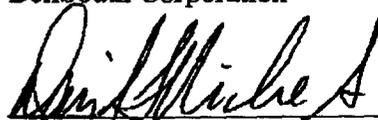
spectrum cap. BellSouth encourages the Commission to act promptly so that Auction No. 35 can proceed without the unnecessary restriction of the spectrum cap.

**VII. Conclusion**

BellSouth respectfully submits that the Commission can meet and exceed its statutory obligation under section 309(j)(3) and (4) of the Act to promote opportunities and competition through a combination of open eligibility, disaggregation of the 30 MHz C block licenses and tiered bidding credits in the current and future reauctions of C and F block PCS licenses. In addition, BellSouth respectfully requests that the Commission adopt the other changes advocated by BellSouth herein and that the Commission take prompt action in WT Docket No. 98-205 to eliminate the spectrum cap.

Respectfully submitted,

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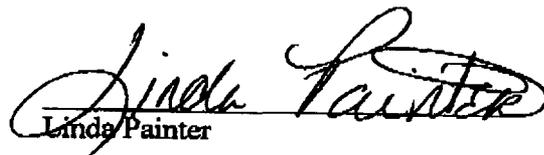
**CERTIFICATE OF SERVICE**

I hereby certify that I have this 22nd day of June, 2000, served a copy of the foregoing Comments of BellSouth Corporation, by United States Mail, first class, postage prepaid, on the persons listed below, unless otherwise indicated by an asterisk, which signifies the foregoing was hand-delivered.

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