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JUL 30 1994

FEDERAL COMMUNICATIONS COMMISSION

Fax Cover Sheet

Office of Public Affairs
Phone 202-418-0500 Fax 202-632-0942

To: Alexis Herman
From: Karen Watson
Date: July 29, 1994

No. of Pages Including Cover:

Message: I apologize for the confusion, however I am resending a summary of the Commission's rules on designated entities, talking points and the short briefing paper on PCS. Please substitute this corrected version for the one the I sent on Wednesday. Thanks

Time Sensitive

Must read

TALKING POINTS ON AUCTIONS (GENERAL)

*The Commission made no estimates on the value of these licenses.

*The Commission's goal for this week's auction is to have the auction go smoothly, award the licenses swiftly and create competition that is strong.

*Thus far, the bidding has greatly exceeded all industry estimates. As of July 28th, 1994, the bids for the 10 nationwide licenses total approximately $500 million.

TALKING POINTS ON DESIGNATED ENTITIES

*In authorizing the Commission to auction licenses, Congress directed the Commission to create opportunities for minorities, women, small businesses and rural telephone companies, known collectively as the "designated entities (DE's)

* While there were no DE's left in the bidding for the 10 licenses auctioned off this week for narrowband PCS, X percent of the winners of IVDS were minorities and Y percent were women.

*The Commission tailored its DE rules for each service and each service provides a different type of opportunity.

*The Commission's incentives for designated entities in Narrowband PCS, IVDS and Broadband PCS are an opportunity to compete not a guarantee of success.

*The Designated Entities program is not affirmative action, its an affirmative opportunity. The action is up to small businesses, women and minorities.

*In his speech to the Urban League, Hugh Price, the new Urban League President, challenged America to make changes in an economy that works well for most Americans, but leaves too many behind. He said that African Americans have to be competitive to succeed, the Commission has provided an opportunity for the DEs to attract the needed capitol to make them competitive.

*The narrowband PCS auctions being conducted this week involve ten of approximately 3,500 narrowband PCS licenses that will be auctioned by the FCC over the next couple of years. The remaining licenses are for smaller areas--for regions, major trading areas and basic trading areas.

*Of the 3,500 licenses, special bidding credits for minorities and women are available for 166 of the licenses. We anticipate more participation by minorities and women in bidding on licenses for the smaller service areas because the cost will be lower.

*The effectiveness of the de's program and whether the Commission's goal of diversifying these specific industries cannot be evaluated only on the results of this first round of auctions. The Commission plans to evaluate the success of the DE's program early and see if adjustments need to be made.

BRIEFING PAPER ON AUCTIONS

Beginning July 25, 1994, the FCC commenced the first-ever auctions to award licenses to operate communications facilities on the electromagnetic spectrum. The first auction is for 10 nationwide licenses to provide personal communications services in the 900 MHz band (narrowband PCS). On July 28, 1994, another auction will be held to award almost 600 licenses for interactive video data services (IVDS).

Narrowband PCS

Narrowband PCS will operate on a family of mobile or portable radio devices which can be used to provide such new services as advanced voice paging, two way acknowledgment paging, and data services. These new services are expected to benefit consumers by expanding the offerings that can be provided by paging companies and by increasing the level of competition in the paging industry. These services may also increase business productivity and enhance communications, for example, by introducing two-way communications capability that would allow a page recipient to respond with his/her own message.

A series of auctions will be conducted to award the approximately 3,500 narrowband PCS licenses. The first auction (for the nationwide licenses) will be a simultaneous multiple round auction, in which bids on all 10 licenses may be submitted simultaneously. (Bidders will be permitted to aggregate or combine up to three of these licenses in order to provide multiple service offerings or wider bandwidth services.) Prior to the auction, bidders were required to submit a minimum upfront payment of $350,000 for each license desired. As of July 14, 1994, the FCC has received valid upfront payments totalling over $30 million from 29 applicants interested in the 10 nationwide narrowband PCS licenses.

Winners of nationwide narrowband PCS licenses will be authorized to provide service over all fifty states, the District of Columbia, Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

Later this year, the FCC is planning to conduct a second simultaneous multiple round auction for license to provide narrowband PCS over five regional service areas and over the 51 Major Trading Areas (MTAs). Auctions for Basic Trading Area (BTA) narrowband PCS licenses will be held in 1995.

Broadband PCS

Broadband PCS will provide a variety of mobile services that will compete with existing cellular, paging, and other land mobile services. It also is expected to make available to the public new communications capabilities not available through current service offerings. These services will be provided via a new generation of communications devices that will include small, lightweight, multi-function portable phones, portable facsimile and other imaging devices, new types of multi-channel cordless phones, and advanced paging devices with two-way data capabilities. The advent of PCS should benefit consumers by raising the overall level of competition in many already competitive segments of the telecommunications industry and by providing competition in others for the first time.

In short, the PCS industry is expected (a) to create thousands of new jobs for our economy, (b) to enable businesses and consumers to realize substantial savings through enhanced productivity and by promoting competition to existing wireless telephone services, and (c) to provide the United States with an unparalleled opportunity to lead the world in an international growth industry.

Broadband PCS licenses will be awarded in a series of three auctions. The Commission is planning to conduct the first of these auction by the end of 1994. The Office of Management and Budget and the Congressional Budget Office have projected that broadband PCS auction will generate billions of dollars for the U.S. Treasury.

IVDS

IVDS is a new short-distance communications service in which licensees may provide information, products or services to individual subscribers located at fixed locations, and these subscribers may provide responses. Service offerings could include home banking, home shopping, educational and pay-per view programming and other interactive television services. An IVDS system, for example, may incorporate the use of television broadcast stations, cable television stations, wireless cable facilities, as well as direct broadcast satellite to provide service to subscribers. IVDS is still evolving as a radio service and has the potential to change the way we shop, learn, bank and even the way we receive health care.

Beginning July 28, 1994, the Commission will award IVDS licenses in an open outcry auction. Bidders are required to bring to the auction upfront payments of $2,500 for every five licenses desired. The FCC has received over 500 bidder applications for the IVDS auction, and over 80 percent of the applicants certified that they are entitled to take advantage of special measures the Commission has adopted to benefit small businesses and businesses owned by minorities and/or women. Ultimately, the FCC will issue a total of approximately 1,400 IVDS licenses.

IVDS licenses are awarded for Metropollitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs) as defined by the U.S. Census Bureau. Two IVDS licenses will be made available in each of these areas, but a single entity may hold only one license in any area. Because IVDS is a television-driven service, the Commission will award licenses in a manner consistent with the "Areas of Dominant Influence", or ADIs, defined by Arbitron Ratings Company, with the MSAs contained in the largest ADI auctioned first.

Special Provisions for Designated Entities

The FCC has adopted special measures designed to benefit businesses owned by minorities and/or women and small businesses. They include the following:

Bidding Credits: Narrowband PCS - Businesses that are at least 50.1 percent owned and controlled by women or minorities will be eligible for a 25 percent bidding credit (i.e., a 25 percent discount on the amount bid) when bidding on certain narrowband PCS licenses.

IVDS - These minority and women-owned businesses will be eligible for a 25 percent bidding credit when bidding on one of the two IVDS licenses in each market.

Installment Payments: Small businesses (which are defined separately for narrowband PCS and IVDS) will be eligible to pay for licenses (except for nationwide narrowband PCS licenses) over time at a low interest rate.

Tax Certificates: Tax certificates will be available to investors in minority and women-owned firms upon sale of their interests, and to licensees who transfer their authorizations to minority and women-owned businesses. Tax certificates enable the investors or licensees to avoid recognition of any gain upon sale of their interests.

Payment for Auctioned Licenses

After each auction has closed and the winning bidders have been identified, these winners will submit a down payment bringing the total amount on deposit with the Commission to 20 percent of their winning bids. Winners will then submit detailed applications for a license which are subject to challenge. If such an application is granted, the applicant must tender the remainder of its payment within five business days of the grant. The license grant will be conditioned on full payment. (NOTE: Relaxed payment terms are more liberal payment.) The FCC will issue another Public Notice identifying the winning bidder for each license.

License terms

Licenses are granted for a 10 year period for narrowband PCS and 5 years for IVDS.

-FCC-

SUMMARY OF COMMISSION RULES SPECIFICALLY TARGETED AT THE DESIGNATED ENTITIES

Narrowband

On April 20th the Commission adopted competitive bidding rules for Narrowband PCS licenses. In order to enhance access to the spectrum by groups that have historically been under-represented in the management and control of telecommunication services, the Commission adopted bidding credits of 25%. In addition the Commission indicated that licensees may use tax certificates to attract start up capital.

IVDS

These minority and women owned businesses will be eligible for a 25% bidding credit when bidding on one of the two IVDS licenses in each market.

Broadband

On June 29th, the Commission adopted rules designed to generate significant opportunities for a new generation of telecommunications providers: Women, small businesses and minorities. The Commission

*Set aside Blocks C and F. Only businesses whose (1) gross revenues (in each of the last two years) did not exceed 125 million and (2) total assets are not in excess of $500 million. The entrepreneurs' blocks will permit smaller businesses to participate in auctions without facing head-to-head competition from very large companies, thereby carrying out Congress's objective that the Commission disseminate licenses to a wide variety of applicants.

*Established a range of provisions within the entrepreneurs' blocks to enable the winners of these licenses to compete effectively with the winners of other PCS licenses and with other wireless service providers. In addition, these provisions are designed to directly address the largest obstacle facing designated entities in general and businesses owned by women and minorities in particular -- access to capital. The provisions include:

(1) Bidding credits of 10 percent for small businesses, 15 percent for businesses owned and controlled by minorities and/or women, and 25 percent for small businesses owned and controlled by minorities and/or women;

(2) Installment payment plans that will be available to all winning bidders for the entrepreneurs' blocks in the 50 largest BTAs. In the remaining BTAs, installment payment plans will be available to businesses owned and controlled by minorities and/or women and

to winning bidders whose gross revenues in each of the last two years did not exceed $75 million. The installment payment plan generally provides for payment of interest only for the first year of the license term with interest an principal amortized over the remaining 9 years. The interest charges will be set at a rate equal to the 10 year Treasury note rate plus 2.5%. The FCC will provide "enhanced" installment payment plans for small businesses and businesses owned and controlled by women and minorities, as follows:

> Small businesses (those with attributable gross revenues not greater than $40 million): Interest rate equal to 10 year Treasury note rate plus 2.5%; payment of interest only for two years from license grant.
>
> Businesses owned and controlled by minorities and/or women: Interest rate equal to 10 year Treasury note rate: payment of interest only for three years from license grant.
>
> Small businesses that are owned and controlled by minorities and or/women: Interest rate equal to 10 year Treasury not rate; payment of interest only for five years from license grant.

(3) A relaxed attribution standard for businesses owned and controlled by minorities and/or women to enable theme to overcome historic difficulties they have faced in raising capital. In general, the gross revenues and assets of an investor in an applicant for the entrepreneurs' blocks will be attributed to that applicant if the investor holds more than 25 percent of the applicant's equity or more than 5 percent of the voting interests . In addition, investors in businesses owned by minorities and/or women will be permitted to own up to 49.9 percent of the applicant's equity and 5 percent of the voting interests without their gross revenues and assets being attributed to the applicant, if the minorities and/or women maintain ownership of at least 50.1 percent of the equity and 50.1 percent of the voting interests. This provision should enable businesses owned and controlled by minorities and women to more easily attract investment.

*Adopted a tax certificate program that would grant tax certificates to investors in minority and woman owned business and to PCS licensees who assign or transfer control of their authorization to women-or minority owned business in post auction sales. Tax certificates will also be granted to cellular companies who sell their interests to women- or minority owned business to come into compliance with cellular/PCS overlap rules .

*Provided for geographic partitioning of PCS licenses by rural telephone companies to encourage the provision of PCS service in rural areas.

*Limited the number of licenses within the entrepreneurs' blocks that a single entity may win at the auction to ten percent of the available licenses in these blocks. This will help ensure the Commission meets the Congressional objective to avoid undue concentration and to disseminate licenses widely.

JUN 30

FEDERAL COMMUNICATIONS COMMISSION

Fax Cover Sheet

Office of the Public Affairs

Phone 202-418-0500 Fax 202-632-0942

To: Alexis Herman

From: OPA

Date: **June 30, 1994**

No. of Pages Including Cover: __________

Message: Attached is short summary statement and articles explaining the FCC actions with regards to Personal Communications Systems (PCS) yesterday. If you have any questions, please feel free to call Karen Watson at 202-418-0500.

MEMORANDUM

We thought you would be interested in today's coverage of the Commission's decision yesterday adopting the rules for broadband auctions.

We were very pleased that the Commission unanimously adopted a plan that is the greatest economic opportunity ever made available to women and minorities in American History. There was unanimous support for the Commission's plan earlier this month to provide more and better spectrum for what we call the "entrepreneur's block." We were also very pleased that there was widespread support for yesterday's decision to provide a powerful package of incentives for investment by minorities, women and small businesses. As noted in a number of the press accounts, this package provides competitive opportunities and the ultimate measure of success will depend upon how individual business use the incentives to raise capital and provide service. Although there has been some criticism at the margins, with some groups saying we did not do enough for them and did too much for others, even that criticism was more muted than we expected.

If you have any questions about any aspect of this plan, please do not hesitate to contact Blair Levin, Bob Pepper or Bill Kennard all of whom can be reached at 202-418-1000.

16 AP 06-30-94 08:19 AET 70 LINES
PM-Phones-Diversity,0623
FCC Adopts Plan for Diverse Ownership; Clears Way for New Service
Eds: Also moved on general news wires.
By JEANNINE AVERSA=
Associated Press Writer=

WASHINGTON (AP) Federal regulators have adopted a plan designed to ensure that owners of the next generation of telecommunications companies look more like America's melting pot.

The Federal Communications Commission set aside about half of the licenses for future mobile telephone service for women, minorities and small business. It is expected to be a $50 billion-a-year business in 10 years, said FCC Chairman Reed Hundt.

The plan, adopted Wednesday, is part of new rules companies must follow if they want to bid on licenses for the new service.

Of the 2,000 licenses available, 986 in major metropolitan areas across the country will be reserved for minorities, women and small businesses to bid on. The licenses are for both big and small slices of the public airwaves.

''Businesses in this country should look more like the people they serve,'' Hundt said.

Under the plan, groups historically lacking access to large amounts of money would bid only against each other and not, for example, against capital-rich telecommunications giants for licenses to operate the new mobile phone services.

''This really does help to open the door,'' said Melodie Virtue, a vice president for American Women in Radio and Television Inc.

To qualify to bid on the reserved licenses, companies must have less than $125 million in gross revenues and assets of less than $500 million, the commission said.

The plan, generally praised by groups representing women, minorities and small businesses, did not escape criticism.

''Minorities need a bigger incentive. ... This will substantially affect our ability to attract capital,'' said Jim Winston, executive director of the National Association of Black Owned Broadcasters, of the FCC's plan to provide ''bidding credits.''

The commission adopted a 10 percent bidding credit for small businesses and a 15 percent credit for women and minorities. Small businesses owned by a female or minority get a cumulative credit of 25 percent meaning they only have to pay the government 75 percent of the winning bid's total. Winston said a 35 percent cumulative credit is needed.

Winston also said the FCC's plan to auction licenses for large markets first will put minorities at a competitive disadvantage because the licenses reserved for them are in smaller markets that will be auctioned later.

But Hundt disagreed. ''Most people told us the exact opposite. By going with the large markets first, it will help them determine the auction price for licenses and use that as a measuring stick for raising funds for bidding.''

To make it easier for minorities, women and small businesses to pay for licenses they have won, the commission said they only have to make a down payment of 5 percent of their winning bids. All other winning bidders must put down 20 percent.

While other winning bidders will have to make a full payment on their bids within five business days, minorities, women and small businesses will have installment payment plans available to them.

Some of the nation's largest telecommunications companies, from regional Bells to cable television giants, are planning to join in the bidding, which is scheduled to get under way this fall. The licenses will probably fetch millions of dollars each for the government.

Dubbed broad band personal communications, the new service promises to be more mobile and less expensive than existing cellular service. With it, a number is assigned to a person, not a place. This gives a customer a single number that can ring at home, work or elsewhere.

NEW YORK TIMES
WASHINGTON POST ✓
THE WALL STREET JOURNAL
LOS ANGELES TIMES
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FINANCIAL TIMES
USA TODAY

DATE 6/30 PAGE D2

The FCC's Wheel of Fortune

Special Deals for Minorities, Women to Bid for Wireless Licenses Are Still Very Costly

By Mike Mills
Washington Post Staff Writer

Are you down about your job, feeling entrepreneurial, hoping to get in on The Next Big Thing?

Then you may want to take part in the upcoming auction of radio licenses for "personal communications services," or PCS. Federal analysts say this next generation of lightweight pocket telephones and paging devices could generate a $50 billion industry within a decade.

To encourage small businesses to bid, especially ones owned by minorities or women, the Federal Communications Commission is giving them special breaks. But if you fit that bill, you'll still have to bring a lot of money.

It will take a down payment of roughly $100,000 to get into the room to vie for most of the licenses available in the Washington area, judging from rules adopted by the FCC yesterday.

Than there's the bid itself: The cost of the one license available to the entire Washington area is expected to easily top $50 million. Then the winner will have to spend another $100 million to develop the wireless telephone system, not to mention the cost of buying new equipment for businesses such as Amtrak that now use the frequencies in question.

Licenses for smaller markets, such as those in Cumberland, Md., or Winchester, Va., could cost in the millions to buy and develop, according to rough estimates. And the market there for pocket phones is less than guaranteed.

"The reality is, it's not going to be easy to succeed at PCS," said Jerry Lucas, president of Telestrategies Inc., a McLean-based consulting company.

Numbers like these make James Winston, executive director of the National Association of Black Owned Businesses and a prospective bidder, pessimistic. "I'm not sure there is going to be a significant number of minority businesses involved in PCS," he said. "I think the opportunities are very limited for people who are currently not business owners."

But FCC Chairman Reed Hundt disagrees. "I really do believe this is the single most important opportunity that's been fairly made available to women and minorities in our country's history," he said yesterday. He compared the difficulty of financing a small PCS venture with that of opening a restaurant or a car dealership in a big city.

Hundt predicts that a special block of licenses set aside for businesses with annual revenue under $125 million would spawn firms owned by minorities and women that one day will serve 12 million customers and earn $12 billion in revenue.

It remains unclear who will eventually bid to operate the Washington area systems. But one license has been reserved free of charge for American Personal Communications Inc., which the FCC designated as a "pioneer" to develop the technology. The company is owned by a partnership that is 70 percent owned by The Washington Post.

The FCC predicts the auctions will open today's cellular telephone market to competition, creating 100,000 new jobs and a $50 billion business within the next 10 years. Consumers, in return, will get lower prices for the highly advanced pocket telephones.

Under the FCC plan, two of six licenses in each market would be barred to big companies. Some small businesses and all firms owned by women, blacks and other minorities also get bidding "credits" when vying for these licenses. For example, bids by a firm owned by a woman or minority that also has annual revenue below $40 million would be marked up by 25 percent.

Just as valuable in aiding these firms would be deferred payments on the bids that they win. Small businesses owned by women or minorities would have to pay only interest on the value of their licenses for five years, before being required to begin paying off principal.

Those groups also would have to comply with strict ownership rules intended to keep big businesses from using minorities or women as "fronts" for their companies.

FCC officials said that entrepreneurs should not think the coming PCS auctions will begin a repeat of its much-criticized cellular telephone licensing process, in which speculators made billions of dollars by winning licenses through lotteries and then selling them in the private market.

Auction rules impose penalties on companies that do not build their wireless networks within set periods of time after receiving the license. Fines would be imposed on those who "get into the business for "unjust enrichment," meaning the trafficking of licenses with no intention of actually offering PCS services.

"Investors will have to have some staying power to take advantage of this opportunity," said FCC Commissioner James Quello.

NEW YORK TIMES
WASHINGTON POST ✓
THE WALL STREET JOURNAL
LOS ANGELES TIMES
WASHINGTON TIMES
FINANCIAL TIMES
USA TODAY

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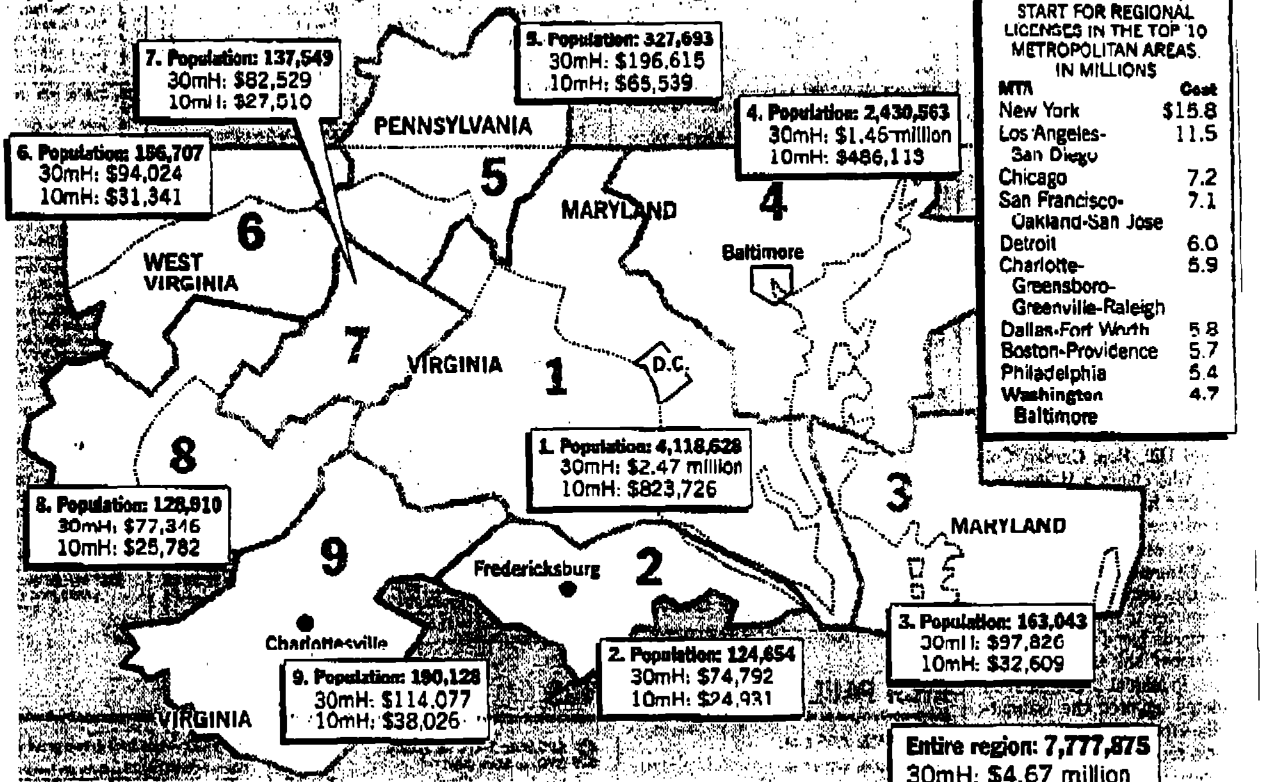
THE COST OF COMMUNICATING

For the purpose of auctioning space on the electromagnetic spectrum, the FCC has divided the country into hundreds of "basic trading areas," or BTAs, each of which will have four service providers—one with a powerful 30-megahertz license and three with more limited 10-megahertz licenses. Two additional licenses will be offered in each of 51 "major trading areas," which cover numerous smaller BTAs. The costs to bid is based on population; here is where the bidding will start for licenses in the Washington area.



THE 10 BIGGEST

WHERE BIDDING WILL START FOR REGIONAL LICENSES IN THE TOP 10 METROPOLITAN AREAS. IN MILLIONS

MTA	Cost
New York	$15.8
Los Angeles-San Diego	11.5
Chicago	7.2
San Francisco-Oakland-San Jose	7.1
Detroit	6.0
Charlotte-Greensboro-Greenville-Raleigh	5.9
Dallas-Fort Worth	5.8
Boston-Providence	5.7
Philadelphia	5.4
Washington Baltimore	4.7

SOURCE: Federal Communications Commission

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WASHINGTON TIMES
FINANCIAL TIMES
USA TODAY

F.C.C. Approves Set-Asides For Its Wireless Auctions

By EDMUND L. ANDREWS

Special to The New York Times

WASHINGTON, June 29 — In the biggest affirmative-action program in decades, the Federal Communications Commission decided today to give small businesses, women and minority groups preferences valued at hundreds of millions of dollars in setting up new wireless telephone and data services.

In a 5-to-0 vote, the commission voted to set aside more than 1,000 new radio licenses for small businesses, women and minority groups to operate "personal communication services," a catch-all term that embraces pocket-sized telephones, hand-held computers, advanced pagers and facsimile machines.

The new program would reserve about half the nearly 2,000 wireless licenses, which the Federal Government expects to award in several auctions beginning late this year. Federal officials predict these licenses have a combined market value of as much as $10 billion.

Based on the explosive growth of cellular telephones during the last decade — from virtually none in 1983 to 16 million subscribers today — almost all the nation's biggest communications companies have anticipated the auctions for months.

Government officials and industry executives said today that the combined package of preferences could allow small companies owned by women or minorities to obtain an effective discount as much as 60 percent off the market value.

"This is without a doubt the biggest affirmative action program in history," said Sandra D. Goeken, president of the In-Flight Phone Corporation in Oakbrook, Ill. "This is over half of billion dollars worth of value, easy."

Today's action is likely to give entrepreneurs, particularly women and members of minority groups, a central role in the larger strategies being devised by cellular telephone companies, the regional Bell companies and long-distance carriers like the AT&T Corporation and the MCI Communications Corporation.

Concerns About Ownership

Indeed, the biggest risk of the new program is that it will permit the rise of companies that only appear to be run by women or minorities and are actually controlled by larger entities.

Under the rules adopted today, for example, a company could still qualify for the full range of preferences even if huge corporate investors acquired 75 percent of the equity and 49.9 percent of the voting stock.

The F.C.C. also set aside two separate categories of wireless licenses for small businesses, which are defined as companies with less than $125 million in assets or $500 million in revenue. One of these "entrepreneurs' blocks" contains licenses that are roughly equivalent to one of today's cellular franchises. A second would be for licenses covering a smaller slice of the radio spectrum, which can be used for phone and data services but will be limited in capacity.

But the most generous preferences are accorded to smaller companies controlled by women or minorities. A company with less that $40 million in sales will get a 10 percent "bidding credit," meaning that the actual price it pays for a license will be 10 percent less than the amount it bids.

Big companies owned by women or members of minority groups will get a 15 percent bidding credit, and small companies owned by women and minorities will get a 25 percent credit.

In addition, small companies owned by women and minority groups will be allowed to pay for their licenses on an installment plan, paying an interest rate equal to 10-year Treasury notes. Big companies will have to pay the cash up front almost as soon as they acquire their licenses, which means their capital costs will be much higher.

Finally, companies owned by women or minorities will be entitled to special "tax certificates," which can be used to defer capital gains taxes if the license is sold.

A 60% Discount

F.C.C. officials estimated that the combined package of preferences added up to an effective discount of more than 60 percent, and they were intended in part to help smaller companies attract investors.

"We want the opportunity to create opporunities for all Americans, so that the businesses we create look more like the people we serve," said Reed E. Hundt, the F.C.C.'s chairman. "This isn't affirmative action. This is affirmative opportunity, and we're leaving the action to small businesses, women and minority groups."

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NEW YORK TIMES
WASHINGTON POST
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LOS ANGELES TIMES
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FINANCIAL TIMES
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DATE 6/30 PAGE A3

FCC Sets Rules For Small Firms In Wireless Sale

Companies Run by Women, Minorities to Get Blocks Of Airwaves in Auction

By MARY LU CARNEVALE
And JEANNE SADDLER
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON – The Federal Communications Commission adopted the most extensive program yet to give small and medium-sized companies, particularly ones controlled by women and minorities, a chance to compete in the Goliath-dominated telecommunications arena.

In the next several months, the rules are expected to trigger courtships of small companies by large companies on an unprecedented scale. That's because the cost of building new communications networks will be too high for most independent small companies, and those able to team up with well-financed companies will have an edge in bidding for licenses.

The decision came as part of the FCC's vote on rules that it will use to auction the airwaves for pocket phones, mobile data services and other advanced wireless services, which will compete against existing cellular companies, as well as against each other. In the decision, the commission reserved two of six blocks of the radio frequency – 30-megahertz and 10-megahertz – for small companies with annual revenues of as much as $125 million and assets of as much as $500 million.

"This is the single biggest economic opportunity made available for small businesses, women-owned and minority-owned companies in American history," declared FCC Chairman Reed Hundt. As for the fierce competition that is expected to ensue, Mr. Hundt said the FCC "isn't offering any guarantee of success for big businesses or small businesses."

The ruling won praise from small-business groups. "This ruling will allow some capital to flow to minority companies," said Walter Threadgill, president of Minority Broadcast Investment Corp., a venture-capital firm licensed by the Small Business Administration. "We now have the public-policy tools to work with, but you can't assume this will be a slam-dunk, because the capital requirements are incredible," he added.

The FCC recognized in its bidding procedures that few small companies can afford to go it alone in what it calls "personal-communications services." The agency decided to auction two of the other blocks in each of the 51 main regions of the country before it puts the "entrepreneurs' blocks" up for sale. Communications giants that aren't successful on the first go-round would have a chance to team up with entrepreneurs in a second round. That's expected to help the small companies line up financial support, as well as alliances that could help them develop their businesses.

To prevent the small companies, particularly those owned by women and minorities, from becoming fronts for others, the FCC limited outside ownership. A big company generally can't hold more than 25% of an entrepreneur's equity or more than 5% of the voting interests. In addition, investors in women or minority companies can own as much as 49.9% of the equity and as much as 5% of the voting interests only if the minority or women owners hold at least 50.1% of the equity and voting interests.

To help the smallest companies – those with revenues of as much as $40 million a year – the commission adopted a series of special preferences. A small business, for example, would get a 10% discount on a winning bid, and pay just the interest for two years at a rate equal to a 10-year Treasury note plus 2.5%. A small company controlled by women or minorities would get a 25% discount, and pay interest only for five years at a rate equal to the 10-year Treasury note. Investors in businesses owned by women and minorities also would get tax certificates.

The plan drew immediate criticism from the National Association of Black Owned Broadcasters, which had hoped for at least a 35% discount for minority-owned companies. The 25% discount "is not significant enough for African-American-owned businesses to attract capital," said James Winston, executive director of Nabob. The association, he added, plans to ask the commission to reconsider its decision. He said he doesn't want the review process, however, to end up delaying the auctions – something that all personal-communications wannabes agree is a bad idea.

Mr. Threadgill said that minorities will have to set "realistic [size] expectations" for their systems to get into the business and stay in it. The financial requirements for entry into the personal-communications business are high. It could cost $150 million or more to build a wireless network in a major city and its suburbs.

Mr. Threadgill said the road will be toughest for small minority-owned companies, which historically have had difficulty attracting capital. Such companies, he suggested, will need the kind of helping hand offered in the late 1970s, when Storer Broadcasting Corp. and the National Association of Broadcasters established venture funds to assist minorities in acquiring radio and television stations. The effort boosted minority ownership of broadcast stations from about 0.5% nationwide to about 2% by the mid-1980s, he said.

The FCC expects to begin the auctions for the new wireless-phone services by the end of the year. If the agency can hold to that schedule, companies believe they could begin offering pocket-phone services in limited areas by the end of 1995 or early 1996.

Generally, the entrepreneurs have to hold their licenses for five years and build a network during that time that serves at least a third of the population within the license territory.

The decision to reserve a portion of the airwaves for entrepreneurs was designed to address a congressional mandate that small companies, rural phone companies and companies owned by minorities and women have an opportunity to participate in the auctions.

The commission decision was welcome news for small-business owners financially ready and able to enter the market. Columbia PCS Inc., an Alexandria, Va., company headed by a former MCI Corp. executive, Steven Zecola, hopes to acquire as many personal-communications-services licenses as possible, up to the limit of 98 set by the FCC. "We're quite happy. This totally accommodates our ability to get into the PCS industry," Mr. Zecola said. "What the FCC has done is set up a system that's worth investing in. With 30 megahertz of spectrum, we can compete against the cellular companies," he said, adding that "we're a start-up company with just seven employees, but we already have three investors and more on the way."

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DATE 6/30 PAGE 2B

FCC sets rules for auction

Women, minorities and small businesses who want to compete in an emerging market for wireless communications devices got some help from federal regulators Wednesday.

The Federal Communications Commission, setting rules for an auction of the airwaves for "broadband" wireless services late this year, voted unanimously to reserve almost half the 2,100 licenses on the block for businesses with less than $125 million in annual revenue.

The FCC voted to give financial breaks to minorities, women and businesses with less than $40 million in yearly revenue. Small businesses will get bidding credits of 10%, while female- and minority-owned small businesses will get an additional 15% discount.

"It is the greatest economic opportunity ever fairly made available to women and minorities in American history," FCC Chairman Reed Hundt says. "It's a fact in America that women and minorities have a harder time raising money."

Rural telephone companies also will be permitted to bid for the earmarked licenses, which are expected to spawn a new class of lightweight pocket phones and other wireless gadgets that cost less to operate than current mobile services. The FCC says all the groups can bid for licenses to one large slice of the airwaves or one small block in each region across the country.

But the commission stressed that it would not be handing out the licenses for free. "Today we are talking not about giveaways, but about giving away the opportunity to compete," Hundt said.

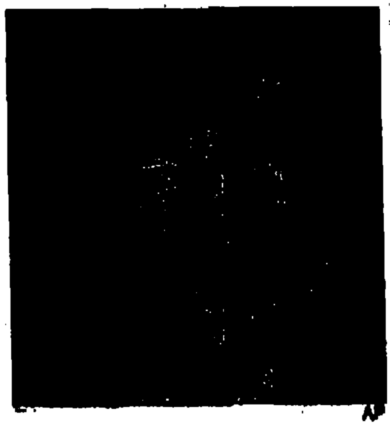
The designated groups will be able to make payments on their winning bids in installments.

Congress ordered the agency to sell the sought-after airwave licenses rather than distribute them free of charge as it has in the past. The lawmakers told the FCC to find ways to make it easier for small, rural and minority-owned companies to bid successfully against big players.

To discourage those who might try to make quick profits on the licenses after receiving the special treatment, the companies will not be allowed to sell them for five years.

"We don't want to have anyone who's not seriously interested in the business," Hundt says.

— Paul Wiseman and wire reports



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HUNDT: 'It's a fact in America that women and minorities have a harder time raising money.'

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Date: July 1, 1994

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Report No. DC- ACTION IN DOCKET CASE June 29, 1994

COMMISSION ADOPTS COMPETITIVE BIDDING PROCEDURES FOR BROADBAND PCS (PP DOCKET NO. 93-253)

The Commission today set the stage for the largest and most important auction of public assets in history. Reaffirming its goal of creating rules for new services that will stimulate vigorous competition, economic growth and diverse business opportunities, the FCC today adopted service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 2 GHz band (broadband PCS). This decision also creates an unprecedented and historic opportunity for more diversity among the wireless service providers of tomorrow.

This decision will spur competition in a booming new industry, generate economic growth and create hundreds of thousands of new jobs. It will also benefit the public by raising money to reduce the federal deficit.

FCC Chairman Reed E. Hundt said, "In the long and tragic history of inequality between races and gender in America, today we are creating the greatest single opportunity made available to women and minorities. For the first time in our nation's history, the federal government is creating opportunities in a new industry in which all Americans will have a fair chance to compete from day one. We are all proud to be associated with this historic step toward a better future for all Americans."

Today's decision supports the Commission's June 9, 1994 action that established the spectrum allocation and technical service rules for broadband PCS. The June 9 decision increased the value of all broadband PCS licenses by placing all of these licenses in one contiguous band and by increasing the number of 30 MHz licenses. That decision was designed to increase competition among service providers by allowing for a wide variety of firms to pursue their visions of PCS and respond to consumer demand.

(over)

Today's action sets forth the rules for the broadband PCS auctions. It provides that the broadband PCS licenses will be awarded through a series of simultaneous multiple round auctions. The decision also specifies procedural requirements and rules regarding payment for licenses, and adopts safeguards to prevent collusion in the auctions and unjust enrichment afterwards.

In addition, the Commission adopted a "Competitive Opportunity Plan", under which "entrepreneurs' blocks" are established, which is designed to fulfill the statutory mandate to ensure that small businesses, rural telephone companies and businesses owned by minorities and/or women (collectively referred to as "designated entities") have the opportunity to participate in providing broadband PCS. The Commission set forth an installment payment plan for all those eligible for the entrepreneurs' block licenses that is narrowly tailored to meet the specific needs of the various groups that will compete for licenses. The plan also affords bidding credits to small businesses and businesses owned by minorities and women which reflect the evidence in the record regarding difficulties facing these groups in raising capital.

"This Competitive Opportunity Plan," said FCC General Counsel William E. Kennard, "employs all the tools suggested by Congress to create meaningful business opportunities. The plan is narrowly tailored to address the historic barriers to entry confronting the designated entities."

Attached are summaries of the Commission's decisions concerning auction design and the provisions adopted for designated entities.

Action by the Commission June 29, 1994, by Fifth Report and Order (FCC 94-///).

News Media contacts: Karen Watson, Susan Lewis Sallet, or Audrey Spivack at (202) 418-0500.

Office of General Counsel contacts: Sara Seidman at (202) 418-1700 or Peter Tenhula at (202) 418-1713.

Office of Plans and Policy contacts: Jonathan Cohen at (202) 418-2040 or Evan Kwerel at (202) 418-2045.

- FCC -

AUCTION DESIGN

With respect to auction design, the Commission:

- Reaffirmed that broadband PCS meets the statutory criteria for competitive bidding;

- Decided that broadband PCS licenses should be awarded through a series of simultaneous multiple round auctions. In the March 8th Second Report and Order, the Commission determined that when licenses are of relatively high value and the license values are highly interdependent, simultaneous multiple round bidding conveys the greatest amount of information to bidders during an auction. Thus, simultaneous multiple round auctions will enable the Commission to assign licenses to those who value them most highly and who will make the most efficient use of the scarce spectrum resource and ultimately render the greatest benefits to the American public.

- Determined that three separate auctions of broadband PCS licenses will be held. The first auction will be for the 99 available 30 MHz licenses on frequency blocks A and B, which will be awarded for Major Trading Areas (or MTAs) as defined by the Rand McNally 1992 Commercial Atlas. The second auction will be for the 986 30 MHz and 10 MHz Basic Trading Area (or BTA) licenses on blocks C and F, respectively. The 986 BTA licenses on blocks D and E will be auctioned last. This sequence allows the licenses with the greatest interdependence to be in the same auction. Holding a sequence of auctions (rather than auctioning all 2,071 available broadband PCS licenses at the same time) also allows the Commission to start its broadband PCS auction program with an auction of relatively manageable size, and spacing the broadband PCS auctions will facilitate the processing of applications since not all applications will be filed at the same time.

- Adopted activity rules requiring bidders to bid on licenses covering a portion of the population they hope to serve in each round of bidding so that these auctions proceed at a reasonable pace. Also, the Commission will apply a simultaneous stopping rule in broadband PCS auctions. This rule provides that bidding on all of the licenses being auctioned at the same time will remain open until no acceptable bids are received on any of the licenses.

- Specified bid withdrawal, default and disqualification penalties to ensure that all bids are sincere.

- Set forth payment and procedural rules for applicants in broadband PCS auctions. These include:

  (1) Upfront payment requirement: to qualify to bid in a broadband PCS auction, applicants will be required to make an upfront payment of two cents per MHz for the maximum population coverage for which they wish to bid in any single round in the auction.

  (2) Down payment requirement: except for winning bidders that are eligible for installment payments, winning bidders must make a down payment equal to 20 percent of their winning bids. (Winning bidders that are eligible for installment payments will only be required to make down payments equalling 5 percent of their winning bids.)

  (3) Full payment requirement: if the Commission finds an applicant qualified and grants it a license, the applicant must make full payment of its bid within five business days of the license grant. Again, an applicant that is eligible for installment payments will receive preferential treatment, paying only an additional 5 percent of the winning bid, with the remaining 90 percent of the bid amount becoming the principal in the licensee's installment obligation to the government. The grant of all licenses will be conditioned on timely payment of all amounts due.

- Adopted safeguards to prevent collusion in the auctions and unjust enrichment afterwards.

PROVISIONS FOR DESIGNATED ENTITIES

Today's action will generate significant opportunities for a new generation of telecommunications providers. Among its actions with respect to designated entities, the Commission:

- Designated frequency blocks C and F as "entrepreneurs' blocks," in which eligibility to bid will be limited to businesses whose (1) gross revenues in each of the last two years did not exceed $125 million, and (2) total assets are not in excess of $500 million. The entrepreneurs' blocks will permit smaller businesses to participate in auctions without facing head-to-head competition from very large companies, thereby carrying out Congress's objective that the Commission disseminate licenses to a wide variety of applicants.

- Established a range of provisions within the entrepreneurs' blocks to enable the winners of these licenses to compete effectively with the winners of other PCS licenses and with other wireless service providers. In addition, these provisions are designed to directly address the largest obstacle facing designated entities in general and businesses owned by women and minorities in particular -- access to capital. The provisions include:

  (1) Bidding credits of 10 percent for small businesses, 15 percent for businesses owned and controlled by minorities and/or women, and 25 percent for small businesses owned and controlled by minorities and/or women;

  (2) Installment payment plans that will be available to all winning bidders for the entrepreneurs' blocks in the 50 largest BTAs. In the remaining BTAs, installment payment plans will be available to businesses owned and controlled by minorities and/or women and to winning bidders whose gross revenues in each of the last two years did not exceed $75 million. The installment payment plan generally provides for payment of interest only for the first year of the license term with interest and principal amortized over the remaining 9 years. The interest charges will be set at a rate equal to the 10 year Treasury note rate plus 2.5%. The FCC will provide "enhanced"

installment payment plans for small businesses and businesses owned and controlled by women and minorities, as follows:

Small businesses (those with attributable gross revenues not greater than $40 million): Interest rate equal to 10 year Treasury note rate +2.5%; payment of interest only for two years from license grant.

Businesses owned and controlled by minorities and/or women: Interest rate equal to 10 year Treasury note rate; payment of interest only for three years from license grant.

Small businesses that are owned and controlled by minorities and/or women: Interest rate equal to 10 year Treasury note rate; payment of interest only for five years from license grant.

(3) A relaxed attribution standard for businesses owned and controlled by minorities and/or women to enable them to overcome historic difficulties they have faced in raising capital. In general, the gross revenues and assets of an investor in an applicant for the entrepreneurs' blocks will be attributed to that applicant if the investor holds more than 25 percent of the applicant's equity or more than 5 percent of the voting interests. In addition, investors in businesses owned by minorities and/or women will be permitted to own up to 49.9 percent of the applicant's equity and 5 percent of the voting interests without their gross revenues and assets being attributed to the applicant, if the minorities and/or women maintain ownership of at least 50.1 percent of the equity and 50.1 percent of the voting interests. This provision should enable businesses owned and controlled by minorities and women to more easily attract investment.

- Adopted a tax certificate program that would grant tax certificates to investors in minority- and woman-owned business and to PCS licensees who assign or transfer control of their authorization to women- or minority-owned business in post auction sales. Tax certificates will also be granted to cellular companies who sell their cellular interests to women- or minority-owned business to come into compliance with cellular/PCS overlap rules.

- Provided for geographic partitioning of PCS licenses by rural-telephone companies to encourage the provision of PCS service in rural areas.

- Limited the number of licenses within the entrepreneurs' blocks that a single entity may win at the auction to ten percent of the available licenses in these blocks. This will help ensure the Commission meets the Congressional objective to avoid undue concentration and to disseminate licenses widely.

STATEMENT OF
COMMISSIONER JAMES H. QUELLO

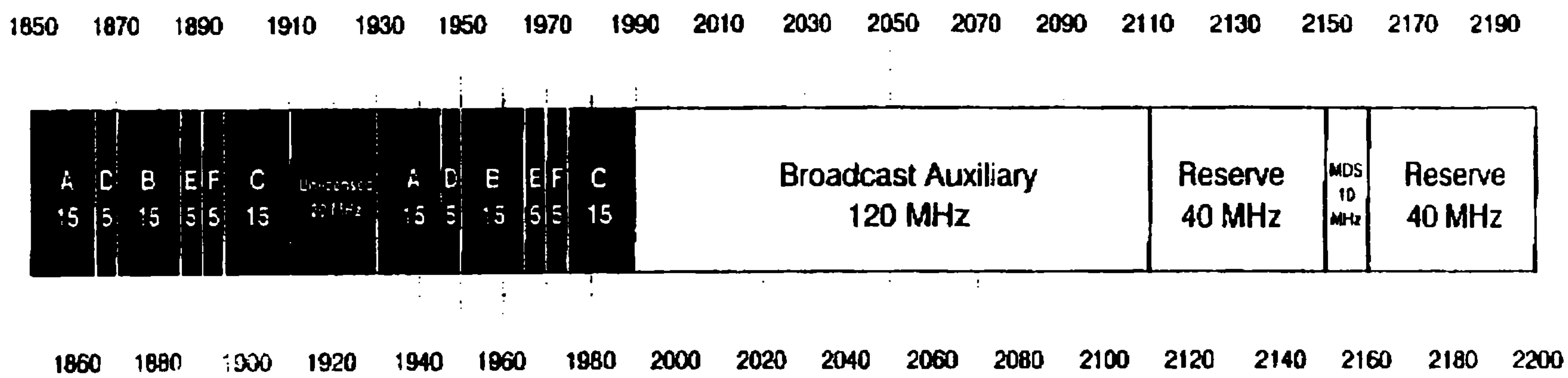
RE: BROADBAND PCS AUCTION PROCEDURES
PP DOCKET NO. 93-253

Today the Commission puts in place the procedures that will govern perhaps our most eagerly-awaited new spectrum auctions: the auctions for broadband PCS frequencies.

This Report and Order embodies our best collective effort to meet our Congressionally-imposed objectives in a responsible and fair way consistent with the record before us. In this process we have been particularly sensitive to the need to provide increased opportunity to small businesses, minorities, women, and rural telephone companies commensurate with the varying degrees of difficulty each faces in attracting capital. In the building of broadband PCS systems there is not only room for, but ***need*** for, players large and small, with different outlooks, different strategies, and different strengths. Our action today attempts to make that room and to meet that need.

Is every piece and part of this Report and Order perfect? No - but then, nothing is. Might each of us have drawn somewhat different lines had each been the sole author? Of course. But, not unlike the benefits we envision flowing from the policy of entrepreneurial inclusion in licensing PCS, I believe this Report and Order is sounder for having drawn from my colleagues' distinctive strengths and outlooks. And if the decisions we make today require further refinement, I am completely open to the presentation of facts and arguments in favor of any such changes. In the meantime, I support this Report and Order as the penultimate administrative precursor to moving broadband PCS from the drawing board to the launch pad.

Broadband PCS Band Plan



FCC June 9, 1994

Provisions for Small Businesses, Minorities, and Women

	Bidding Credits	Deferred Payment	Tax Certificates for Investors
Entrepreneurial Businesses (less than $125 MM in revenue and less than $500 MM in total assets)	0	Interest only for 1 year; rate equal to 10-year Treasury note plus 2.5%; (for businesses with revenues greater than $75 MM, available only in top 50 markets)	No
Small Businesses (less than $40 MM revenues)	10%	Interest only for 2 years; rate equal to 10-year Treasury note plus 2.5%;	No
Businesses Owned by Minorities and/or Women ($40 MM - $125 MM in revenues)	15%	Interest only for 3 years; rate equal to 10-year Treasury note;	Yes
Small Businesses Owned by Minorities and/or Women (less than $40 MM revenues)	25%	Interest only for 5 years; rate equal to 10-year Treasury note;	Yes

JUNE 29, 1994

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: IMPLEMENTATION OF SECTION 309(j) of the Communications Act-- Competitive Bidding (PP Docket no. 93-253)

Today, we adopt the auction rules for broadband Personal Communications Services (PCS). The impact of this decision cannot be overstated. It is significant and historic. In this Order, we address several important statutory goals established by Section 309(j) of the 1993 Omnibus Budget Reconciliation Act [OBRA]. My decision-making process in this docket was governed by several policy goals: 1. Develop auction rules that will permit efficient aggregation schemes for spectrum or geographic PCS service blocks; 2. Ensure that our auction rules provide sufficient flexibility to enhance the probability of participation by minorities, women, rural telephone companies, and small businesses [Designated Entities] in the provision of PCS services; 3. Develop an auction framework that will allow various business plans to be executed, thus promoting viable opportunities to serve a variety of market demand, from wide-area mobile telephony to niche data, voice or video applications; 4. Ensure that the capital markets can clearly evaluate the incentives created for investment in businesses owned by minority, women and small business PCS applicants; and 5. Develop an auction framework that addresses universal service goals through a competitive, private investment framework.

The decision today balances the various goals of Section 309(j) and my policy goals for this auction docket.[1] It reflects an effort to address the strong views of various competing interests for broadband PCS services. The decision is narrowly tailored to address the challenges of disseminating PCS licenses among a wide variety of businesses in order to achieve a robust, competitive wireless marketplace. The Order reflects a philosophy that the PCS market should not be governed by a few

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[1] PCS services throughout the U.S. could provide a competitive solution to several goals emphasized by current National Information Infrastructure initiatives [NII]. Specifically, a wide dissemination of PCS licenses among businesses, large and small, minority, women-owned and rural, could support the NII goals of: 1. universal service; 2. private investment in infrastructure; 3. new competition; and 4. open access. The auction rules today create the possibility that PCS could become a significant market solution to universal access and affordable pricing throughout the U.S. and its territories.

large entities; rather, the market should provide sufficient opportunities to "democratize" the ownership of our PCS infrastructure among a wide variety of businesses, large and small, new entrants and existing players, minorities or women and rural companies.

There has been significant interest in this proceeding expressed to us by existing industry players, the Administration, Congress, minorities, women, rural telephone companies, small businesses, and the financial community. The decision today reflects a thorough effort to balance the various positions reflected in the record by each of these interests. Based on the requirements of Section 309(j) and my policy goals, I am generally satisfied that we have achieved a narrowly tailored resolution to the competing interests for PCS licenses. To understand the tailoring accomplished within this framework, interested parties must review the entire "package" of policy tools utilized to support the goal of disseminating licenses among a wide variety of competing businesses.[2]

While shaping the policy framework to implement PCS auction rules the following factors were important for me in assessing the effectiveness of the this Order today: a. The historical capital formation barriers for minority and women-owned businesses; b. The under- representation of minority and women-owned firms in the telecommunications industry; c. The relative economic leverage of existing telecommunications providers in terms of cost of capital, investment in infrastructure, existing revenue, cashflow, earnings and market value, economies of scale, market penetration, vendor relationships, customer and billing relationships, and access to subsidized funding or market price formulas; d. Potential costs of PCS licenses in the auction; e. Potential buildout costs of PCS licenses; and f. Potential costs of competing against existing communications service providers who have a significant headstart. The decision today addresses these factors in a balanced manner.

Simultaneous, multiple round bidding will permit entities to aggregate licenses across markets or within markets. In addition, the entrepreneurial blocks, block C [30 Mhz BTA] and block F [10 Mhz BTA], support Section 309(j) license dissemination requirements by limiting the relative economic power of the competitors for PCS licenses within these auctions. Without eligibility restrictions on blocks C and F, the largest

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[2] Upon release of this Order, I believe the Commission must actively provide briefings to the public regarding the basic requirements of these auction rules. I look forward to hearing from the public regarding the effectiveness of future auction seminars that highlight the requirements imposed by these PCS rules.

telecommunications providers collectively representing $195.5 billion in revenues, $61.9 billion in earnings, and $86.7 billion in cumulative book value, could dominate all PCS license auctions. In addition, interexchange carriers pay approximately $25 billion in cumulative local access charges on an annual basis. Cellular carriers represent another $10-12 billion in cumulative revenues, and a similar figure for capital investment. Thus, the combined impact of such market leverage and the incentive to reduce billions of dollars in fixed costs would likely eliminate smaller companies and new entrants from successful bids for PCS licenses. I believe further market intervention is needed to address these factors. Utilizing bidding credits only, without other policy tools in a package, is not likely to support Section 309(j) goals for disseminating PCS licenses among small, minority and women-owned businesses, unless the bidding credits were in the extreme range of 60-70%. Thus, the entrepreneurial blocks are likely to create a wider dissemination of licenses among a greater variety of businesses and potential new entrants.

Our eligibility and attribution rules for entrepreneur block licenses also are likely to further the ownership dissemination of PCS licenses. Incentives for partnering between larger telecommunications providers and small companies, or between large companies and minorities or women, are enhanced by a variety of bidding credits, installment payments, or tax certificate incentives. Due to the capital-intensive nature of PCS, our definition of entrepreneur [$125 million] and small business [$40 million] are sufficiently flexible to encompass a vast majority of businesses, including Tier II and Tier III local exchange carriers, various cellular operators, paging companies, cable companies, Specialized Mobile Radio operators, rural telephone companies, broadcast companies, and various other service providers within the communications industry. In addition, new entrants, with ongoing businesses in other industries or those creating start-ups, are likely to have a better opportunity to attract capital, joint venture, or form consortia to participate in PCS. License ownership caps, spousal attribution rules, and corporate or individual net worth limits also are designed to enhance our goal of disseminating PCS licenses among various businesses. Our decision to permit partitioning of PCS licenses to promote service by rural telephone companies also supports the statutory goals of Section 309(j). In addition, we will issue a Further Notice concurrent with the release of this Order that proposes to extend partitioning of PCS licenses to minority and women-owned businesses as well; this additional licensing flexibility is likely to promote service to the public and enhance our efforts to achieve the statutory goals of Section 309(j).

I believe the combined effect of our prior June 9 PCS decision this auction decision is a pro-competitive PCS license structure. The Commission's prior decision in cellular, where the FCC set-aside one license per market for local exchange carriers, and provided one license per market for new entrants, did not result in the most efficient market structure for fully competitive wireless services. The cumulative effect of our PCS license and auction decisions is more likely to create incentives for a competitive, robust PCS marketplace. Under our auction framework, a variety of competing business interests will have a more reasonable opportunity to bid for PCS licenses and compete in the wireless marketplace. By tailoring our policy tools to support a broader dissemination of PCS licenses, the Commission creates a win-win-win scenario -- the consumer has more choice, our economy creates new business opportunities, and we proceed to support the goals of promoting universal service and access through competitive market solutions. I look forward to receiving the feedback of the financial community, industry and designated entities as we proceed to implement the package of policy tools to effectuate the rapid deployment of PCS services by a wide variety of players.

STATEMENT OF COMMISSIONER SUSAN NESS

RE: In the Matter of Implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket No. 93-253

With today's action, the Commission has charted a clear course towards the broadband PCS auctions. Our deliberations have produced a decision that is narrowly tailored to meet Congress' objectives for competitive bidding.

We have adopted auction rules that will provide meaningful opportunity in this exciting new sector of the telecommunications industry to those who have historically been absent from the table. We have also taken steps to ensure that licenses will be disseminated to a wide variety of applicants. No one is guaranteed a favorable outcome; however, we have made the process as fair as possible. Our auction methodology will promote a robust competition to put each license in the hands of the applicant who values it most. Let us also not lose sight of another result Congress intended: for the first time, the public will recognize substantial revenues from licensing a particularly valuable portion of the spectrum resource.

The record we have factored into our decision-making is substantial. This record includes the views of the many interested parties who have taken the time to meet with me. I am confident that we have achieved a balanced result. We have also incorporated safeguards into our rules to minimize shams.

On a related note, I am concerned lest the auction process attract not only serious players, but also those unscrupulously wishing to take advantage of consumers in the form of "get rich quick" schemes. I caution potential applicants to keep in mind that the cost of acquiring a PCS license is likely to be substantial, and the business risks are high. Broadband PCS is not a place to earn phenomenal returns on your retirement fund. I encourage the Commission staff to get the word out to consumers themselves, as well as the various consumer protection agencies. A concerted effort in this area before the auction begins could save consumers a lot of grief.

I fully support the Commission's efforts to make broadband PCS a reality. The rules and procedures we adopt today will hasten that result.

SEPARATE STATEMENT

OF

COMMISSIONER RACHELLE B. CHONG

Re: Implementation of Section 309(j) of the Communications Act -- Competitive Bidding PP Docket No. 93-253

Just three weeks ago, the Commission finalized rules governing broadband personal communications services, or PCS. Today, consistent with congressional intent, we adopt rules establishing a system of competitive bidding to award PCS licenses. Taken together, these two decisions represent an important milestone in our efforts to bring the benefits of this innovative wireless technology to the American public.

Today's decision is the result of an enormous amount of work by the Commission's staff and all who provided comments in this proceeding. It reflects a balance of the various perspectives presented in this extensive rulemaking record and the goals of Section 309(j) of the Communications Act. There are, of course, differing views of how the competitive bidding rules should be drafted. It is critical, however, to establish the ground rules for PCS in order to facilitate the licensing and rapid deployment of this vital new service. Thus, while every aspect of today's decision may not fully comport with my regulatory philosophy, I support these rules in order to move PCS forward.

The establishment of the two "entrepreneurs'" blocks will increase diversity in the telecommunications industry. It will encourage small businesses, rural telephone companies, and companies owned by women and minorities to participate in the PCS industry, consistent with the goals of Congress. While I support the overall approach reflected in today's decision, two general concerns are worth noting. A fundamental premise of competitive bidding is that the bidder who values a particular license most will submit the highest bid. Presumably, a bidder will devise a bidding strategy based on business judgments and a careful assessment of the economics of providing service in specific markets. I am concerned that some aspects of today's decision may unduly interfere with those judgments. I would rather have market forces shape the bidding process to the greatest extent possible. Moreover, the competitive bidding plan we have crafted is more complicated than I would have preferred, although I fully recognize that we are dealing with novel and complex issues. Despite these reservations, in the final analysis, I believe it is essential that we move forward with a set of rules. This will unleash innovators to build these important new communications systems and provide vigorous competition to existing wireless telephone services.

We are charting new waters here. Today's decision reflects our best predictive judgments based on the administrative record. When it comes to issuing licenses by competitive bidding, practical experience is in short supply and the consequences of our decision are great. I am hopeful that our decision today will result in successful auctioning of these licenses.

Federal Communications Commission
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JUN 29 1994

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Report No. DC- ACTION IN DOCKET CASE June 29, 1994

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(over)

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In addition, the Commission adopted a "Competitive Opportunity Plan", under which "entrepreneurs' blocks" are established, which is designed to fulfill the statutory mandate to ensure that small businesses, rural telephone companies and businesses owned by minorities and/or women (collectively referred to as "designated entities") have the opportunity to participate in providing broadband PCS. The Commission set forth an installment payment plan for all those eligible for the entrepreneurs' block licenses that is narrowly tailored to meet the specific needs of the various groups that will compete for licenses. The plan also affords bidding credits to small businesses and businesses owned by minorities and women which reflect the evidence in the record regarding difficulties facing these groups in raising capital.

"This Competitive Opportunity Plan," said FCC General Counsel William E. Kennard, "employs all the tools suggested by Congress to create meaningful business opportunities. The plan is narrowly tailored to address the historic barriers to entry confronting the designated entities."

Attached are summaries of the Commission's decisions concerning auction design and the provisions adopted for designated entities.

Action by the Commission June 29, 1994, by Fifth Report and Order (FCC 94-///).

News Media contacts: Karen Watson, Susan Lewis Sallet, or Audrey Spivack at (202) 418-0500.
Office of General Counsel contacts: Sara Seidman at (202) 418-1700 or Peter Tenhula at (202) 418-1713.
Office of Plans and Policy contacts: Jonathan Cohen at (202) 418-2040 or Evan Kwerel at (202) 418-2045.

- FCC -

AUCTION DESIGN

With respect to auction design, the Commission:

- Reaffirmed that broadband PCS meets the statutory criteria for competitive bidding;

- Decided that broadband PCS licenses should be awarded through a series of simultaneous multiple round auctions. In the March 8th Second Report and Order, the Commission determined that when licenses are of relatively high value and the license values are highly interdependent, simultaneous multiple round bidding conveys the greatest amount of information to bidders during an auction. Thus, simultaneous multiple round auctions will enable the Commission to assign licenses to those who value them most highly and who will make the most efficient use of the scarce spectrum resource and ultimately render the greatest benefits to the American public.

- Determined that three separate auctions of broadband PCS licenses will be held. The first auction will be for the 99 available 30 MHz licenses on frequency blocks A and B, which will be awarded for Major Trading Areas (or MTAs) as defined by the Rand McNally 1992 Commercial Atlas. The second auction will be for the 986 30 MHz and 10 MHz Basic Trading Area (or BTA) licenses on blocks C and F, respectively. The 986 BTA licenses on blocks D and E will be auctioned last. This sequence allows the licenses with the greatest interdependence to be in the same auction. Holding a sequence of auctions (rather than auctioning all 2,071 available broadband PCS licenses at the same time) also allows the Commission to start its broadband PCS auction program with an auction of relatively manageable size, and spacing the broadband PCS auctions will facilitate the processing of applications since not all applications will be filed at the same time.

- Adopted activity rules requiring bidders to bid on licenses covering a portion of the population they hope to serve in each round of bidding so that these auctions proceed at a reasonable pace. Also, the Commission will apply a simultaneous stopping rule in broadband PCS auctions. This rule provides that bidding on all of the licenses being auctioned at the same time will remain open until no acceptable bids are received on any of the licenses.

- Specified bid withdrawal, default and disqualification penalties to ensure that all bids are sincere.

- Set forth payment and procedural rules for applicants in broadband PCS auctions. These include:

  (1) Upfront payment requirement: to qualify to bid in a broadband PCS auction, applicants will be required to make an upfront payment of two cents per MHz for the maximum population coverage for which they wish to bid in any single round in the auction.

  (2) Down payment requirement: except for winning bidders that are eligible for installment payments, winning bidders must make a down payment equal to 20 percent of their winning bids. (Winning bidders that are eligible for installment payments will only be required to make down payments equalling 5 percent of their winning bids.)

  (3) Full payment requirement: if the Commission finds an applicant qualified and grants it a license, the applicant must make full payment of its bid within five business days of the license grant. Again, an applicant that is eligible for installment payments will receive preferential treatment, paying only an additional 5 percent of the winning bid, with the remaining 90 percent of the bid amount becoming the principal in the licensee's installment obligation to the government. The grant of all licenses will be conditioned on timely payment of all amounts due.

- Adopted safeguards to prevent collusion in the auctions and unjust enrichment afterwards.

PROVISIONS FOR DESIGNATED ENTITIES

Today's action will generate significant opportunities for a new generation of telecommunications providers. Among its actions with respect to designated entities, the Commission:

- Designated frequency blocks C and F as "entrepreneurs' blocks," in which eligibility to bid will be limited to businesses whose (1) gross revenues in each of the last two years did not exceed $125 million, and (2) total assets are not in excess of $500 million. The entrepreneurs' blocks will permit smaller businesses to participate in auctions without facing head-to-head competition from very large companies, thereby carrying out Congress's objective that the Commission disseminate licenses to a wide variety of applicants.

- Established a range of provisions within the entrepreneurs' blocks to enable the winners of these licenses to compete effectively with the winners of other PCS licenses and with other wireless service providers. In addition, these provisions are designed to directly address the largest obstacle facing designated entities in general and businesses owned by women and minorities in particular -- access to capital. The provisions include:

  (1) Bidding credits of 10 percent for small businesses, 15 percent for businesses owned and controlled by minorities and/or women, and 25 percent for small businesses owned and controlled by minorities and/or women;

  (2) Installment payment plans that will be available to all winning bidders for the entrepreneurs' blocks in the 50 largest BTAs. In the remaining BTAs, installment payment plans will be available to businesses owned and controlled by minorities and/or women and to winning bidders whose gross revenues in each of the last two years did not exceed $75 million. The installment payment plan generally provides for payment of interest only for the first year of the license term with interest and principal amortized over the remaining 9 years. The interest charges will be set at a rate equal to the 10 year Treasury note rate plus 2.5%. The FCC will provide "enhanced"

installment payment plans for small businesses and businesses owned and controlled by women and minorities, as follows:

Small businesses (those with attributable gross revenues not greater than $40 million): Interest rate equal to 10 year Treasury note rate +2.5%; payment of interest only for two years from license grant.

Businesses owned and controlled by minorities and/or women: Interest rate equal to 10 year Treasury note rate; payment of interest only for three years from license grant.

Small businesses that are owned and controlled by minorities and/or women: Interest rate equal to 10 year Treasury note rate; payment of interest only for five years from license grant.

(3) A relaxed attribution standard for businesses owned and controlled by minorities and/or women to enable them to overcome historic difficulties they have faced in raising capital. In general, the gross revenues and assets of an investor in an applicant for the entrepreneurs' blocks will be attributed to that applicant if the investor holds more than 25 percent of the applicant's equity or more than 5 percent of the voting interests. In addition, investors in businesses owned by minorities and/or women will be permitted to own up to 49.9 percent of the applicant's equity and 5 percent of the voting interests without their gross revenues and assets being attributed to the applicant, if the minorities and/or women maintain ownership of at least 50.1 percent of the equity and 50.1 percent of the voting interests. This provision should enable businesses owned and controlled by minorities and women to more easily attract investment.

- Adopted a tax certificate program that would grant tax certificates to investors in minority- and woman-owned business and to PCS licensees who assign or transfer control of their authorization to women- or minority-owned business in post auction sales. Tax certificates will also be granted to cellular companies who sell their cellular interests to women- or minority-owned business to come into compliance with cellular/PCS overlap rules.

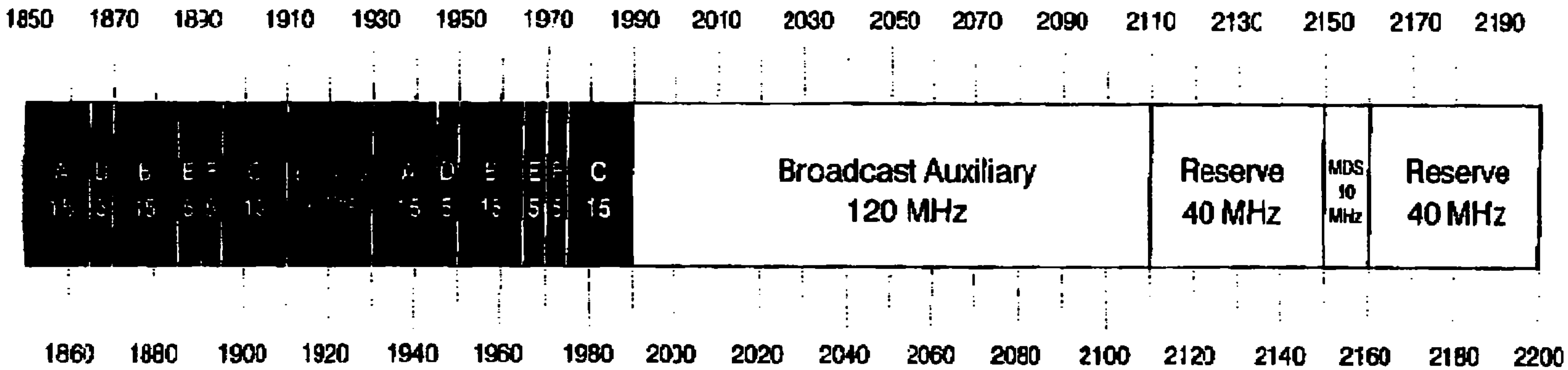
- Provided for geographic partitioning of PCS licenses by rural telephone companies to encourage the provision of PCS service in rural areas.

- Limited the number of licenses within the entrepreneurs' blocks that a single entity may win at the auction to ten percent of the available licenses in these blocks. This will help ensure the Commission meets the Congressional objective to avoid undue concentration and to disseminate licenses widely.

Provisions for Small Businesses, Minorities, and Women

	Bidding Credits	Deferred Payment	Tax Certificates for Investors
Entrepreneurial Businesses (less than $125 MM in revenue and less than $500 MM in total assets)	0	Interest only for 1 year; rate equal to 10-year Treasury note plus 2.5%; (for businesses with revenues greater than $75 MM, available only in top 50 markets)	No
Small Businesses (less than $40 MM revenues)	10%	Interest only for 2 years; rate equal to 10-year Treasury note plus 2.5%;	No
Businesses Owned by Minorities and/or Women ($40 MM - $125 MM in revenues)	15%	Interest only for 3 years; rate equal to 10-year Treasury note;	Yes
Small Businesses Owned by Minorities and/or Women (less than $40 MM revenues)	25%	Interest only for 5 years; rate equal to 10-year Treasury note;	Yes

Broadband PCS Band Plan



FCC June 9, 1994

NEW YORK TIMES
WASHINGTON POST ✓
THE WALL STREET JOURNAL
LOS ANGELES TIMES
WASHINGTON TIMES
FINANCIAL TIMES
USA TODAY

DATE 6/29 PAGE A3

Women, Minorities to Gain At FCC Wireless Auction

By Mike Mills
Washington Post Staff Writer

Women, minorities and small-business owners hoping for advantages in the upcoming federal auctions of new wireless telephone radio licenses will get much, but not all, of what they have pushed for, according to congressional sources.

The Federal Communications Commission this morning is expected to approve rules for the first-ever auction of radio licenses for wireless telephone services. The services' pocket phones would be smaller, lower in cost and have better sound quality than today's cellular phones.

The agency plans to set aside two licenses in each community for any business with annual revenue of about $100 million or less, the sources said. Companies owned by minorities or women would get special breaks in bidding for these licenses.

The auctions will take place by year's end, according to the FCC.

Congress last year ordered the commission to ensure that large companies would not shut out small ones in bidding on the lucrative licenses. But it gave the agency broad leeway on how to structure the auctions in a way that would allow women, minorities, small business owners and those in rural areas to win licenses.

Minority and women's groups pushed hard for a direct set-aside of licenses for which only they could bid. But FCC officials balked, saying such treatment would run into trouble in the courts.

Instead, bids by women and minorities companies will be marked up by 10 percent to 15 percent in the contest for the licenses reserved for companies with $100 million in revenue or less, the sources said. Companies with revenue considerably below $100 million also would qualify for these markups.

To prevent large companies from securing behind-the-scenes control of small businesses and firms owned by women and minorities, bidders seeking the reserved licenses would have to own and have voting control over at least half of their businesses, the sources said.

FCC officials declined comment on these details. They cautioned that the rules will vary depending on the size of any one market and the characteristics of bidders.

In another major move toward competition in the communications industry, the House yesterday approved two bills aimed at allowing cable television operators and local and long-distance telephone companies to compete in each others' businesses.

One measure, which would allow the seven regional Bell telephone companies to enter the long-distance, manufacturing and alarm services industries, was passed by a vote of 423-5. The chamber then passed a second bill, 423-4, that would force local telephone companies to open their lines to competitors, while freeing them to offer cable television service.

The House action bolsters prospects of final legislation this year. Sen. Ernest F. Hollings (D-S.C.), said he plans to move his companion bill in mid-July. Congressional analysts expect a major battle over it.

Date: June 29, 1994

JUN 29 1994

YOU ARE RECEIVING A FAX FROM:

the office of

COMMISSIONER ANDREW C. BARRETT
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street, NW, Suite 826
WASHINGTON, D.C. 20554

TO: Alexis Herman

ORGANIZATION: Dir of Public Liaison, The White House

PHONE NO.: 202/456-2930

FAX NO.: 202/456-2983

FROM: Andrew C. Barrett

PHONE NO.: 202/418-2300

FAX NO.: 202/632-5168

note:

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Contact us immediately if you do not receive all of the pages.

JUNE 29, 1994

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: IMPLEMENTATION OF SECTION 309(j) of the Communications Act--Competitive Bidding (PP Docket no. 93-253)

Today, we adopt the auction rules for broadband Personal Communications Services (PCS). The impact of this decision cannot be overstated. It is significant and historic. In this Order, we address several important statutory goals established by Section 309(j) of the 1993 Omnibus Budget Reconciliation Act [OBRA]. My decision-making process in this docket was governed by several policy goals: 1. Develop auction rules that will permit efficient aggregation schemes for spectrum or geographic PCS service blocks; 2. Ensure that our auction rules provide sufficient flexibility to enhance the probability of participation by minorities, women, rural telephone companies, and small businesses [Designated Entities] in the provision of PCS services; 3. Develop an auction framework that will allow various business plans to be executed, thus promoting viable opportunities to serve a variety of market demand, from wide-area mobile telephony to niche data, voice or video applications; 4. Ensure that the capital markets can clearly evaluate the incentives created for investment in businesses owned by minority, women and small business PCS applicants; and 5. Develop an auction framework that addresses universal service goals through a competitive, private investment framework.

The decision today balances the various goals of Section 309(j) and my policy goals for this auction docket.[1] It reflects an effort to address the strong views of various competing interests for broadband PCS services. The decision is narrowly tailored to address the challenges of disseminating PCS licenses among a wide variety of businesses in order to achieve a robust, competitive wireless marketplace. The Order reflects a philosophy that the PCS market should not be governed by a few

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[1] PCS services throughout the U.S. could provide a competitive solution to several goals emphasized by current National Information Infrastructure initiatives [NII]. Specifically, a wide dissemination of PCS licenses among businesses, large and small, minority, women-owned and rural, could support the NII goals of: 1. universal service; 2. private investment in infrastructure; 3. new competition; and 4. open access. The auction rules today create the possibility that PCS could become a significant market solution to universal access and affordable pricing throughout the U.S. and its territories.

large entities; rather, the market should provide sufficient opportunities to "democratize" the ownership of our PCS infrastructure among a wide variety of businesses, large and small, new entrants and existing players, minorities or women and rural companies.

There has been significant interest in this proceeding expressed to us by existing industry players, the Administration, Congress, minorities, women, rural telephone companies, small businesses, and the financial community. The decision today reflects a thorough effort to balance the various positions reflected in the record by each of these interests. Based on the requirements of Section 309(j) and my policy goals, I am generally satisfied that we have achieved a narrowly tailored resolution to the competing interests for PCS licenses. To understand the tailoring accomplished within this framework, interested parties must review the entire "package" of policy tools utilized to support the goal of disseminating licenses among a wide variety of competing businesses.[2]

While shaping the policy framework to implement PCS auction rules the following factors were important for me in assessing the effectiveness of the this Order today: a. The historical capital formation barriers for minority and women-owned businesses; b. The under- representation of minority and women-owned firms in the telecommunications industry; c. The relative economic leverage of existing telecommunications providers in terms of cost of capital, investment in infrastructure, existing revenue, cashflow, earnings and market value, economies of scale, market penetration, vendor relationships, customer and billing relationships, and access to subsidized funding or market price formulas; d. Potential costs of PCS licenses in the auction; e. Potential buildout costs of PCS licenses; and f. Potential costs of competing against existing communications service providers who have a significant headstart. The decision today addresses these factors in a balanced manner.

Simultaneous, multiple round bidding will permit entities to aggregate licenses across markets or within markets. In addition, the entrepreneurial blocks, block C [30 Mhz BTA] and block F [10 Mhz BTA], support Section 309(j) license dissemination requirements by limiting the relative economic power of the competitors for PCS licenses within these auctions. Without eligibility restrictions on blocks C and F, the largest

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[2] Upon release of this Order, I believe the Commission must actively provide briefings to the public regarding the basic requirements of these auction rules. I look forward to hearing from the public regarding the effectiveness of future auction seminars that highlight the requirements imposed by these PCS rules.

telecommunications providers collectively representing $195.5 billion in revenues, $61.9 billion in earnings, and $86.7 billion in cumulative book value, could dominate all PCS license auctions. In addition, interexchange carriers pay approximately $25 billion in cumulative local access charges on an annual basis. Cellular carriers represent another $10-12 billion in cumulative revenues, and a similar figure for capital investment. Thus, the combined impact of such market leverage and the incentive to reduce billions of dollars in fixed costs would likely eliminate smaller companies and new entrants from successful bids for PCS licenses. I believe further market intervention is needed to address these factors. Utilizing bidding credits only, without other policy tools in a package, is not likely to support Section 309(j) goals for disseminating PCS licenses among small, minority and women-owned businesses, unless the bidding credits were in the extreme range of 60-70%. Thus, the entrepreneurial blocks are likely to create a wider dissemination of licenses among a greater variety of businesses and potential new entrants.

Our eligibility and attribution rules for entrepreneur block licenses also are likely to further the ownership dissemination of PCS licenses. Incentives for partnering between larger telecommunications providers and small companies, or between large companies and minorities or women, are enhanced by a variety of bidding credits, installment payments, or tax certificate incentives. Due to the capital-intensive nature of PCS, our definition of entrepreneur [$125 million] and small business [$40 million] are sufficiently flexible to encompass a vast majority of businesses, including Tier II and Tier III local exchange carriers, various cellular operators, paging companies, cable companies, Specialized Mobile Radio operators, rural telephone companies, broadcast companies, and various other service providers within the communications industry. In addition, new entrants, with ongoing businesses in other industries or those creating start-ups, are likely to have a better opportunity to attract capital, joint venture, or form consortia to participate in PCS. License ownership caps, spousal attribution rules, and corporate or individual net worth limits also are designed to enhance our goal of disseminating PCS licenses among various businesses. Our decision to permit partitioning of PCS licenses to promote service by rural telephone companies also supports the statutory goals of Section 309(j). In addition, we will issue a Further Notice concurrent with the release of this Order that proposes to extend partitioning of PCS licenses to minority and women-owned businesses as well; this additional licensing flexibility is likely to promote service to the public and enhance our efforts to achieve the statutory goals of Section 309(j).

I believe the combined effect of our prior June 9 PCS decision this auction decision is a pro-competitive PCS license structure. The Commission's prior decision in cellular, where the FCC set-aside one license per market for local exchange carriers, and provided one license per market for new entrants, did not result in the most efficient market structure for fully competitive wireless services. The cumulative effect of our PCS license and auction decisions is more likely to create incentives for a competitive, robust PCS marketplace. Under our auction framework, a variety of competing business interests will have a more reasonable opportunity to bid for PCS licenses and compete in the wireless marketplace. By tailoring our policy tools to support a broader dissemination of PCS licenses, the Commission creates a win-win-win scenario -- the consumer has more choice, our economy creates new business opportunities, and we proceed to support the goals of promoting universal service and access through competitive market solutions. I look forward to receiving the feedback of the financial community, industry and designated entities as we proceed to implement the package of policy tools to effectuate the rapid deployment of PCS services by a wide variety of players.

JUN 29

Federal Communications Commission
Telefax Cover Sheet

Date 6/29/94

FROM:

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Bureau/O: OGC

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TO:

Name: Alexis Herman

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SPECIAL INSTRUCTIONS:

This Cover Sheet is Page 1 of 16 Pages

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Report No. DC- ACTION IN DOCKET CASE June 29, 1994

COMMISSION ADOPTS COMPETITIVE BIDDING PROCEDURES FOR BROADBAND PCS (PP DOCKET NO. 93-253)

The Commission today set the stage for the largest and most important auction of public assets in history. Reaffirming its goal of creating rules for new services that will stimulate vigorous competition, economic growth and diverse business opportunities, the FCC today adopted service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 2 GHz band (broadband PCS). This decision also creates an unprecedented and historic opportunity for more diversity among the wireless service providers of tomorrow.

This decision will spur competition in a booming new industry, generate economic growth and create hundreds of thousands of new jobs. It will also benefit the public by raising money to reduce the federal deficit.

FCC Chairman Reed E. Hundt said, "In the long and tragic history of inequality between races and gender in America, today we are creating the greatest single opportunity made available to women and minorities. For the first time in our nation's history, the federal government is creating opportunities in a new industry in which all Americans will have a fair chance to compete from day one. We are all proud to be associated with this historic step toward a better future for all Americans."

Today's decision supports the Commission's June 9, 1994 action that established the spectrum allocation and technical service rules for broadband PCS. The June 9 decision increased the value of all broadband PCS licenses by placing all of these licenses in one contiguous band and by increasing the number of 30 MHz licenses. That decision was designed to increase competition among service providers by allowing for a wide variety of firms to pursue their visions of PCS and respond to consumer demand.

(over)

Today's action sets forth the rules for the broadband PCS auctions. It provides that the broadband PCS licenses will be awarded through a series of simultaneous multiple round auctions. The decision also specifies procedural requirements and rules regarding payment for licenses, and adopts safeguards to prevent collusion in the auctions and unjust enrichment afterwards.

In addition, the Commission adopted a "Competitive Opportunity Plan", under which "entrepreneurs' blocks" are established, which is designed to fulfill the statutory mandate to ensure that small businesses, rural telephone companies and businesses owned by minorities and/or women (collectively referred to as "designated entities") have the opportunity to participate in providing broadband PCS. The Commission set forth an installment payment plan for all those eligible for the entrepreneurs' block licenses that is narrowly tailored to meet the specific needs of the various groups that will compete for licenses. The plan also affords bidding credits to small businesses and businesses owned by minorities and women which reflect the evidence in the record regarding difficulties facing these groups in raising capital.

"This Competitive Opportunity Plan," said FCC General Counsel William E. Kennard, "employs all the tools suggested by Congress to create meaningful business opportunities. The plan is narrowly tailored to address the historic barriers to entry confronting the designated entities."

Attached are summaries of the Commission's decisions concerning auction design and the provisions adopted for designated entities.

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- FCC -

AUCTION DESIGN

With respect to auction design, the Commission:

- Reaffirmed that broadband PCS meets the statutory criteria for competitive bidding;

- Decided that broadband PCS licenses should be awarded through a series of simultaneous multiple round auctions. In the March 8th Second Report and Order, the Commission determined that when licenses are of relatively high value and the license values are highly interdependent, simultaneous multiple round bidding conveys the greatest amount of information to bidders during an auction. Thus, simultaneous multiple round auctions will enable the Commission to assign licenses to those who value them most highly and who will make the most efficient use of the scarce spectrum resource and ultimately render the greatest benefits to the American public.

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- Adopted activity rules requiring bidders to bid on licenses covering a portion of the population they hope to serve in each round of bidding so that these auctions proceed at a reasonable pace. Also, the Commission will apply a simultaneous stopping rule in broadband PCS auctions. This rule provides that bidding on all of the licenses being auctioned at the same time will remain open until no acceptable bids are received on any of the licenses.

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  (1) Upfront payment requirement: to qualify to bid in a broadband PCS auction, applicants will be required to make an upfront payment of two cents per MHz for the maximum population coverage for which they wish to bid in any single round in the auction.

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Today's action will generate significant opportunities for a new generation of telecommunications providers. Among its actions with respect to designated entities, the Commission:

- Designated frequency blocks C and F as "entrepreneurs' blocks," in which eligibility to bid will be limited to businesses whose (1) gross revenues in each of the last two years did not exceed $125 million, and (2) total assets are not in excess of $500 million. The entrepreneurs' blocks will permit smaller businesses to participate in auctions without facing head-to-head competition from very large companies, thereby carrying out Congress's objective that the Commission disseminate licenses to a wide variety of applicants.

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  (2) Installment payment plans that will be available to all winning bidders for the entrepreneurs' blocks in the 50 largest BTAs. In the remaining BTAs, installment payment plans will be available to businesses owned and controlled by minorities and/or women and to winning bidders whose gross revenues in each of the last two years did not exceed $75 million. The installment payment plan generally provides for payment of interest only for the first year of the license term with interest and principal amortized over the remaining 9 years. The interest charges will be set at a rate equal to the 10 year Treasury note rate plus 2.5%. The FCC will provide "enhanced"

installment payment plans for small businesses and businesses owned and controlled by women and minorities, as follows:

Small businesses (those with attributable gross revenues not greater than $40 million): Interest rate equal to 10 year Treasury note rate +2.5%; payment of interest only for two years from license grant.

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Small Businesses Owned by Minorities and/or Women (less than $40 MM revenues)	25%	Interest only for 5 years; rate equal to 10-year Treasury note;	Yes

STATEMENT OF
COMMISSIONER JAMES H. QUELLO

RE: BROADBAND PCS AUCTION PROCEDURES
PP DOCKET NO. 93-253

Today the Commission puts in place the procedures that will govern perhaps our most eagerly-awaited new spectrum auctions: the auctions for broadband PCS frequencies.

This Report and Order embodies our best collective effort to meet our Congressionally-imposed objectives in a responsible and fair way consistent with the record before us. In this process we have been particularly sensitive to the need to provide increased opportunity to small businesses, minorities, women, and rural telephone companies commensurate with the varying degrees of difficulty each faces in attracting capital. In the building of broadband PCS systems there is not only room for, but ***need*** for, players large and small, with different outlooks, different strategies, and different strengths. Our action today attempts to make that room and to meet that need.

Is every piece and part of this Report and Order perfect? No - but then, nothing is. Might each of us have drawn somewhat different lines had each been the sole author? Of course. But, not unlike the benefits we envision flowing from the policy of entrepreneurial inclusion in licensing PCS, I believe this Report and Order is sounder for having drawn from my colleagues' distinctive strengths and outlooks. And if the decisions we make today require further refinement, I am completely open to the presentation of facts and arguments in favor of any such changes. In the meantime, I support this Report and Order as the penultimate administrative precursor to moving broadband PCS from the drawing board to the launch pad.

JUNE 29, 1994

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: IMPLEMENTATION OF SECTION 309(j) of the Communications Act--Competitive Bidding (PP Docket no. 93-253)

Today, we adopt the auction rules for broadband Personal Communications Services (PCS). The impact of this decision cannot be overstated. It is significant and historic. In this Order, we address several important statutory goals established by Section 309(j) of the 1993 Omnibus Budget Reconciliation Act [OBRA]. My decision-making process in this docket was governed by several policy goals: 1. Develop auction rules that will permit efficient aggregation schemes for spectrum or geographic PCS service blocks; 2. Ensure that our auction rules provide sufficient flexibility to enhance the probability of participation by minorities, women, rural telephone companies, and small businesses [Designated Entities] in the provision of PCS services; 3. Develop an auction framework that will allow various business plans to be executed, thus promoting viable opportunities to serve a variety of market demand, from wide-area mobile telephony to niche data, voice or video applications; 4. Ensure that the capital markets can clearly evaluate the incentives created for investment in businesses owned by minority, women and small business PCS applicants; and 5. Develop an auction framework that addresses universal service goals through a competitive, private investment framework.

The decision today balances the various goals of Section 309(j) and my policy goals for this auction docket.[1] It reflects an effort to address the strong views of various competing interests for broadband PCS services. The decision is narrowly tailored to address the challenges of disseminating PCS licenses among a wide variety of businesses in order to achieve a robust, competitive wireless marketplace. The Order reflects a philosophy that the PCS market should not be governed by a few

[1] PCS services throughout the U.S. could provide a competitive solution to several goals emphasized by current National Information Infrastructure initiatives [NII]. Specifically, a wide dissemination of PCS licenses among businesses, large and small, minority, women-owned and rural, could support the NII goals of: 1. universal service; 2. private investment in infrastructure; 3. new competition; and 4. open access. The auction rules today create the possibility that PCS could become a significant market solution to universal access and affordable pricing throughout the U.S. and its territories.

large entities; rather, the market should provide sufficient opportunities to "democratize" the ownership of our PCS infrastructure among a wide variety of businesses, large and small, new entrants and existing players, minorities or women and rural companies.

There has been significant interest in this proceeding expressed to us by existing industry players, the Administration, Congress, minorities, women, rural telephone companies, small businesses, and the financial community. The decision today reflects a thorough effort to balance the various positions reflected in the record by each of these interests. Based on the requirements of Section 309(j) and my policy goals, I am generally satisfied that we have achieved a narrowly tailored resolution to the competing interests for PCS licenses. To understand the tailoring accomplished within this framework, interested parties must review the entire "package" of policy tools utilized to support the goal of disseminating licenses among a wide variety of competing businesses.[2]

While shaping the policy framework to implement PCS auction rules the following factors were important for me in assessing the effectiveness of the this Order today: a. The historical capital formation barriers for minority and women-owned businesses; b. The under- representation of minority and women-owned firms in the telecommunications industry; c. The relative economic leverage of existing telecommunications providers in terms of cost of capital, investment in infrastructure, existing revenue, cashflow, earnings and market value, economies of scale, market penetration, vendor relationships, customer and billing relationships, and access to subsidized funding or market price formulas; d. Potential costs of PCS licenses in the auction; e. Potential buildout costs of PCS licenses; and f. Potential costs of competing against existing communications service providers who have a significant headstart. The decision today addresses these factors in a balanced manner.

Simultaneous, multiple round bidding will permit entities to aggregate licenses across markets or within markets. In addition, the entrepreneurial blocks, block C [30 Mhz BTA] and block F [10 Mhz BTA], support Section 309(j) license dissemination requirements by limiting the relative economic power of the competitors for PCS licenses within these auctions. Without eligibility restrictions on blocks C and F, the largest

[2] Upon release of this Order, I believe the Commission must actively provide briefings to the public regarding the basic requirements of these auction rules. I look forward to hearing from the public regarding the effectiveness of future auction seminars that highlight the requirements imposed by these PCS rules.

telecommunications providers collectively representing $195.5 billion in revenues, $61.9 billion in earnings, and $86.7 billion in cumulative book value, could dominate all PCS license auctions. In addition, interexchange carriers pay approximately $25 billion in cumulative local access charges on an annual basis. Cellular carriers represent another $10-12 billion in cumulative revenues, and a similar figure for capital investment. Thus, the combined impact of such market leverage and the incentive to reduce billions of dollars in fixed costs would likely eliminate smaller companies and new entrants from successful bids for PCS licenses. I believe further market intervention is needed to address these factors. Utilizing bidding credits only, without other policy tools in a package, is not likely to support Section 309(j) goals for disseminating PCS licenses among small, minority and women-owned businesses, unless the bidding credits were in the extreme range of 60-70%. Thus, the entrepreneurial blocks are likely to create a wider dissemination of licenses among a greater variety of businesses and potential new entrants.

Our eligibility and attribution rules for entrepreneur block licenses also are likely to further the ownership dissemination of PCS licenses. Incentives for partnering between larger telecommunications providers and small companies, or between large companies and minorities or women, are enhanced by a variety of bidding credits, installment payments, or tax certificate incentives. Due to the capital-intensive nature of PCS, our definition of entrepreneur [$125 million] and small business [$40 million] are sufficiently flexible to encompass a vast majority of businesses, including Tier II and Tier III local exchange carriers, various cellular operators, paging companies, cable companies, Specialized Mobile Radio operators, rural telephone companies, broadcast companies, and various other service providers within the communications industry. In addition, new entrants, with ongoing businesses in other industries or those creating start-ups, are likely to have a better opportunity to attract capital, joint venture, or form consortia to participate in PCS. License ownership caps, spousal attribution rules, and corporate or individual net worth limits also are designed to enhance our goal of disseminating PCS licenses among various businesses. Our decision to permit partitioning of PCS licenses to promote service by rural telephone companies also supports the statutory goals of Section 309(j). In addition, we will issue a Further Notice concurrent with the release of this Order that proposes to extend partitioning of PCS licenses to minority and women-owned businesses as well; this additional licensing flexibility is likely to promote service to the public and enhance our efforts to achieve the statutory goals of Section 309(j).

I believe the combined effect of our prior June 9 PCS decision this auction decision is a pro-competitive PCS license structure. The Commission's prior decision in cellular, where the FCC set-aside one license per market for local exchange carriers, and provided one license per market for new entrants, did not result in the most efficient market structure for fully competitive wireless services. The cumulative effect of our PCS license and auction decisions is more likely to create incentives for a competitive, robust PCS marketplace. Under our auction framework, a variety of competing business interests will have a more reasonable opportunity to bid for PCS licenses and compete in the wireless marketplace. By tailoring our policy tools to support a broader dissemination of PCS licenses, the Commission creates a win-win-win scenario -- the consumer has more choice, our economy creates new business opportunities, and we proceed to support the goals of promoting universal service and access through competitive market solutions. I look forward to receiving the feedback of the financial community, industry and designated entities as we proceed to implement the package of policy tools to effectuate the rapid deployment of PCS services by a wide variety of players.

SEPARATE STATEMENT

OF

COMMISSIONER RACHELLE B. CHONG

Re: Implementation of Section 309(j) of the Communications Act -- Competitive Bidding PP Docket No. 93-253

Just three weeks ago, the Commission finalized rules governing broadband personal communications services, or PCS. Today, consistent with congressional intent, we adopt rules establishing a system of competitive bidding to award PCS licenses. Taken together, these two decisions represent an important milestone in our efforts to bring the benefits of this innovative wireless technology to the American public.

Today's decision is the result of an enormous amount of work by the Commission's staff and all who provided comments in this proceeding. It reflects a balance of the various perspectives presented in this extensive rulemaking record and the goals of Section 309(j) of the Communications Act. There are, of course, differing views of how the competitive bidding rules should be drafted. It is critical, however, to establish the ground rules for PCS in order to facilitate the licensing and rapid deployment of this vital new service. Thus, while every aspect of today's decision may not fully comport with my regulatory philosophy, I support these rules in order to move PCS forward.

The establishment of the two "entrepreneurs'" blocks will increase diversity in the telecommunications industry. It will encourage small businesses, rural telephone companies, and companies owned by women and minorities to participate in the PCS industry, consistent with the goals of Congress. While I support the overall approach reflected in today's decision, two general concerns are worth noting. A fundamental premise of competitive bidding is that the bidder who values a particular license most will submit the highest bid. Presumably, a bidder will devise a bidding strategy based on business judgments and a careful assessment of the economics of providing service in specific markets. I am concerned that some aspects of today's decision may unduly interfere with those judgments. I would rather have market forces shape the bidding process to the greatest extent possible. Moreover, the competitive bidding plan we have crafted is more complicated than I would have preferred, although I fully recognize that we are dealing with novel and complex issues. Despite these reservations, in the final analysis, I believe it is essential that we move forward with a set of rules. This will unleash innovators to build these important new communications systems and provide vigorous competition to existing wireless telephone services.

We are charting new waters here. Today's decision reflects our best predictive judgments based on the administrative record. When it comes to issuing licenses by competitive bidding, practical experience is in short supply and the consequences of our decision are great. I am hopeful that our decision today will result in successful auctioning of these licenses.

STATEMENT OF COMMISSIONER SUSAN NESS

RE: In the Matter of Implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket No. 93-253

With today's action, the Commission has charted a clear course towards the broadband PCS auctions. Our deliberations have produced a decision that is narrowly tailored to meet Congress' objectives for competitive bidding.

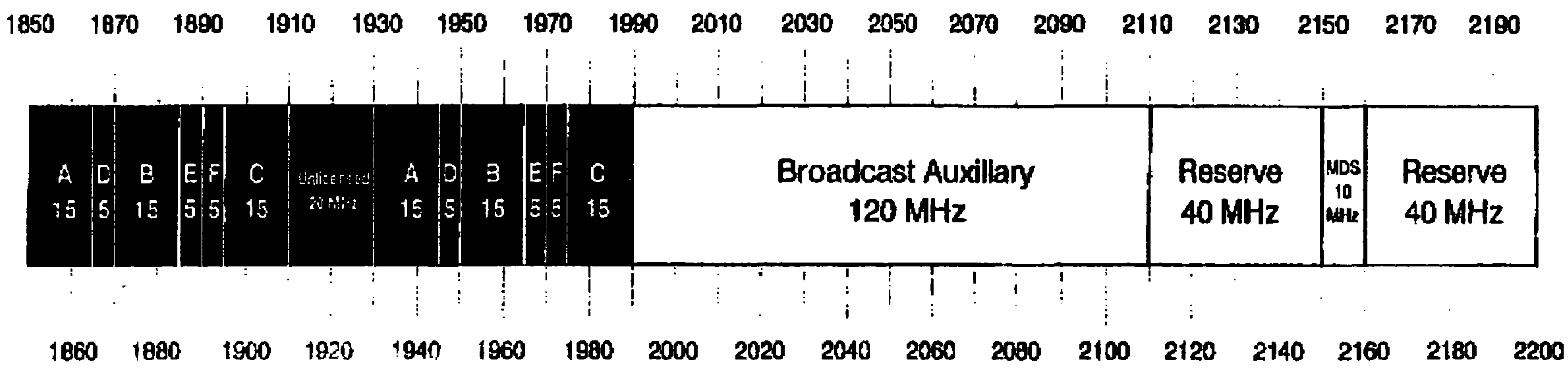
We have adopted auction rules that will provide meaningful opportunity in this exciting new sector of the telecommunications industry to those who have historically been absent from the table. We have also taken steps to ensure that licenses will be disseminated to a wide variety of applicants. No one is guaranteed a favorable outcome; however, we have made the process as fair as possible. Our auction methodology will promote a robust competition to put each license in the hands of the applicant who values it most. Let us also not lose sight of another result Congress intended: for the first time, the public will recognize substantial revenues from licensing a particularly valuable portion of the spectrum resource.

The record we have factored into our decision-making is substantial. This record includes the views of the many interested parties who have taken the time to meet with me. I am confident that we have achieved a balanced result. We have also incorporated safeguards into our rules to minimize shams.

On a related note, I am concerned lest the auction process attract not only serious players, but also those unscrupulously wishing to take advantage of consumers in the form of "get rich quick" schemes. I caution potential applicants to keep in mind that the cost of acquiring a PCS license is likely to be substantial, and the business risks are high. Broadband PCS is not a place to earn phenomenal returns on your retirement fund. I encourage the Commission staff to get the word out to consumers themselves, as well as the various consumer protection agencies. A concerted effort in this area before the auction begins could save consumers a lot of grief.

I fully support the Commission's efforts to make broadband PCS a reality. The rules and procedures we adopt today will hasten that result.

Broadband PCS Band Plan



FCC June 9, 1994

THE WHITE HOUSE

WASHINGTON

June 22, 1994

MEMORANDUM FOR ALEXIS HERMAN

FROM: SHERYLL CASHIN

SUBJECT: Issues concerning NTIA Position on PCS Auction

You have asked me to review the NTIA letter to Reed Hundt from a policy and political perspective, particularly regarding whether the tools it advocates would be effective in ensuring successful minority business participation in the PCS Auction. Here are my observations:

1. Overview of Positive Aspects of the Letter.

Strongly supports concept of entrepreneur blocks, which are needed to level the playing field. The letter "strongly supports" the FCC's tentative proposal to reserve two entrepreneur blocks within each Basic Trading Area (BTA) for entities with annual revenues below a certain threshold, e.g. $100 million.

Supports installment payments and low down payments for small businesses, which will help redress financial barriers.

Supports distinct bidding credits within entrepreneur blocks for minority- and women-owned businesses ("MBE's" and "WBE's" respectively), recognizing that they experience disadvantages not experienced by all small businesses.

Supports joint venturing in a way that allows MBEs to retain control and limits likelihood of fronts and quick resales to non-minority businesses. A critical issue for MBEs is that they have tools to enter into joint ventures with major companies but not be placed in a position where they lose effective control of their businesses as a consequence of such joint ventures. To maintain the benefit of having real MBEs (as opposed to "fronts") in the wireless industry -- e.g., achieving universal access, increasing minority employment -- the letter wisely recommends that large firms be allowed to make non-majority equity investments in MBEs and WBEs, without voiding eligibility for the entrepreneur blocks. At the same time, the letter recommends that such non-majority equity interests be limited to leave actual control with the MBEs and WBEs. Finally, the letter also recommends a limit of 3-5 years on transfers of "entrepreneur block" licenses to non-eligible firms.

2. Potential Problems.

Does not address the need for a substantial bidding credit. The letter is silent on the question of the amount of the bidding credit. It should be noted that in the recent narrow band rulings, the FCC allowed for a 25% bidding credit for MBEs and specifically stated that this would be adequate because bidding for narrow-band licenses would not be a capital-intensive undertaking. By definition, the PCS broadband auction will be capital-intensive. In addition, given the historic under-representation of MBEs in this industry, they will be at a particular disadvantage in attracting capital to bid for these licenses. This points out the need for a substantial credit, one that meets and preferably exceeds the 25% bidding credit accorded in the narrow-band rulings, for MBEs.

Does not distinguish between MBEs and WBEs regarding bidding credits. The letter implicitly suggests that MBEs and WBEs should be treated the same for purposes of bidding credits. However, the empirical and anecdotal evidence suggests that MBEs experience greater discrimination and difficulty in accessing capital. There is a strong, documented record of discrimination and disadvantage experienced by MBEs in accessing capital, particularly equity capital. (The NTIA letter cites studies and data to this effect.) While there is some evidence that WBEs experience similar difficulties, the record is more anecdotal in nature and suggests that WBEs do not have the same history discrimination and disadvantage as do MBEs.

The D.C. Circuit ruled, for example, that a gender preference for broadcast licenses was not constitutional because there was not record of under-representation of WBEs in the broadcast industry. The position of MBEs is that they should receive a greater credit -- preferably at least what they received in the narrow band rulings, i.e. 25% -- and that WBEs and small businesses should receive lesser credits. Their main concern is that offering the same credits to WBEs will dilute the incentive for MBEs because investors are more likely to invest in a WBE given that they are more established in the communications industry. Obviously, differentiating between MBEs and WBEs may create political problems with WBEs. The bidding credits are cumulative in the sense that an MBE or WBE that qualifies as "small" may take <u>both</u> a small business credit and a MBE/WBE credit (which, as currently proposed, would be greater than the credit for small businesses.) If the bidding credit for both MBEs and WBEs were substantial (say 35% to 50%) this may mitigate the concerns of MBEs that WBEs are receiving the same credit.

Does not address tax certificates. Tax certificates have proven to be an important tool in facilitating minority business participation in the communications industry. The letter is silent on this issue. It appears that the upcoming PCS ruling will address tax certificates and may extend this benefit to WBEs. Again, MBEs have serious concerns about dilution of the effect of this tool by extending it to WBEs, due to the fact that WBEs are more established in the communications industry. The FCC has already extended tax certificates to WBEs in at least one prior ruling, however.

Support for bidding credits is limited to the entrepreneur blocks. Under the PCS license structure, each of the 51 Major Trading Areas ("MTAs") will have two large licenses (30 MHz) and each of the 493 Basic Trading Areas (BTAs) will have one large license (30 MHz) and 3 small licenses (10 MHz). The FCC's tentative proposed entrepreneur blocks would reserve one large license and one small license for each BTA but there are no proposed reserves for the MTAs. Reserving MTA licenses may not be feasible, either from a policy or political perspective. However, limiting entrepreneur blocks to BTAs may provide a rationale for allowing less stringent tools for MBE participation -- i.e. bidding credits -- to apply outside the reserved entrepreneur blocks. This would enhance minority opportunities to participate throughout the wireless market, rather than limiting their participation to an "entrepreneur block ghetto" of sorts. A bidding credit that is not tied to retaining minority control (as should be required within the entrepreneur blocks) and that applies outside the entrepreneur blocks would give major companies some incentive to include minority participants in their overall business strategies and would help increase the expertise of minorities in the industry.

Date:

THE WHITE HOUSE

National Economic Council

TO: Alexis Herman

PHONE:

FAX: 6-2983

FROM: ***Sheryll Cashin***
Director to the National Economic Council

PHONE: ***202-456-2800***

FAX: ***202-456-2223***

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

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In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding	)	PP Docket No. 93-253
In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314 RM-7140, RM-7175, RM-7618

To: The Commission

SUPPLEMENTAL COMMENTS

THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

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June 1, 1994

SUMMARY

The National Association of Black Owned Broadcasters, Inc., ("NABOB") submits these Supplemental Comments to clarify and expand upon its comments previously filed in these two proceedings. NABOB submits that any PCS licensing and auction plan adopted by the Commission must be based upon the following principals:

1. If designated entities are not accorded preferred treatment in all frequency blocks, then they must be accorded preferential treatment in frequency blocks of the same size and geographic coverage as the largest frequency blocks made available to any other bidder.

2. The historic discrimination to which minorities have been subjected requires that any preference plan accord greater weight to minorities than to any of the other designated entities. Minorities should not be deprived of opportunities which had been previously denied by law and practice, simply because it is now vogue, when dealing with racial minorities to say "forget the past, let's look forward."

3. The Commission must auction all frequency blocks in a geographic area at the same time, especially those for which designated entities are to apply.

4. The Commission should establish procedures to assure that unqualified applicants are not put forward as "front" applicants.

5. The Commission should apply its existing minority tax certificate and distress sale policies to PCS.

The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding	))))))	PP Docket No. 93-253
In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services	)))))	GEN Docket No. 90-314 RM-7140, RM-7175, RM-7618

To: The Commission

SUPPLEMENTAL COMMENTS

The National Association of Black Owned Broadcasters, Inc., ("NABOB"), by its attorneys, hereby submits its Supplemental Comments in the above-captioned proceedings.

NABOB submits these Supplemental Comments to clarify and expand upon its earlier Comments. See NABOB Comments filed in PP Docket No. 93-253, filed November 10, 1993 ("NABOB Auction Comments"), and NABOB Comments filed in GEN Docket No. 90-314, filed April 22, 1994 ("NABOB Spectrum Allocation Comments"). In NABOB's Spectrum Allocation Comments, NABOB argued that the Commission's proposed frequency set-aside plan was so inadequate and potentially damaging to minority applicants that NABOB opposed the frequency set-asides contained in that plan. NABOB Spectrum Allocation Comments at 3-4. In so arguing, it was not NABOB's intent to oppose all potential set-aside plans. In fact, NABOB submits that the preferred method of allocation should be to provide a set-aside for minority applicants. However, a principal feature of any set-aside plan must be that any frequency block set-aside for minority applicants must be equal in size and geographic coverage to the largest frequency blocks made available to any other applicant.

Having proposed that the Commission adopt a set-aside plan, NABOB recognizes that fashioning a set-aside plan which can meet all of the Commission's competing interests in this proceeding will be difficult. NABOB submits that the set-aside plan below is the best method of achieving a balance among the many conflicting interests the Commission should consider when establishing an allocation system.

I. NABOB PROPOSED SET-ASIDE PLAN ("BTA PLAN")

1. Allocate three 30 MHz licenses in the lower band, all on a BTA basis.

2. Set aside one 30 MHz allocation for designated entities.

3. Within the designated entity 30 MHz allocation,

   a. Minority applicants should be accorded a bidding credit equal to 50%.

   b. Women-owned applicants should receive a bidding credit equal to 1/2 of the bidding credit provided to minority owned companies, i.e., a 25% bidding credit.

   c. Small businesses and rural telephone companies should receive no bidding credit.

II. ALTERNATIVE ALLOCATION PLANS

NABOB submits that the above-described set-aside plan best meets the Commission's obligation to develop a frequency allocation plan. Should the Commission not agree to adopt the NABOB proposed set-aside plan, NABOB submits the following alternative plans which should be considered. They are set forth here in terms of their rank as potential alternatives.

A. ALTERNATIVE SET-ASIDE PLAN ONE ("ECONOMIC AREA PLAN")

1. Allocate three 30 MHz licenses in the lower band, all on an "economic area" basis. (The proposal to create 183 "economic areas" was proposed by the National Telecommunications and Information Administration ("NTIA") in a letter to Chairman James Quello dated September 14, 1993, p.5. Given the lack of consensus among commenters between the choice of MTAs versus BTAs, the 183 "economic areas" would be an excellent compromise.)

2. Set aside one 30 MHz allocation for designated entities.

3. Within the designated entity 30 MHz allocation,

   a. Minority applicants should be accorded a bidding credit equal to 50%.

   b. Women-owned applicants should receive a bidding credit equal to 1/2 of the bidding credit provided to minority owned companies, i.e., a 25% bidding credit.

   c. Small businesses and rural telephone companies should receive no bidding credit.

B. <u>ALTERNATIVE SET-ASIDE PLAN TWO ("MTA PLAN")</u>

1. Allocate three 30 MHz licenses in the lower band, all on a MTA basis.

2. Set aside one 30 MHz allocation for designated entities.

3. Within the designated entity 30 MHz allocation,

a. Minority applicants should be accorded a bidding credit equal to 50%.

b. Women-owned applicants should receive a bidding credit equal to 1/2 of the bidding credit provided to minority owned companies, i.e., a 25% bidding credit.

c. Small businesses and rural telephone companies should receive no bidding credit.

III. MINORITY-OWNED APPLICANTS MUST BE ACCORDED MORE SUBSTANTIAL BIDDING PREFERENCES THAN WOMEN-OWNED APPLICANTS

One very sensitive, but critical, matter which all of the above-described preference plans recognize is that the Commission must accord minority-owned applicants a greater bidding preference in the auction process than women-owned applicants. NABOB does not raise this issue to get into a "crabs-in-the-barrel" dispute with women-owned applicants. Rather, NABOB raises this subject because it has been well recognized over the course of twenty years of Commission precedent that the factors which mandate the need for minority ownership incentives are not as pronounced among the non-minority female population.

The need for this distinction was recognized by the Commission in its broadcast minority ownership policies for many years. Those policies include: the distress sale policy, the tax certificate policy, and the policy of providing enhancement credit for minority applicants in comparative hearings for broadcast licenses. The tax certificate policy and the distress sale policy have never been extended to women-owned applicants. Women-owned applicants were accorded enhancement credit in comparative hearings, but the Commission did not accord that enhancement credit the same weight it accorded the minority credit. In fact, as a direct result of this clear distinction, the Commission's policy of providing an enhancement credit for female ownership in comparative broadcast hearings was struck down as unconstitutional by the U.S. Court of Appeals for the D.C. Circuit just two years after the U.S. Supreme Court affirmed the constitutionality of the Commission's policy of according enhancement credit to minority applicants in comparative hearings. Compare Lamprecht v. FCC, 958 F. 2d 382, 70 RR 2d 658 (D.C. Cir. 1992) with Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997, 67 RR 2d1353 (1990).

In Lamprecht the Court of Appeals discussed the history of the Commission's policy for providing enhancement credit for women owned applicants and contrasted that history with the Commission's policy of providing enhancement credit to minority owned applicants. The Court quoted the decision of the Commission's Review Board in which the Commission's policy of according enhancement credit to women owned applicants was first announced:

> We hold that the merit for female ownership and participation is warranted upon essentially the same basis as the merit given for black ownership and participation, but that it is a merit of lesser

> significance. The basic policy considerations are the same. Women are a general population group which has suffered from a discriminatory attitude in various fields of activity, and one which, partly as a consequence, has certain separate needs and interests with respect to which the inclusion of women in broadcast ownership and operations can be of value. <u>On the other hand, it is equally obvious that the need for diversity and sensitivity reflected in the structure of a broadcast station is not so pressing with respect to women as it is with respect to blacks -- women have not been excluded from the mainstream of society as have black people.</u>

<u>Lamprecht</u>, 70 RR 2d at 659, quoting <u>Mid-Florida Television Corp.</u>, 70 FCC 2d 281, 326, 43 RR 2d 811 (Rev. Bd. 1978)(emphasis added).

The Court went on to note that later in the same year the Commission ruled that non-minority women could not participate in the Commission's tax certificate and distress sale policies. <u>Lamprecht</u>, 70 RR 2d 659, citing <u>National Telecommunications & Information Administration</u>, 69 FCC 2d 1591, 1593, n. 8, 44 RR 2d 1051 (1978). The Court quoted the Commission's finding that "we have not concluded that the historical and contemporary [disadvantage] suffered by women is of the same order, or has the same contemporary consequences, which would justify inclusion of a majority of the nation's population in a preferential category defined by the presence of 'minority groups'." <u>Id</u>. The Court then proceeded to rule that the Supreme Court's <u>Metro Broadcasting</u> decision upholding the constitutionality of the minority preference policies was distinguishable from the case before the Court in <u>Lamprecht</u>, because neither the Commission nor the Congress had established an adequate basis for the preference policy in favor of women owned companies. <u>Id</u>.

More recently, in the "Report of the FCC Small Business Advisory Committee to the Federal Communications Commission Regarding Gen Docket 90-314," the Commission's Small Business Advisory Committee ("SBAC") documented the growing disparity between ownership of businesses by women and by minorities. The report showed that between 1982 and 1987 the number of women-owned businesses rose from 2,612,621 to 4,112,787, an increase of 58%, compared to a 26% increase among all small businesses. The report added that, during this same period of time, total receipts of women-owned businesses nearly tripled -- rising from $98.3 billion in 1982 to $278.1 billion in 1987, outdistancing by far the 55% increase for small businesses as a whole. The report added that the U.S. Census Bureau showed that 30% of U.S. business were owned by women. SBAC Report at 3-4. The report stated that only 1.9% of these women-owned companies were engaged in the business group containing transportation, communications and public utilities. However 1.9% of 4,112,787 is approximately 78,143 companies. SBAC Report at 3-4. In stark contrast, the SBAC report showed that in, the entire U.S., only 11 minority-owned firms could be found engaged in the delivery of cellular, specialized mobile radio, radio paging, or messaging services. SBAC Report at 4.

Therefore, NABOB submits that the Commission's findings when it adopted the women's preference policy, the findings of the U.S. Court of Appeals when it struck down that policy, and the recent report of the Commission's SBAC, all support the need to provide a greater preference for minority-owned companies than for women owned companies in the PCS auction proceeding.

IV. PREVENTION OF "FRONT" APPLICATIONS

NABOB is acutely aware of the need to assure that designated entity applicants are not put forward as "fronts" for entities which otherwise would not qualify for designated entity treatment. At the same time, NABOB recognizes that many designated entities will find it desirable and necessary to form strategic alliances with non-designated entity companies. (Indeed, many non-designated entity companies have already announced strategic alliances among themselves.) Bona fide designated entities forming alliances in which the designated entities retain 50.1% control should not be penalized by any policies designed to prevent "fronts" in the bidding process.

To balance these conflicting interests, NABOB submits that the Commission should require that all applicants seeking to bid at PCS auctions be required to file with the Commission, prior to bidding, a detailed description of the substantial prior business ownership and management experience of the ownership and management team which will control the applicant. The Commission should examine the submissions to determine whether the ownership and management team demonstrates a history of substantial business ownership and management which could be reasonably applied to the ownership and management of a PCS system. A showing of "substantial" business ownership and management experience by a minority-owned or women-owned businesses should include a minimum of three persons within the management and ownership group, each having a minimum of at least 10 years of business management or ownership experience.

While NABOB is mindful of the extra paper work burden such a requirement will place upon applicants seeking to bid for PCS spectrum, this procedure seems to be the only reasonable means of assuring that unscrupulous non-designated entity companies will not pick a minority or woman to "front" as a "rented citizen." Such "front" arrangements do injury to the efforts of NABOB to assure that the Commission's policies designed to encourage minority ownership are used to create meaningful ownership opportunities for minorities. The many legitimate transactions involving minority-owned companies rarely receive media attention, but transactions involving an apparent "front" arrangement frequently receive wide-spread negative publicity. NABOB offers this proposal as a means of protecting the integrity of the auction process.

V. THE COMMISSION MUST AUCTION ALL FREQUENCIES IN ANY GEOGRAPHIC AREA AT THE SAME TIME

Regardless of the method the Commission adopts for meeting its statutory obligation to disseminate licenses among the designated entities, the Commission must auction all frequencies in a geographic area at the same time. It has been suggested that the Commission might auction some frequencies in a geographic area, but hold off auctioning frequencies for the designated entities until a later date. Any decision by the Commission to adopt such a plan would be devastating to the ability of the designated entities to obtain an even start with other PCS licensees in the provision of service to the public. Separating the designated entity frequencies for a later auction would allow non-designated entity applicants to obtain a competitive advantage by beginning service during the delay. The Commission should not impose such a disadvantage on groups already struggling to overcome their existing historical disadvantages.

VI. THE COMMISSION SHOULD APPLY THE TAX CERTIFICATE AND DISTRESS SALE POLICIES TO PCS

The Commission should apply its minority tax certificate and distress sale policies to PCS. In particular, the tax certificate policy should be applied to allow any existing cellular, SMR, paging or telephone company, as well as PCS companies, to sell to a minority owned company and obtain a tax certificate. This could prove an effective means of encouraging existing cellular licensees and others to sell their systems to minority owned companies in order to "trade-up" to PCS systems. Similarly, while the distress sale policy has been infrequently used in recent years, application of the policy to the above listed services might result in some opportunities for its reinvigoration in these services. The tax certificate policy also could be useful in aiding minority applicants to raise financing to bid for PCS frequencies by using the provision which allows initial investors holding a less than controlling interest to obtain a tax certificate if they sell out to the controlling minority owner.

VI. CONCLUSION

The Commission is about to make decisions with respect to the auctioning of PCS spectrum which will shape a substantial portion of the wireless segment of the "information superhighway." If the Commission fails to take meaningful steps to assure that minorities are given a realistic opportunity to participate in the ownership of PCS licenses, it will perpetuate the current exclusion of minorities from any participation in common carrier services, thus continuing the current "apartheid" among mass media and common carrier services, and effectively eliminate the possibility of minorities gaining any control over the dissemination of information and viewpoints on the "information superhighway." Such a result would represent a failure of the Commission to meet the clear mandate given to the Commission by Congress in the Budget Reconciliation Act last year to disseminate licenses to minority owned companies, and would amount to an abdication of the Commission's long-standing obligation to provide a diversity of voices in the provision of communications services.

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With the Compliments of

Andrew C. Barrett
Commissioner
Federal Communications Commission

1919 M St., N.W.
Washington, D.C. 20554
202 ~~632-7116~~ 418-2300

JUN 21 1994

KEYNOTE ADDRESS

BY

ANDREW C. BARRETT

COMMISSIONER

FEDERAL COMMUNICATIONS COMMISSION

AT THE

BROADCAST CABLE FINANCIAL MANAGEMENT ASSOCIATION

34TH ANNUAL CONFERENCE

BCFM "MAKING WAVES '94"

MAY 24, 1994

SAN DIEGO, CA

INTRODUCTION:

Before I begin my remarks, I would like to comment on the imminent arrival of our new colleagues, Rachelle Chong and Susan Ness. As you know, it has been some time since there has been a full complement of commissioners at the Federal Communications Commission ("FCC"). As we prepare to address issues such as reconsideration of our cable rate regulations, our broadcast multiple ownership rules as well as the other mass media issues now pending at the FCC, I welcome the opportunity to learning from their experiences and sharing their views with respect to the developments in the communications industries. I am confident that, as we confront the many policy issues that are now before the Commission, under Chairman Reed Hundt's leadership, we will accomplish a great deal in the time to come.

Today I will address evolving market trends in the cable and broadcast industries, in light of the Federal Communication Commission's (the "FCC") most recent cable rate regulation decisions and the relaxed rules for broadcast ownership and program regulatory environment. I will also discuss my concerns regarding the impact of future regulatory actions on broadcast ownership, and diversity and cable service quality.

MARKET TRENDS:

Cable Television:

The cable television industry has been the focus of much attention in recent years. Despite various consumer complaints about high prices or poor customer service, cable television's market penetration for basic service continues to grow.[1] For example, in 1994, it is projected that consumers will spend approximately $22 billion on cable services--nearly two and one half times the level of expenditure in 1985. Moreover, advertising revenues are projected to reach $4.4 billion this year, amounting to a 359% increase since 1986. It is also projected that cable penetration will climb to 72% by the year 2000. Finally, 95% of cable subscribers are able to receive 30 channels or more and cable homes spend an average of 19 hours per week watching basic cable programming.[2]

Since the adoption of the FCC's cable rate regulations, the near term financial picture for some in the cable industry has become less clear. Declining cable stock valuations have been cited as a contributing factor in the termination of some cable-telephone company ventures.[3] Our rate regulation decisions[4], including the cable rate freezes, were cited as the cause for a $2 billion reduction in cable television industry revenues in

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[1] Cabletelevision Advertising Bureau citing "Cable TV Investor", Paul Kagan Associates, Inc., March 1994.

[2] Id.

[3] The seven regional Bell operating companies and GTE had combined revenues in 1992 of $102.3 billion and net income of $11.1 billion. By contrast, the eight leading publicly held cable-TV companies reported 1992 revenues of $6 billion and net loss of $600 million. "Baby Bells 1, Cable 0", The Wall Street Journal, Alan Gerry, February 23, 1994, p. A20.

[4] See, Los Angeles Times, "Cable Rates Cut Again", February 23, 1994, Jube Shiver, Jr. and Amy Harmon, p. B5.

1993.[5] Some analysts now also predict that our additional cable rate rollbacks in 1994 will cost cable companies about $600 million in annual revenue.[6]

Interestingly, Wall Street's initial reaction to the recent rollback announcement appeared to be somewhat "indifferent". Some argue that stock declines began in September 1993 in anticipation of the impact of rate regulation. Others speculate that cable operators with diversified sources of income (e.g. programming) would be able to "weather the storm".[7] Although I agree with the initial assessment, the question then becomes-- What damage will be done while they weather the storm?

Various cable operators indicate that the financial constraints stemming from reduced cash flow will diminish the operators' ability to modernize plant and invest in new technologies. Moreover, borrowing power is likely to be negatively effected by reduced cash flow.[8]

There are several recent examples of the near term effect of

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5 See, Study by Paul Kagan Associates, Inc., January 1994.

6 "Cable Stock Investors Shrug Off Latest Cuts", Washington Post, Bloomberg Business News, February 23, 1994, p. A22.

7 See, "Cable and Entertainment, Potholes in the Information Superhighway, but Programming in the Fast Lane", Dillon Read Equity Research, May 3, 1994, p. 7.

8 See, "Analysts See Cash Flow 'Crisis' for Cable Industry, Multichannel News, Ted Hearn, March 14, 1994, p. 23.

the rate regulation decisions. Time Warner recently announced that it was reducing its 1994 capital spending on cable operations by $100 million and that it will institute a hiring freeze.[9] This announcement came on the heels of TCI's decision to temporarily suspend $500 million in capital expenditures.[10] Cable operators that own cable systems only and lack additional revenue sources may be under greater pressures to respond to reduced cash flow and revenues in the current environment.[11] If large diversified cable companies feel the need to trim their expenditures, the "pure" cable operator is likely to be under similar pressure in the near term.

Broadcast:

While cable operators are adjusting to a regulatory environment, according to some trade publications, some broadcasters are experiencing a resurgence in their revenue prospects.[12] Also, some broadcasters have already experienced an

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[9] "Time Warner Trims Cable-TV Budget Due to Rate Cuts", Mark Robichaux, Wall Street Journal, May 5, 1994, p. B7; See also, "Few Systems Roll Back Rates", Kate Maddox, Electronic Media, May 16, 1994, p. 3.

[10] Id.

[11] Cablevision Industries Corporation (CVI) reported that 92% of its revenues in 1993 were derived from monthly subscriber fees for basic, cable programming and premium services, equipment rental and installation income. It goes on to report that "[t]he high level of depreciation and amortization associated with the [CVI's] acquisitions and capital expenditures and interest costs related to its financing activities have caused CVI to report net losses" for 1993 and the foreseeable future. See, Cablevision Industries Corporation, Form 10K for the fiscal year ending December 1993, p. 23.

[12] The 300 stations owned by minority groups represent only 2.7% of the 11,201 stations in the U.S. and many are the weakest in their markets. See, "Slow Gains by Minority Broadcasters", Geraldine Fabrikant, New York Times, May

increase in advertising.[13] The renewed interest in some broadcasting stations, and in particular television stations, is evidenced by the increase in advertising which grew by 4% in 1993. Additionally, advertising on ABC, NBC, and CBS was up 13% in the fourth quarter of 1993.[14]

Many broadcast conglomerates are doing well[15] and discussions about potential broadcast mergers abound.[16] Moreover, lending institutions are now showing a renewed interest in broadcasters' activities.[17] Within the past two years, there has also been a surge in sales of broadcast stations.[18] Major

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31, 1994, D1.

[13] Local TV ad revenue increased by 16% to $1.35 billion in the first quarter and spot TV ad revenue grew by 18% to $1.34 billion. See, Communications Daily, May 11, 1994, p. 4.

[14]See, "TV Station Sales Surge", Variety, Joe Flint, March 14, 1994, p. A24.

[15]Capital Cities/ABC has determined that the proliferation of channels justifies its increased investment in programming--$200 million in 1993 from $100 million in 1992 and the acquisition of European television production companies and networks. The companies first quarter revenues nearly doubled to $116.68 million. See, "Cap Cities Builds Media Highway for Its Own Back Lot", Los Angeles Times, James Flanigan, February 27, 1994, D1; See also, "NBC Ties In With Mexico's TV Azteca", Communications Daily, May 18, 1994, p. 6.

[16]For instance, some have speculated that Walt Disney Co. will purchase a television network if prime time slots are reduced by the entry of ABC, CBS and NBC into full-scale program production as a result of our relaxed financial interest and syndication regulations. See, "Merger Talk Now Takes Center Stage", David Lieberman, USA Today, March 22, 1994, p. B1.

[17]See, "Banks Giving More Attention to Acquisitions", Electronic Media, Diane Mermigas, April 11, 1994, p. 15.

[18]In 1992, there were a total of 41 TV transactions totaling $124 million. In 1993, the FCC approved 101 TV-related transactions totaling $1.73 billion. See, "The Race is on in Hot TV Station Market", Diane Mermigas, Electronic Media, April 11, 1994, p. 1.

group owners are reportedly using broadcast stations as outlets for program and production ventures that will likely be offered on other stations and for second cable channels in the same markets for niche programming and regional cable channels.[19] Television stations that were at one time sold for prices as low as seven to eight times cash flow are trading at 9 to 10 times cash flow.[20] Now, group owners for good markets rather than the particular network affiliation of the stations.

The market interest in independent television stations continues in light of Paramount and Warner Bros.' decisions to launch new networks and to sign-up new affiliates.[21] The emergence of these new television networks are likely to translate into increased programming production, reduced programming costs and improved advertising market penetration.[22]

We are also seeing a surge of activity in the transfer of radio stations since adoption of the FCC's revised rules governing radio station ownership is also apparent. There were 188 radio station transactions in 1993 totalling $1.4 billion of

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[19] Recently, A.H. Belo acquired the CBS affiliate, WWL-TV in New Orleans for $110 million while The Washington Post purchased an ABC affiliate in San Antonio and an NBC in Houston for $250 million. Id., p. 1.

[20] See, "TV Station Sales Surge", Variety, Joe Flint, March 14, 1994, p. A24.

[21] Id.

[22] See, "Paramount Placing Trust in 'Voyager' to Launch Network", Thomas Tyrer, Electronic Media, May 16, 1994, p. 53.

which the top 10 transactions accounted for $781 million in ownership changes.[23] A total of 1462 stations (14.7%) of all commercial U.S. radio stations were participants in duopolies or local management agreements.[24] Concerns about diversity and concentration of ownership continue to be important factors as the radio industry continues to consolidate its ownership structures.[25]

FUTURE MARKET TRENDS:

Cable Television:

Some cable operators, prompted by the need to create new revenue sources in a regulatory environment, have planned to launch interactive television services that deliver movies on demand, home shopping and video games. Time Warner Cable is scheduled to launch its interactive service in Orlando, Florida by the end of 1994.[26] To develop this interactive capability, Time Warner has joined US West as an investment partner, and invested in AT&T switching technology.

Viacom has planned a market trial for interactive services

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[23] Radio Business Report Source and Directory: The All-Radio Yearbook, Volume 2, 1994.

[24] Id.

[25] Id.

[26] The Time Warner launch which was originally scheduled for April 1994, announced that the launch date will be delayed at least until September. See, "Interactive TV: Not Ready for Prime Time", Business Week, Kathy Rebello et al., March 14, 1994, p. 30.

in Castro Valley, California. This market trial is scheduled to provide video-on-demand and on-screen programming to 1,000 homes by late 1994, and will expand its service to 4,000 sites within eighteen (18) months.[27]

Notwithstanding the unpredictable demand for new interactive services[28], investment incentives for the cable industry under our rate regulations are likely to encourage the proliferation of interactive and pay-per-view services rather than additional regulated services.

Broadcast:

In recent years, broadcasters have been given the opportunity to increase their market penetration and service offerings due to several FCC decisions. We relaxed our radio ownership limits from 12AM/12FM to 18AM/18FM.[29] We relaxed our radio ownership duopoly rules to allow 2 AM and 2 FM in many major markets. We also relaxed our network-cable cross-ownership rules[30] and our financial interest and syndication rules[31]. Finally, the Commission has been granting one-to-a-market waivers

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[27] Id.

[28] Id.

[29] These limits will be further relaxed in September 1994 to 20AM/20FM. See, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, MM Docket No. 91-140, 7 FCC Rcd 6387 (1992).

[30] See, Report and Order, FCC 92-262, 7 FCC Rcd 6156 (1992).

[31] Second Report and Order, MM Docket No. 90-162, 8 FCC 3282 (1993).

on a fairly routine basis.[32]

In addition to our regulatory actions, the Cable Act of 1992 and pending legislation (if passed) will provide additional support to the broadcast industry. The effort by broadcasters to secure a position on the information superhighway has been addressed in pending federal legislation. S.1828[33] which would permit broadcasters to offer digital services with spectrum they will receive for the implementation of high definition television (HDTV). Moreover, the FCC would be required to review its radio and television ownership rules and to eliminate those that are not needed to promote program diversity. The FCC would also be required to conduct a study on the statutory ban on broadcast/cable cross-ownership in the same market. According to S.1828, broadcasters would be allowed to offer nontraditional services such as data, paging and voice services.

The expansion of broadcasters' provision of services is made possible by the allocation of an additional simulcast television channel for advanced television services. Until the standard is established by the FCC and HDTV television sets and equipment become readily available, broadcasters would be permitted to use portions of these channels for non-simulcast programming.

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[32] See, Concurring Statement of Commissioner Andrew C. Barrett, In Re: Assignment of Television Station License WOI-TV, Ames, Iowa, December 14, 1993.

[33] S.1822, The Communications Act of 1994, 140 Cong. Rec. S-771-788 (2/3/94).

Further, digital compression could allow broadcasters to provide multiple channels within one bandwidth. As the number of channels increase so does the expanded opportunity for revenues through increased advertisement.

The implementation of the 1992 Cable Act's "must-carry" and retransmission consent rules have worked to the advantage of the broadcast industry as well. ABC, NBC and Fox negotiated for new service agreements as compensation from cable systems in exchange for the right to carry their signals. Now, these networks' new channels have a much wider and expeditious distribution than many other new and existing programming networks. For example, as a result of ABC's agreements for ESPN2, an all-sports channel, ESPN2 was available in 10 million homes on its first day in business and is expected to reach 30 million homes by year's end.[34] Fox is scheduled to launch its FX Channel on June 1, 1994 and NBC plans to start its "America's Talking" channel on July 4, 1994. Other retransmission consent agreements by various broadcast station groups also have resulted in compensation arrangements or carriage of local news channels.

While regulatory issues will be generated from the increased number of channels operated by broadcasters, the future for television broadcasters appears bright, given their ability to

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[34] See, "Networks New Cable Channels Get a Big Jump on the Competition", New York Times, Bill Carter, March 14, 1994, p. D7.

take advantage of synergies in programming and additional channel outlets.[35]

REGULATORY ISSUES:

We (the FCC) must balance our regulations in a manner that does not unduly hinder any single industry's ability to be a competitive player in the future multimedia marketplace.

Cable Television:

While I supported our rate regulations (the Commission vote was unanimous), I have and will continue to express concerns that the small independent cable operator would be impacted most severely by our revised rate regulations. The threat of economic instability and foreclosure for the small independent operators is being reported in the trade press.[36] These operators have greatly suffered for two primary reasons: 1) our (FCC) mandated cable rate freeze will likely denied these operators the ability to raise rates to generate cash to cover loan payments and 2) their inability to secure refinancing for existing debt stemming from bankers' apprehension about lending in a highly regulated environment. Lending institutions are likely to become more reluctant to provide financing for small independent operators

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[35] Donaldson, Lufkin & Jenerette, "Television Broadcasters Looking for On-Ramp to the Superhighway", Dennis H. Leibowitz, March 18, 1994, p. 6.

[36] See, "A Rural Squeeze: FCC's Rate Rules Prompt Foreclosure", K.C. Neel Cable World, April 25, 1994, 1. See also, "SCBA Tallies Its Achievements", Kate Maddox, Electronic Media, May 16, 1994, 14; "FCC Rate Order Producing Few Rollbacks", Kate Maddox, Electronic Media, May 16, 1994, p. 3.

for these reasons. For those operators that are willing to or who can sell their systems, there may either be no purchasers. In the alternative, some larger MSOs will be eager to offer significantly reduced acquisition prices for the systems or will wait until small independent operators default on loan agreements and acquire their systems through forced sales.[37]

We (FCC) are faced with implementation challenges. Since the adoption of our rules, many parties have requested clarification of our rate regulations, particularly with respect to programming services. Immediate responses were necessary in order to satisfy operators' concerns that the addition of new programming services would not adversely affect operators' revenues. Expeditious response from the FCC is required to ensure that we do not hinder the launch of new programming services, particularly those scheduled for launch before the FCC's adoption of the revised cable rate rules.[38]

The Commission has also been compelled to act expeditiously on complaints that franchising authorities have implemented rate orders with erroneous calculations. These miscalculations could have serious consequences for cable operators that seek a

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[37]<u>See</u>, "Endangered Cable Firms Eye Options", Kate Maddox, <u>Electronic Media</u>, May 2, 1994, p. 3.

[38]<u>See</u>, Request for Expedited Clarification of Going-Forward Rate Regulations to Alexandra Wilson, Acting Chief, Cable Services Bureau, dated April 15, 1994.

reasonable return on investments in regulated services.[39] Because the Commission's procedural rules do not specify a date by which the FCC must make a determination in the case of rate appeals, we must expedite our efforts in this area to avoid unnecessary damage to existing cable businesses.

Broadcast:

In the past, the broadcast industry has been the focus of the Commission's attention. Restrictions were placed on broadcasters to deter certain anti-competitive market practices that occurred in the past. However, changes in the video market and the corresponding emergence of the cable industry have forced the Commission to reconsider many of its ownership and programming restrictions on the broadcast industry.

The regulatory climate for broadcasters is improving. At the time that our Prime Time Access Rules (PTAR)[40] were originally adopted, the Big 3 networks--ABC, NBC and CBS--dominated the programming playing field. The emergence of the Fox network, in addition to the Paramount and Warner Bros. networks, has led the FCC to consider arguments regarding the on-

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[39] See, Order, In the Matter of TCI Cablevision of St. Louis, Docket No. DA 94-424 (April 29, 1994).

[40] See, 47 C.F.R. § 73.658(k).

going necessity for PTAR.[41] The Commission is accepting comments on several petitions for rulemaking in this area.[42] Network affiliates and television stations must respond to these petitions with respect to their concerns about diverse program supplies in today's syndication market.

In April 1993, we significantly relaxed the financial interest and syndication rules (fin/syn) and established a twenty-four month period before the rules would sunset, subject to a prior Commission review.[43] In November 1993, the United States District Court in Los Angeles removed consent decree restrictions from the big-three networks which allowed our relaxed fin/syn rules to be implemented.[44] The District Court questioned whether the fin/syn rules were even warranted, and opined that the changes in the broadcast marketplace since their adoption raised concerns about the need for the restrictions. Currently, the Seventh Circuit Court is reviewing the merits of appeals from our April 1993 fin/syn decision. Absent any modification to our decision by the Seventh Circuit, the

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[41]Some of the network affiliates feel that the network programming will not draw large audiences. Therefore, they have voiced their reluctance to surrendering the 30 minutes leading up to prime time to the networks. See, "Big 3 Mull Impact of PTAR Repeal", Thomas Tyrer, Electronic Media, April 25, 1994, p. 3.

[42]See, Public Notice, "Petitions, Applications and Related Pleadings Regarding the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules", Released April 12, 1994.

[43]See, Second Report and Order, 8 FCC Rcd 3282 (1993).

[44]United States v. NBC, CV74-3601-R (C.CD. Cal. Nov. 10, 1993).

remaining fin/syn rules would be reviewed in the summer of 1995, and subject to our prior review, are likely to sunset in November 1995. During the interim period, I expect to see NBC, CBS and ABC become more involved in program production and syndication.[45]

The Commission may take action on its television multiple ownership rules some time this year. Any action to further relax the current ownership limits on broadcast stations will depend, to a great extent, on the FCC's determinations about the impact of its current ownership rules. Bearing in mind the intended regulatory objective--to encourage competition and to promote diversity--the Commission must assess whether it is advisable to further relax broadcast station local and national ownership limits.[46] The proposed review of the current limits on television broadcast station ownership would be of particular interest to the larger broadcast groups and the television networks.[47]

Relaxation of ownership restrictions and the ability of radio stations to form duopolies have provided the radio industry with an important means of increasing the market value of

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[45]CBS and NBC have already indicated intentions to expand their first-run operations in the near future. See, "Television's Turf Wars", Electronic Media, April 11, 1994, p. 1; See also, "NBC Ties In With Mexico's TV Azteca", Communications Daily, May 18, 1994, p. 6.

[46]See, Notice of Proposed Rule Making, Docket No. 91-221, 7 FCC Rcd 4111 (1992).

[47]See, "Television's Turf Wars", Electronic Media, p. 15.

broadcast radio stations. Through the use of duopolies and local marketing agreements (LMAs), broadcasters are able to save money by creating economies of scale. It has been argued that television broadcast stations could derive similar benefits from these arrangements. Though it is difficult to predict how the marketplace will react if television broadcasters are permitted to own or control a larger number of stations, clearly the impact on diversity remains a significant issue.

POLICY ISSUES:

The cable, broadcast and telephone industries are players that will help to shape the evolving video marketplace. It has become evident in recent months that Congress, by way of legislation, will not only illuminate the government's expectations for the telecommunications industry, but will also define and formulate the FCC's role in the development of the communications environment. Yet, whatever regulatory action is undertaken by the government--be it Congress or the FCC--regulation must foster competition and promote diversity of ownership in the marketplace.

The FCC revised cable rules establish interim cost of service rules.[48] It is imperative that the implementation of these regulations demonstrate sufficient flexibility so that we

[48] See, Report and Order and Further Notice of Proposed Rulemaking, CS Docket No. 94-28, February 22, 1994.

are able to expeditiously address the concerns of franchise authorities, and cable operators. Thus, I believe the Commission must continue to work with franchise authorities and cable operators to establish a definitive cost-of-service review process and timetable.

The on-going consolidation of media ownership presents obstacles to the entry of and possibly the survival of small and minority-owned businesses. The financial obstacles faced by these businesses continue to be significant.[49] It has become increasingly apparent that to survive minority-owned broadcast concerns must either become larger or serve a certain defined market. Both in the television and radio businesses, minority-owned broadcast outlets are under pressure to joint venture with others or reduce expenses. As larger station groups evolve, minority-owned broadcast stations are attempting to compete for advertising against large group owners who may focus on the minority target market as part of a diversified media approach. Thus, far minority-owned broadcast stations are losing the battle.[50] I am concerned that the FCC endeavor to promulgate regulations that do not hinder the minority broadcasters' ability to compete, on some level, with the existing players so that in ten years minority ownership of broadcast stations will not be

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[49] See, Interim Report of the Federal Communications Commission Small Business Advisory Committee, April 21, 1994, p. 64.

[50] See, "Slow Gains by Minority Broadcasters", Geraldine Fabrikant, New York Times, May 31, 1994, p. D1.

effectively eliminated.

CONCLUSION:

The media industry development will continue to evolve toward an interactive, multimedia marketplace built around digital switching technology, new programming services and additional providers.[51] With recent cable regulation changes, alternative revenue sources sought by cable companies, such as pay-per-view and other interactive services, may provide future opportunities for the industry; however, the pace of change toward these services may be less certain.

Finally, it is important to recognize that the potential for development and growth in the video marketplace will be contingent upon the ability of Congress and the Commission to foster a competitive environment to ensure benefits for the consumer public. In broadcasting, we must ensure that a relaxed regulatory environment does not undermine our traditional concerns for diversity, service quality and ownership opportunities for minorities and women.

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[51] See, Remarks by Commissioner Andrew C. Barrett, Federal Communications Commission, Northern Telecom, Inc.'s Executive Marketing Symposium, June 19, 1991.

KEYNOTE SPEECH

BY

COMMISSIONER
ANDREW C. BARRETT
FEDERAL COMMUNICATIONS COMMISSION

"THE DIGITAL MEDIA REVOLUTION"
MEDIENFORUM NORDHEINWESTFALEN 1994

COLOGNE, GERMANY
June 6, 1994

INTRODUCTION:

During the past several years, rapid changes have been taking place in the world of digital technology. Digital technology has the potential to redefine the telecommunications industry. Advances in memory, system design, switching and information transmission is transforming the framework within which you and I are receiving various communications services.

Today, I will address media regulatory issues that should be considered in conjunction with the evolution of digital media. I will discuss: (1) the formation of media policy resulting from the trend toward interactivity; (2) the impact of mergers and new alliances on the development of the media; (3) policy objectives that should be pursued in the next few years and the challenges created by increased channel capacity; (4) the evolution of individual and mass communications into an interactive digitized media; and (5) the issues raised by the development and deployment of technologies for the "information superhighway" in the United States.

WHAT DOES THE DIGITAL MEDIA REVOLUTION MEAN FOR NATIONAL AND MEDIA POLICY?

As the telecommunications industry evolves, many European countries will be forced to grapple with policy issues similar to those now being addressed by companies in the United States. The interaction of the cable, broadcast and telephone industries in the United States is generating significant regulatory issues. The FCC must continually endeavor to balance its regulations in a manner which will not unduly hinder any single industry's ability to be a competitive player in the future multimedia marketplace.

In the future, I believe that digital compression will produce additional capacity for the transmission of media programming. To that end, consumer demand for greater convenience and program selection should be the driving force behind the deployment of digital services. Satellite, broadcasting and cable companies are likely to deploy such technology. Programming producers and distributors should benefit as the number of media outlets are increased.

Despite these anticipated advancements in digital technology, there is still an element of uncertainty with respect to the implementation of the digital media. Digital transmission should provide superior signal control, quality and security while allowing for increased channel capacity and lower distribution costs. Yet, the remaining stumbling blocks--

industry standards[1] and cost of conversion--are significant. Thus, industry adaptation to the technology will prove to be a significant challenge.

Media companies that deploy digital services will seek to gain advantages in an increasingly competitive video marketplace. Satellite-delivered services could become viable competitors to the cable and broadcast players that have traditionally served the video marketplace. In the U.S., cable systems will look to deliver multiple channels of programming through their existing wiring to subscribers' homes; in the future their channel capacity could grow to one hundred channels or more. Moreover, U.S. telephone companies are seeking to compete with cable systems to provide video programming services over the telephone infrastructure. American broadcast licensees may also attain the capability of increasing their service offerings through multiple digital broadcast channels. Finally, program producers should benefit from the increased channel capacity and lower distribution costs that digital compression will provide to its users.

Policymakers and regulators should strive to attain a model that will permit the proliferation of new services from various media players, including new entrants such as DBS and the telephone companies. At the same time, investment risks in such new media activities should be borne by shareholders and not captive payers.

WHAT EFFECTS DO THE MERGERS AND NEW ALLIANCES OCCURRING AT THE PRESENT TIME HAVE ON THE DEVELOPMENT OF MEDIA?

Broadcasters in the U.S. are experiencing a resurgence in their revenue prospects. Broadcasters have already experienced an increase in advertising.[2] The renewed interest in broadcasting stations, and in particular television stations, is evidenced by the increase in advertising which grew by 4% in 1993. Additionally, advertising on ABC, NBC, and CBS was up 13% in the fourth quarter of 1993.[3] Advance advertising sales for

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[1]The Motion Picture Experts Group, a committee of the International Standards Organization, is expected to unveil the MPEG II standards as the accepted standards for digital compression later this year. See, "The Information Wave", Appliance, Spring 1994, p. 5.

[2] Local TV ad revenue increased by 16% to $1.35 billion in the first quarter and spot TV ad revenue grew by 18% to $1.34 billion. See, Communications Daily, May 11, 1994, p. 4.

[3]See, "TV Station Sales Surge", Variety, Joe Flint, March 14, 1994, p. ABBE.

the 1994-1995 prime-time television season are expected to increase by more than 11% from last year and could reach as much as $4 billion.[4]

Broadcast conglomerates are flourishing[5] and discussions about potential broadcast mergers abound.[6] Moreover, lending institutions are now showing a renewed interest in broadcasters' activities.[7] Within the past two years, there has also been a surge in sales of broadcast stations.[8] Major group owners are reportedly using broadcast stations as outlets for program and production ventures that will likely be offered on other stations and for second cable channels in the same markets for niche programming and regional cable channels.[9] Television stations that were at one time sold for prices as low as seven to eight times cash flow are trading at 9 to 10 times cash flow.[10]

Fox Inc. recently announced a broadcasting alliance in which New World Communications Group Inc. has agreed to change the network affiliation for up to 12 VHF stations from ABC, CBS and

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[4] See, "Rebound in Upfront TV AdSales Expected", The Wall Street, May 31, 1994, p. B8.

[5] Capital Cities/ABC has determined that the proliferation of channels justifies its increased investment in programming--$200 million in 1993 from $100 million in 1992 and the acquisition of European television production companies and networks. The companies first quarter revenues nearly doubled to $116.68 million. See, "Cap Cities Builds Media Highway for Its Own Back Lot", Los Angeles Times, James Flanigan, February 27, 1994, D1; See also, "NBC Ties In With Mexico's TV Azteca", Communications Daily, May 18, 1994, p. 6.

[6] For instance, some have speculated that Walt Disney Co. will purchase a television network if prime time slots are reduced by the entry of ABC, CBS and NBC into full-scale program production as a result of our relaxed financial interest and syndication regulations. See, "Merger Talk Now Takes Center Stage", David Lieberman, USA Today, March 22, 1994, p. B1.

[7] See, "Banks Giving More Attention to Acquisitions", Electronic Media, Diane Mermigas, April 11, 1994, p. 15.

[8] In 1992, there were a total of 41 TV transactions totaling $124 million. In 1993, the FCC approved 101 TV-related transactions totaling $1.73 billion. See, "The Race is on in Hot TV Station Market", Diane Mermigas, Electronic Media, April 11, 1994, p. 1.

[9] Recently, A.H. Belo acquired the CBS affiliate, WWL-TV in New Orleans for $110 million while The Washington Post purchased an ABC affiliate in San Antonio and an NBC in Houston for $250 million. Id., p. 1.

[10] See, "TV Station Sales Surge", Variety, Joe Flint, March 14, 1994, p. ABBE.

NBC to Fox Broadcasting Company.[11] By investing $500 million dollars in New World, Fox acquires additional outlets for its programming and strengthens its position as a network competitor. Fox's interest as a non-voting shareholder allows the company to retain its other affiliates while staying within the FCC's national broadcast ownership constraints of twelve (12) television stations. It also places the network in the position of generating increased advertising revenues. Fox will no longer be forced to give discounts to advertisers because its affiliates are UHF stations.

The Fox-New World alliance may have significant ramifications for the broadcast industry. First, there are market ramifications. CBS, which lost eight (8) affiliate stations to Fox[12], will more than likely seek to replace these affiliates with stations that are aligned with other networks. Reportedly, CBS may offer greater network affiliation compensation and extend the term of affiliation agreements. ABC and NBC would then be forced to seek ways in which to retain their affiliates and would most likely be forced to pay increased compensation for carriage of their network shows. Moreover, the Fox announcement precedes the networks' sale of "upfront" advertising time for the 1994-1995 season. CBS, ABC and NBC will be forced to make guarantees with respect to viewership levels without knowing with certainty what their affiliates lineups will be. Finally, Fox's network competitors will be forced to come up with popular quality programming that will support the advertising rates they will command.

Second, there are regulatory issues. This recent development with Fox-New World spurs the accelerated demise of the financial interest and syndication rules; thus, allowing more mergers of networks with Hollywood studios. Additionally, the merits of the Prime Time Access Rule will come under increased scrutiny.

The market interest in independent television stations continues in light of Paramount and Warner Bros.' decisions to launch new networks and to sign-up new affiliates.[13] The emergence of these new television networks are likely to

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[11]See, "Fox Inc., New World Communications Group Inc. Announce Largest Affiliation Switch in Network Television History: Fox Makes $500 Million Investment in New World", Press Release dated May 23, 1994.

[12]See, "Fox Will Sign Up 12 New Stations; Takes 8 from CBS", Bill Carter, New York Times, May 24, 1994, p. A1.

[13]Moreover, now that CBS, NBC and ABC will be searching for new affiliate stations as result of the Fox-New World deal, the competition for independents will be fierce. Id.

translate into increased programming production, reduced programming costs and improved advertising market penetration.[14]

As various types of alternative network deployment scenarios unfold in the broadcast marketplace, the FCC must determine how to create a level playing field in an increasingly competitive environment. For example, Bell Atlantic currently plans to provide enhanced delivery of services to the home, including its current plans for a $10 billion fiber-optic network.[15] Initially, this video dialtone network reportedly is expected to include basic video services and video-on-demand, with future capacity for home shopping and banking, remote education, and video games.

More recently, state regulators in New York have opened the door to local phone competition in an agreement with the Rochester Telephone Corporation. Subject to approval from the New York State Public Service Commission, Rochester Telephone will gain greater freedom to explore new services and retain profits in exchange for letting rival companies connect with its network.[16] This agreement would enable Time Warner to offer ordinary telephone service throughout Rochester by the end of 1995.[17] This development provides Rochester with the opportunity to offer competing television service to residential customers.

In other developments, PacTel has announced a $16 billion seven-year plan for wiring the California market with fiber, a plan that would complement their proposed video dialtone service, with construction reportedly scheduled to begin in San Diego in June 1994. Ameritech also plans to provide interactive service

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[14]See, "Paramount Placing Trust in 'Voyager' to Launch Network", Thomas Tyrer, Electronic Media, May 16, 1994, p. 53.

[15]The company is scheduled to reach 1.25 million homes by the end of 1994, and 8.75 million homes by 2000, in the Washington D.C. metropolitan area, northern New Jersey, and parts of Philadelphia, Pittsburgh, and Baltimore. "With TCI Deal History, Bell Atlantic Plans Anew", Washington Post, February 26, 1994, at C1.

[16] "A Telephone Role by Time Warner," New York Times, May 18, 1994, at A1.

[17]Time Warner's cable television equipment in the area has already been upgraded with fiber optic lines to reach into every neighborhood. Therefore, the only remaining step to allow them to provide telephony services will be the installation of switching equipment for two-way voice communications.

in 13 cities in its own region.[18]

As these companies begin to provide cable and telephone services, the FCC must ensure regulatory parity and flexibility in order to encourage competition and thus progress in the marketplace. We must make certain that the shareholders, and not the regulated rate payer, bears the financial burden of constructing and deploying expanded video and telephony services. Further, we must ensure open access and sufficient channel capacity are offered on any common carrier video dialtone platforms authorized by the FCC. Finally, it is imperative that consumer demand be permitted to determine the fate of these businesses; however, we must be careful not to permit competition to develop at the expense of ownership diversity.

WHICH OBJECTIVES SHOULD MEDIA POLICY SEEK TO PURSUE IN THE NEXT FEW YEARS AND WHAT CHALLENGES WILL BE PRESENTED BY THE INCREASING TRANSMISSION CAPACITIES?

In the past, the U.S. broadcast industry has been the focus of the Commission's attention. Restrictions were placed on broadcasters to deter certain anti-competitive market practices that occurred in the past. However, changes in the video market and the corresponding emergence of the cable industry have forced the Commission to reconsider many of its ownership and programming restrictions on the broadcast industry.

In April 1993, we significantly relaxed the financial interest and syndication rules (fin/syn). These rules were originally adopted in the 1970's when the Big 3 networks--ABC, CBS and NBC--dominated the program and broadcast marketplace. Since that time, Fox has evolved and grown into a fourth network. It's recent alliance with New World resulting in new television affiliates and the acquisition of NFL football games makes it a fully comparable competitor to the other networks. By November 1995, the fin/syn rules should sunset, subject to a prior Commission review.[19] During the interim period, I expect to see NBC, CBS and ABC become more involved in program production and

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[18] The City of San Diego also has initiated a request for information on ways to establish a public-private collaboration on building a "broadband telecommunications grid" serving city residents. See "San Diego Seeks Views on Broadband Grid Project", Telecommunications Reports, May 9, 1994, at 34. See also "US West Plans Video Division", New York Times, March 8, 1994 at D19.

[19] See, Second Report and Order, 8 FCC Rcd 3282 (1993).

syndication, both domestically and in Europe.[20]

In recent years, broadcasters in the U.S. have been given the opportunity to increase their market penetration and service offerings due to several FCC decisions.[21] The FCC relaxed its radio ownership limits in 1992 and its network-cable cross-ownership rules[22]. The Commission is likely to take action on its television multiple ownership rules some time this year. Any action to further relax the current ownership limits on broadcast stations will depend, to a great extent, on the FCC's determinations about the impact of its current ownership rules and the ensuing impact of further broadcast ownership. Bearing in mind the intended regulatory objective--to encourage competition and to promote diversity--the Commission must assess whether it is advisable to further relax television broadcast station local and national ownership limits.[23]

The FCC is currently faced with implementation challenges in the re-regulation of cable. Since the adoption of our rules, many parties have requested clarification of our rate regulations, particularly with respect to investment incentives for new programming services, *a la carte* program services, and rate decisions by local authorities. The FCC must ensure that our cable regulations, while protecting consumer, do not unduly hinder the capability of the cable industry to provide new programming services and to develop interactive media offerings.

Each of the European markets possess its own characteristics and, in certain instances, regulatory obstacles. In an effort to establish uniformity in Europe, near the end of 1991, the European Launching Group for Digital Video Broadcasting ("ELG"),

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[20]CapCities/ABC has a twenty percent (20%) interest in RTL2, a new German television general network and a twenty-four percent (24%) interest in Scandinavian Broadcasting System SA. ESPN also owns thirty-three percent (33%) of Eurosport, a pan-European sports network. Further, ESPN International broadened its programming distribution 90 countries in 11 languages. See, "Capital Cities/ABC, Inc. 1993 Annual Report & 10-K" CBS and NBC have already indicated intentions to expand their first-run operations in the near future. See, "Television's Turf Wars", Electronic Media, April 11, 1994, p. 1; See also, "NBC Ties In With Mexico's TV Azteca", Communications Daily, May 18, 1994, p. 6.

[21]The FCC relaxed its radio ownership limits from 12AM/12FM to 18AM/18FM. We relaxed our radio ownership duopoly rules to allow 2 AM and 2 FM in many major markets. These limits will be further relaxed in September 1994 to 20AM/20FM. See, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, MM Docket No. 91-140, 7 FCC Rcd 6387 (1992).

[22] See, Report and Order, FCC 92-262, 7 FCC Rcd 6156 (1992).

[23]See, Notice of Proposed Rule Making, Docket No. 91-221, 7 FCC Rcd 4111 (1992).

a group of broadcasters, industrialists and government officials met to discuss the feasibility of developing standards for the introduction of digital terrestrial broadcasting in Europe. By mid-1993, ELG began to discuss satellite, cable and pay-television.[24] Shortly thereafter, the European Digital Video Broadcasting Project (DVBP) evolved.[25] DVBP adopted a resolution that recognized the increased use of digital transmission systems in Europe.[26]

Our own efforts to develop digital standards for high definition television (HDTV) is constantly evolving. We are hopeful that the HDTV standard will be established by next year. It is my hope that our standard processes for digital media will encourage the deployment of compatible digital technologies throughout the world.

As U.S. companies expand into the European markets and become more sophisticated in their delivery of media services, we must ensure that our rules encourage the same level of competition in the United States. Further, there must be an efficient system for the resolution of international issues that keeps pace with technological changes. For instance, in the U.K., Nynex CableComms, began purchasing cable systems in 1991.[27] It is now one of Britain's largest cable/telephony operators and is scheduled to commence testing of video-on-demand services later this year.[28] Moreover, it has formed a strategic alliance with Viacom Inc. which will give Nynex the much-needed software for testing and the ability to develop new entertainment services in the United States as well as the U.K. Lessons learned in U.K. will provide substantial benefits for future U.S. video-on-demand customers.

Numerous U.S. companies are participants in international programming concerns that encourages the development of diverse voices. CapCities/ABC attributes its ability to sell programming internationally to modification of the fin/syn rules.[29] Further, Time Warner Entertainment Germany is one of the owners of a local commercial channel, TV Hamburg 1, that recently was granted a ten

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[24]"Telecommunications", EC Commentaries, Coopers & Lybrand, 1994.

[25]Id.

[26]Resolution (OJ 1993 c209), Id.

[27]See, "Across the Americas", Multichannel News, Janet Stilson, May 16, 1994, p. 9A.

[28]Id.

[29]See, "Capital Cities/ABC, Inc. 1993 Annual Report & 10-K"

year license by the Hamburg media regulator.[30] Turner Broadcasting System Inc. ("Turner") which launched TNT and Cartoon Network in Europe last year, has also purchased an interest in a German TV news station.[31] Several U.S. companies[32] have established Cable Programming Partners ("CPP") to develop a cable-exclusive sports channel, Wire TV, to compete with BSkyB's Multichannels service in the U.K.[33]

Although the effort by U.S. broadcasters to secure a position on the information superhighway has been addressed in pending federal legislation,[34] the additional channel capacity that will come from digital technology will permit broadcasters to offer a greater number of program services. The expansion of broadcasters' provision of services will be made possible by the allocation of an additional simulcast television channel for advanced television services. Until the standard is established by the FCC and HDTV television sets and equipment become readily available, broadcasters would be permitted to use portions of these channels for non-simulcast programming. Further, digital compression could allow broadcasters to provide multiple channels within one bandwidth. Given their ability to take advantage of synergies in programming and additional channel outlets,[35] we must make certain that other broadcasters are able to compete at some level with other multichannel video providers, such as DBS and cable television.

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[30]TV Hamburg 1 is scheduled to be launched in the fall and hopes to attract 2.5 million viewers in the Hanseatic area. Advertising revenues for the channel are projected at $14.7 million for 1994 and $25.8 million for 1995. See, "Local German TV Market Opens Up", Jack Kindred, Television Business International, May 1994, p. 22.

[31]See, "Why Is This Man Smiling?", David Greising, Business Week, May 30, 1994, p. 132.

[32]Nynex CableComms, U S West, TCI, Comcast and Southwestern Bell have teamed up as U.K. cable operators to form CPP. See, "Staking Out More U.K. Cable Turf", Michael Taylor, Cable World, May 2, 1994, p. 15.

[33]BSkyB subscribers totaled 2.4 million in June 1993--and increase of .8 million from 1992. See, Financial Report of The News Corporation Limited for the Year ending June 30, 1993.

[34]Senator Hollings is the sponsor of S.1822 which would permit broadcasters to offer digital services with spectrum they will receive for the implementation of high definition television (HDTV). According to S.1822, broadcasters would also be allowed to offer nontraditional services such as data, paging and voice services. S.1822, The Communications Act of 1994, 140 Cong. Rec. S-771-788 (2/3/94).

[35]Donaldson, Lufkin & Jenerette, "Television Broadcasters Looking for On-Ramp to the Superhighway", Dennis H. Leibowitz, March 18, 1994, p. 6.

HOW DO YOU ASSESS ASSUMPTIONS THAT INDIVIDUAL AND MASS COMMUNICATIONS ARE GOING TO COALESCE INTO AN INTERACTIVE AND DIGITALIZED MEDIA COMPOUND SYSTEM?

Market Trends in the United States:

Cable Television:

The cable television industry in the United States has been the focus of much attention in recent years. Despite various consumer complaints about high prices or customer service, cable television's market penetration for basic service continues to grow.[36] For example, in 1994, it is projected that consumers will spend approximately $22 billion on cable services--nearly two and one half times the level of expenditure in 1985. Moreover, advertising revenues are projected to reach $4.4 billion this year, amounting to a 359% increase since 1986. It is also projected that cable penetration will climb to 72% by the year 2000. Finally, 95% of cable subscribers are able to receive 30 channels or more and cable homes spend an average of 19 hours per week watching basic cable programming.[37]

In recent months, since the adoption of the FCC's cable rate regulations, the near term financial picture for the cable industry has become less clear. In response to recent cable re-regulation, some cable operators, prompted by the need to create new unregulated revenue sources, have planned to launch interactive television services that deliver movies on demand, home shopping and video games. Time Warner Cable is scheduled to launch its interactive service in Orlando, Florida by the end of 1994.[38] To develop this interactive capability, Time Warner has joined a large Regional Bell Operating Company (RBOC), US West as an investment partner, and invested in switching technology developed by our largest US interexchange carrier, AT&T. A new US West division, Interactive Video Enterprises, Inc., also will develop and distribute interactive TV services and will test technology later this year in Omaha.[39] The companies have stated that they will take the best data from the two trials and share

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[36] Cabletelevision Advertising Bureau citing Paul Kagan Associates, Inc.

[37] Id.

[38] The Time Warner launch which was originally scheduled for April 1994, announced that the launch date will be delayed at least until September. See, "Interactive TV: Not Ready for Prime Time", Business Week, Kathy Rebello et al., March 14, 1994, p. 30.

[39] "US West Plans Video Division", New York Times, March 8, 1994 at D19.

the information.[40]

Another U.S. cable company, Viacom, has planned a market trial for interactive services in Castro Valley, California. This market trial is scheduled to provide video-on-demand and on-screen programming to 1,000 homes by late 1994, and will expand its service to 4,000 sites within eighteen (18) months.[41] FCC approval is still required to authorize this market trial.

Investment incentives for the cable industry under our rate regulations are likely to encourage the proliferation of interactive and pay-per-view services rather than additional regulated services. Consumer demand for these new interactive services is unpredictable at this time.[42] Consequently, the cable industry will be under pressure to continue to derive reasonable rates of return from its regulated services.

Direct Broadcast Satellite:

The U.S. Direct Broadcast Satellite industry (DBS) is still evolving. One entity, DIRECTV, is scheduled to offer direct-to-home satellite entertainment services through digital compression later this year.[43] Through several strategic alliances[44], DIRECTV is scheduled to offer 150 channels of movies, sports and entertainment. Another entity, United States Satellite Broadcasting Co., Inc. (USSB), will provide thirty (30) channels of popular cable programming.

DIRECTV will provide one of the best tests for consumer demand of the variety and number of programming options offered by DBS. Moreover, cable and broadcast industry companies will be able to assess the impact of digital DBS services on their

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[40] "Time Warner, US West Well-Connected", USA Today, May 4, 1994, at 4B.

[41] Id.

[42] In a random survey of 1000 cable homes performed by Broadcasting & Cable, forty-four percent (44%) indicated that they would be willing to pay for video-on-demand and fifty-four percent (54%) indicated that are willing to pay an additional $5.80 per month for interactive services. See, "Cable Ready: The High Appeal of Interactive Services", Harry A. Jessell, Broadcasting & Cable, May 23, 1994, p. 75.

[43] See, "The Information Wave", Appliance, Spring 1994, p. 5.

[44] DIRECTV and USSB will share a satellite and the receiving equipment developed by Thomson Consumer Electronics. Id.

various markets. If the demand is significant,[45] then cable and broadcast companies are likely to respond by increasing channel capacity through digital technologies.

Market Trends in Europe:

The European market has been deemed a high growth market, owing in large part to the fact that 85% of the market has limits on competition.[46] The European Union ("EU") has the largest consumer market of 345 million consumers,[47] and boasts a gross national product of approximately $6.157 trillion.[48] Four (4) countries--United Kingdom, France, Germany and Italy-- comprise over 80% of the potential European market in terms of GNP and income.[49]

Cable Television:

Cable television in Europe has shown only moderate growth in recent years.[50] In 1993, approximately 30 million of 152 million homes in Western Europe were connected to cable television in Western Europe--an increase of only 26 million from 1992. Moreover, the number of European subscribers is projected to grow only to twenty-seven percent (27%) while revenues from cable connections are estimated to reach $72 million in the year 2002. Pay TV revenues from cable revenues are expected to climb from $480 million in 1992 to $2.5 billion by 2002.

Germany hosts Europe's largest cable market with around 20 million subscribers and a total of 34 million television

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[45]Twenty-one percent (21%) of the cable subscribers surveyed in the Broadcasting & Cable survey expressed a high level of interest in DBS, but only fourteen percent (14%) indicated that they would switch to DBS if they had to pay $600.00 for the reception gear. See, "Cable Ready: The High Appeal of Interactive Services", Harry Jessell, Broadcasting & Cable, p. 78.

[46]U.S. Congress, Office of Technology Assessment, U.S. Telecommunications Services in Europe, OTA-TCT-548 (Washington, DC: U.S. Government Printing Office), August 1993, p. 47.

[47]Id, p. 49.

[48]Id., p.47.

[49]Id., p. 49.

[50]See, "European Cablers Prepare to Cross The Red Line", Jean-Luc Renaud, Television Business International, March 1994, p. 58.

households.[51] Cable systems in Germany operate in a regulated environment. In order to be assured carriage on the system, cable programmers must pay the state-run German cable MSO Deutsche Bundespost Telekom substantial fees.[52] For those programmers that are able to afford these fees, like CNN International, MTV Europe, NBC Super Channel and Eurosport, they have access to Germany's nearly 20 million multichannel homes.

Securing a program spot on the German cable system is challenging due to the limits of a thirty-two (32) channel capacity.[53] Telekom officials have indicated that with the introduction of digital compression, the obstacles associated with carriage should be alleviated with the increase in channel capacity.[54] Digital compression, which is projected to commence in 1995, should provide additional carriage space.

In France, the demand for cable services is less developed and the number of current cable subscribers in France is relatively low. Some argue that it is difficult to economically justify expansion in the French cable market where there are only 1.3 million cable subscribers.[55] Only eleven (11) national networks exist while nearly fifteen (15) are in the planning stages.[56] Despite the fact that many of the existing French cable channels are losing money, some are hopeful that the market will expand to between 2.5 to 3 million subscribers by 2000.[57]

France looks to the prospects created by digital technology. France Telecom would like to use digital compression on its Telecom 2-B satellite, which is used for cable services and will

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[51]"Viva les Networks?", William Mahoney, Multichannel News International, May 16, 1994, p. 20A.

[52]Many United States companies refuse to pay the subscriber fees because they are accustomed to being paid fees for the carriage of their services. See, "Cracking the World's Toughest Pay Markets", William Mahoney, Multichannel News, May 16, 1994, p. 13A.

[53]Id.

[54]Id.

[55]Id.

[56]Experts have speculated that most of these channels will not be launched. See, "Viva les Networks?", William Mahoney, Multichannel News International, May 16, 1994, p. 20A.

[57]Id.

enable it to lower transponder costs, by 1995.[58] Additionally, a new cable service, "La Chaine Info.", is being introduced by TF1, one of France's most successful broadcasters.[59] TF1 is attempting to obtain $1.23 per subscriber from cable operators despite the $.96 that the operators are willing to pay for the service. The price has caused some operators to question their ability to carry the service on the basic tier for which the rate is approximately $26.31 per month.[60] Finally, Lyonnaise Communications, a French MSO, is lending its support to new channels in France.[61] It is a key backer in Multivision, France's first pay-per-view operation. Multivision was scheduled to commence service last month in the Paris region where Lyonnaise has 150,000 cable subscribers.[62]

The United Kingdom's cable market appears to be the EU's most competitive environment. British Telecom ("BT") is competing against new cable television companies for telephony customers. BT has estimated that it will loose $740 million to North American owned cable operators over the next five years.[63] The intense competition for U.K.'s 3 million cable subscribers has benefited UK's subscribers. In recent months, BT has worked to improve its efficiency and to research new services such as video-on-demand.[64] Earlier this year, BT was scheduled to start testing its multimedia system prototype.[65]

Future European Trends:

The communications industry in Europe has generally developed in a non-competitive environment. However, in each country, new players are seeking to take advantage of the

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[58]Id.

[59]TF1 is also involved in a home shopping channel venture called Teleshopping. Id., p. 21A.

[60]"Viva Les Networks?", p. 21A.

[61]Lyonnaise recently launched Contact Television, a classified channel, and currently has interests in Paris Premiere, Planete, Canal Jimmy and Canal J. Id.

[62]Id.

[63]Id.

[64]"Viva les Networks?", William Mahoney, Multichannel News International, May 16, 1994, p. 20A.

[65]"Europeans No Longer Scoff at Interactive Multimedia", Richard L. Hudson, The Wall Street Journal, March 2, 1994, p. B4.

evolving telecommunications marketplace.

Interestingly, many Europeans have some exposure to interactive media. Some contend that the slower evolution of interactive media in the EU, is a result of the influence of the dominant state-run TV systems in many countries.[66] Others contend that there is limited advertising support for such services. Advertising support is crucial to the development of interactive television. To date, there appears to be a moderate level of television advertisement generally utilized throughout Europe.[67]

There are several examples of interactive services underway in the EU. Interactive text services are provided over the television broadcast vertical blanking interval (VBI) at no charge to European television viewers. These service provide access to program listings as well as news, weather, travel and business information. These services are accessed through televisions that are equipped with FASTEXT and can be accessed via remote control.[68] These VBI services have been offered on terrestrial channels for several years. More recently, VBI text services have become standard features on many EU cable and satellite networks.[69]

France Telecom provides another example of the type of interactive services being deployed in Europe. France Telecom networks are highly digitized. Approximately forty percent (40%) of French television households have been exposed to interactive offerings particularly from play-along interactive TV games.[70] Since 1991, broadcast services in France have featured in-home interactivity such as ActivCard's Multipoints game and electronic programs as well as Info Realite's Quizako game. France Telecom's videotext service, Minitel, with around 6.4 million

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[66]See, "Probing the Interactive Puzzle", Multichannel News International, Gary Arlen, May 16, 1994, p. 18A.

[67]For public broadcasters in Europe, advertising revenues (excluding Spain) are projected to increase by just under 20% from 1988 to 1994, and by an additional 9% between 1994 and 1996. See, "Shots in the Arm for Public Health", Toby Syfret, Television Business International, May 1994, p. 162.

[68]"Probing the Interactive Puzzle", p. 19A.

[69]Examples of cable and satellite channels that use interactive text services are CNN International, MTV Europe, TNT, Cartoon Network, Bravo and British Sky Broadcasting. Id.

[70] Id.

users, is paving the way for interactive home media.[71]

Moreover, France Telecom is engaged in international joint ventures and alliances. The company estimates that by the year 2000, twenty percent (20%) of its revenues will be from international activity.[72] Other French companies are also seeking to provide interactive media services. Internationale des Jeux, owner of Info Realite's Quizako has licensed its technology in Spain, where it is called Teletrebol, and in Italy, where it is called Quizzy.[73]

Activity in other European telecommunications markets are making for a more competitive environment which, in certain instances, has worked to the consumers' benefit. Since the mid-80's, the UK has proven that it has the most liberalized EU telecommunications market. U.K. regulators have sanctioned competitive nationwide full service operators, licensed cable communication services, interconnect carriers, and a local loop radio operator.[74] Videotron Holdings Ltd., a British cable and telephony company,[75] offers its customers multimedia, interactive and two-way television services. The company differentiates itself from competitors through such interactive services.[76] Videotron currently has 80,000 cable subscribers as well as 45,000 residential and 5,000 business telephony customers.[77]

The highly competitive telecommunications market in the UK has also led BT to form a $4.3 billion alliance for future expansion with MCI to develop a managed network for multinational corporations and major international companies.[78] The

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[71]"Probing the Interactive Puzzle", Multichannel News International, Gary Arlen, May 16, 1994, p. 18A.

[72]"U.S. Telecommunication Services in European Markets", p. 51.

[73] "Probing the Interactive Puzzle", p. 18A.

[74]See, "The New Order", Steve Twitch and John Williamson, Ericsson Connexion, March 1994, p. 8.

[75]Videotron Holdings, Ltd. is a strategic alliance between the Montreal based Le Group Videotron (65.5%) and Bell Canada Enterprises, Inc. (30.8%). See, "Learning from the Deregulated British Market", Louis Brunel, Multichannel News, May 16, 1994, p. 30A.

[76]By the end of May, Videotron, which offers thirty (30) channels of broadcasting and interactive services, is scheduled to offer transactional TV services. Id.

[77]Id.

[78] "The New Order", p. 8.

internalization of business coupled with the example of the BT-MCI alliance could set the stage for more "super-carrier" alliances.[79] The BT-MCI deal remains subject to regulatory approval from the FCC, as is undergoing review by the Justice Department's Antitrust Division.

Another general trend in Europe is the effort to privatize or commercialize government-owned broadcast outlets. The German public broadcaster, ZDF, is expected to participate in a new joint venture with Germany's Bertelemann and Kirch Group Deutsche Telekom. Each company will have a 30% stake in this newly formed company called Media Services which plans to develop pay television and pay-per-view in Germany.[80] In France, France Television, which owns two public channels, is endeavoring to develop more commercialized media product in response to competition from private stations and pay cable services.[81] The Italian public broadcaster, RAI, is attempting to cut costs and improve efficiency. RAI is hoping to partly privatize Saicis, RAI's distribution arm, with investments from Italian and foreign companies.[82] Finally, in the U.K., a top power in British television, Michael Green, has called for liberalization of cross media ownership rules and further consolidation of Independent Television (ITV).[83]

IN YOUR OPINION, WHICH FUNCTION DOES THE AMERICAN DATA SUPERHIGHWAY PROJECTS PERFORM WITH REGARD TO THE DEVELOPMENT OF MEDIA ECONOMY?

Clearly, today's telecommunication activities in the United States are being completed in anticipation of the companies' participation on the information superhighway. The backbone of the highway will embody the integration of fiber optic, satellite and digital transmission assets to deliver video, data and voice services to the home. It has become evident in recent months that the United States Congress, by way of legislation, will

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[79]Such as the AT&T, Singapore Telecom, and Japan's international carrier, Kokusai Denshi Denwa (KDD) have formed the World Partners Alliance. France Telecom and Deutsche Bundespost are pooling their resources and the Dutch, Swill and Swedish PTO's have come together as the Unisourch alliance. Id.

[80]"MIP Sees Europe Public TV Business Evolving", Anna Carugati, Electronic Media, May 2, 1994, p. 39.

[81]"MIP Sees Europe Public TV Business Evolving", p. 39.

[82]"MIP sees European Public TV Evolving", p. 39.

[83]See, "TV Chief Urges Ownership Liberalisation", Raymond Snoddy, Financial Times, April 20, 1994, p. 6.

illuminate the government's expectations for the telecommunications industry, and will define the FCC's role in the information superhighway.

President Bill Clinton's administration, under the leadership of Vice President Al Gore, has presented social and economic challenges for the development of the information superhighway.[84] It is reasonable to anticipate that the definition of "universal access" to the information superhighway will be defined through legislation. Indeed, President Clinton has taken a broad view when outlining its plans for universal access to the information superhighway. It is clear that the administration intends to encourage private-sector development of the highway and to avoid the creation of a society of information rich and information poor.

Major telecommunications players have been offered the administration's support of enticing deregulatory packages in exchange for assurances of universal access to the highway.[85] However, the economic feasibility of ensuring such a "universal" level of access must now be contemplated in the context of interactive media services, including those that could be offered by regulated telephone and cable companies. The FCC's role is likely to involve an assessment of the appropriate rates for access to the telephone platform, in exchange for additional service and pricing flexibility for telephone service providers. Further, the FCC with guidance from the U.S. Congress, is likely to be involved in assessing appropriate levels of targeted subsidies for certain classes of information superhighway consumers.

CONCLUSION:

In a recent article, Louis Brunel of Videotron contends that the company has learned valuable lessons from competing in the UK's deregulated environment.[86] Videotron, according to Brunel, will be able to compete because its has learned the importance of strategic alliances, customer satisfaction and product

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[84]Vice President Gore has indicated that the information superhighway should be based on five (5) principles: (1) the encouragement of private investment; (2) the promotion and protection of competition; (3) open access to the network; (4) avoiding the creation of a society of information "haves" and "have nots"; and (5) regulatory flexibility. See, Remarks by Vice President Al Gore at National Press Club", December 21, 1993.

[85]See, "The Information Age Isn't Just for the Elite", Business Week, January 10, 1994, at 43.

[86]See, "Learning from the Deregulated British Market", Multichannel News, p. 30A.

differentiation. As the deregulated environment becomes more dynamic, and permits greater competition between telephone, DBS, cable and broadcasters must retain a handle on the potential impact of alliances and mergers. Diversity of ownership over program outlets is important. I am also concerned that the real market risks for new interactive services is borne by shareholders, and not captive ratepayer. Therefore, as regulators, we must be careful not to hinder the ability of various industries to participate in a competitive interactive video marketplace.

To that end, I believe that regulators must balance several considerations in order to avoid causing unintended repercussions in the dynamic markets that will be created by digital technology. We must recognize the significant hurdles that exist for developing an interactive, multimedia broadband infrastructure, such as uncertain consumer demand. As global players adjust from regulated and deregulated markets, create alliances and test consumer demand, some level of regulatory parity between industries must exist to give companies the flexibility to develop technology, to take investment risks, and attract consumers. Finally, as digital technology begins to mold the new global media marketplace, it is imperative that we develop international regulatory strategies which will encourage competition and ultimately benefit the consumer.

FEDERAL COMMUNICATIONS COMMISSION
Telefax Cover Sheet

Date 6/28/94

~~CONFIDENTIAL~~

JUN 28 1994

FROM:

Name: William E. Kennard

Bureau/O: General Counsel Office

Phone: (202) 418-1700

Fax Number: (202) 632-0149

TO:

Name: Alexis Herman

Organization:

Office:

Fax Number: 456-6218

SPECIAL INSTRUCTIONS:

PLEASE CALL ME IF YOU WOULD LIKE FURTHER INFORMATION ABOUT THE COMMISSION'S DECISION.

~~CONFIDENTIAL~~

This Cover Sheet is Page 1 of 23 Pages

DETERMINED TO BE AN ADMINISTRATIVE MARKING INITIALS: DB DATE: 2/24/17

June 28, 1994

MEMORANDUM FROM THE OFFICE OF PUBLIC AFFAIRS

RE. FCC ACTION ON BROADBAND PCS AUCTION RULES

On Wednesday, June 29, the FCC will vote on the rules for the broadband Personal Communications Services (PCS) spectrum auctions to be held later this year. The rules will include provisions that will create tremendous opportunities for small businesses and minority and women-owned businesses that wish to enter this new industry at its inception.

This decision follows the Commission's June 9 adoption of a licensing plan for these new services, which are expected to include portable, anywhere, anytime wireless telephones. Attached are news reports regarding the June 9 decision that also provide some background information on PCS.

The Commission's June 29 decision on auction rules will focus on two main issues. First, the decision will set forth the design of the auctions, addressing, for example, such questions as whether to auction licenses separately or all at the same time. Second, the Commission will decide how best to implement Congress's requirement that the Commission provide opportunities for women, minorities, rural telephone companies and small businesses, referred to as "Designated Entities," to compete in this brand new business.

Finalizing the plan for designated entity participation for this service has required extensive consideration of a number of competing interests. While the Commission's rule making process is always open, the PCS Task Force has made an extra effort to reach out and seek opinions and advice from all interested individuals and organizations in this proceeding. The Commission believes that this inclusive effort will lead to a decision that will allow the new PCS services to reach their fullest potential, benefitting consumers and industry. The FCC's intention is to provide significant economic opportunities for groups that have traditionally been underrepresented in telecommunications to "get in on the ground floor" of the next generation of wireless services.

The FCC will award 2,074 broadband PCS licenses, and is considering proposals that would create powerful incentives to ensure that many of these licenses will be issued to small businesses and businesses owned by minorities and women. If adopted, such a plan for licensing PCS will represent one of the most significant enterprise programs to encourage participation by small businesses and businesses owned by minorities and women ever created by government.

The Commission will announce its decision at its June 29 meeting, which will begin at 9:30 a.m. This meeting will be carried on George Mason University's ITFS station at 2:00 p.m. that afternoon.

NTIA/OAS FAX

NTIA

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for
Communications and Information
Room 4898, HCH Bldg
Washington, D.C. 20230

O:	Alexis Herman	FAX:	456-6218
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ATE:	June 21, 1994	PAGES:	This + Page(s)

MESSAGE

The attached letter was mailed to the FCC today

FAX'D TO Sheryll 6/22/94

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications and Information
Washington, D.C. 20230

June 21, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Amendment of the Commission's Rules To Establish New Personal Communications Services
(GEN Docket No. 90-314, ET Docket No. 92-100)

Dear ~~Chairman~~ Reed Hundt:

On June 29, the Commission will hold an open meeting to adopt auction rules for broadband personal communications services (PCS). The Commission is also expected to determine how those rules can best incorporate preferences for certain "designated entities," such as small businesses and businesses owned by minorities and women. The National Telecommunications and Information Administration (NTIA), on behalf of the Clinton Administration, is writing to offer its views on that important issue and to assist the Commission in developing competitive bidding rules that would satisfy the intent of the recent competitive bidding statute and promote the public interest.

The Commission should seek to ensure that its auction rules not only assign licenses in an economically efficient manner, but also create opportunities for designated entities -- individuals and firms that historically have not had a full and fair chance to participate in telecommunications markets. Further, the Commission should make every effort to assure that such entities can build and, more importantly, sustain their businesses over a period of time. This would enable them to develop skills and expertise that can be diffused throughout their communities.

NTIA strongly supports the Commission's tentative proposal to reserve two "entrepreneur's blocks" within each Basic Trading Area (i.e., one 30 MHz allocation and one 10 MHz block) for entities whose annual revenues are below a certain threshold -- for example, $100 million. In giving the Commission authority to auction radio spectrum, Congress expressed concern that "unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries." A specific small business designation, like the one the Commission is considering, would be the most direct effective mechanism for preserving opportunities for small companies in an auction environment. The Commission also should help such firms transform their licenses into viable businesses by mitigating the "up-front" costs of obtaining those licenses by, for example, reducing the down payment that must be made and by allowing small firms to pay their winning auction bids in installments over a period of time (i.e., 5 or 10 years).

The Commission should not stop there. Congress also directed the Commission to construct its rules "to ensure that businesses owned by members of minority groups and women are not in any way excluded from the competitive bidding process." NTIA is concerned that minorities and women may not have a fair opportunity to compete in an auction environment if they are accorded only the preferences available to small businesses generally.

The justification for further accommodations for women and minorities is compelling. Businesses owned by such individuals are significantly underrepresented in most telecommunications businesses. For example, a study conducted by Symbiont, Inc., for the Commerce Department's Minority Business Development Agency in 1991 revealed that less than one percent of all telecommunications companies, including both telephone-related and mass media firms, were minority-owned. Of particular relevance to PCS, only 11 minority firms were engaged in the provision of wireless services such as cellular, specialized mobile radio, radio paging, or messaging services.

As far back as 1982, the Commission's Advisory Committee on Alternative Financing Sources for Minority Ownership in Telecommunications identified access to capital as the principal impediment to increased minority involvement in telecommunications industries. The Symbiont report, as well as studies by Timothy Bates of the Joint Center for Political and Economic Studies, Faith Ando for the U.S. Small Business Administration, and the Commission's own Small Business Advisory Committee, reached similar determinations. Bates' study depicts the obstacles faced by minority individuals, in particular. His analysis of 2,133 bank loan recipients indicated that, after controlling for education, age, work experience, and other factors, white business owners received \$1.85 in loans for every dollar of owner equity investment versus only \$1.16 for black business owners.

The Commission can and should rectify this situation by making additional provisions for small businesses owned by minorities and women. Specifically, minorities and women who are otherwise eligible to participate in auctions for the designated "entrepreneur's blocks" should be given a bidder's preference -- that is, a minority or woman would be able to purchase a desired license for a specified discount below his or her winning auction bid. The Commission has already adopted that approach in its auction rules for narrowband PCS and the Interactive Video and Data Service.

The Commission could further reduce the financial barriers faced by businesses owned by women and minorities by allowing larger firms to make equity investments in such businesses without voiding their eligibility for the "entrepreneur's blocks." However, the Commission should permit only non-majority equity interests that leave actual control in the hands of the individuals who are eligible to bid for the frequencies in question. Allowing larger investments would risk enriching individuals for serving the interests of larger firms, rather than creating a new generation of minority and women owners who can enrich the lives of their communities. For much the same reason, NTIA also supports limiting transfers of "entrepreneur's block" licenses to non-eligible firms for a specified period of time (e.g., 3-5 years) after they are first acquired at auction.

NTIA applauds the Commission's efforts to address this difficult but critical issue. Incorporating the proposals outlined above into the Commission's competitive bidding scheme will effectively balance competing interests and create meaningful opportunities for small businesses, minorities, and women to participate in PCS.

Sincerely,

Larry

Larry Irving

cc: The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan Ness

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