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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 1, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *ET Docket No. 95-183/ RM-8553 - Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; PP Docket No. 93-253 - Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*

On behalf of Pacific Bell Mobile Services, please find enclosed an original and six copies of its *"Reply Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Enclosure

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

In the Matter of	
Amendment of the Commission's Rules Regarding the 37.0 - 38.6 GHz and 38.6 - 40.0 GHz Bands	ET Docket No. 95-183 RM-8553
Implementation of Section 309 (j) of the Communications Act -- Competitive Bidding, 37.0 - 38.6 GHz and 38.6 - 40.0 GHz	PP Docket No. 93-253

REPLY COMMENTS OF PACIFIC BELL MOBILE SERVICES

I. INTRODUCTION

In the above-captioned proceeding,[1] the Commission sought comment on amendments to its rules to provide a channeling plan and licensing and technical rules for fixed point-to-point microwave operations in the 37.0-38.6 GHz ("37") band and to amend licensing and technical rules for fixed point-to-point microwave operations in the 38.6-40.0 GHz ("39 GHz") band. As the comments indicate, there is a great deal of interest in this spectrum both for backhaul to support PCS and for broadband local loops. However, there are very different views on the appropriate method of licensing and other aspects of the proposed rules. Pacific Bell Mobile Services hereby comments on selected issues raised in the comments.

[1] In the Matter of Amendment of the Commission's Rules Regarding the 37.0 - 38.6 GHz and 38.6 - 40.0 GHz Bands Implementation of Section 309 (j) of the Communications Act - Competitive Bidding, 37.0 - 38.6 GHz and 38.6 - 40.0 GHz, ET Docket No. 95-183, RM-8553, PP Docket No. 93-253, Notice of Proposed Rulemaking and Order, released December 15, 1995, ("NPRM").

II. THE PROPOSED TREATMENT OF 39 GHz LICENSES AND PENDING APPLICATIONS IS INAPPROPRIATE.

The Commission has proposed a construction requirement for 39 GHz licenses and a freeze on the processing of pending applications.[2] Many commenters oppose both. We agree.

A. The Proposed Buildout Requirement On Existing 39 GHz Licenses Should Be Rejected.

The Commission proposed that current licensees of the rectangular service areas be given eighteen months from the adoption of a Report and Order in this proceeding to file with the Commission a certification that they have constructed a minimum average of four permanently installed and operating links per hundred square kilometers of their licensed service area for each licensed channel block.[3] As many of the commenters note, this is an onerous requirement that bears no relationship to how the service is provided.[4] Altron notes that the construction requirement for one channel block would require the construction of 1,036 links.[5] Advanced Radio Telecom suggests that meeting the proposal would be beyond the current production capacity of 38 GHz manufacturers.[6]

The Commission offered an alternative buildout schedule that would vary the number of links required by market size, such as 15 permanently installed and operating two-way links in each channel block licensed in the top ten markets, a minimum of 10 permanently installed and operating two-ways links for each licensed channel block in markets 11-25 and a minimum number of 5 permanently installed and operating two-way links for each licensed channel in all other markets.[7] The Personal Communications Industry Association ("PCIA") supports this proposal[8] and we agree that it

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[2] NPRM, para. 105 and 121-124.
[3] NPRM, para. 105.
[4] See e.g., Advanced Radio Telecom Corp., p. 12-13; Bachow and Associates, p. 13.
[5] Altron Communications, p. 2.
[6] Advanced Radio Telecom, p. 12.
[7] NPRM, para. 107.
[8] PCIA, p. 8.

is much more acceptable than the four links per hundred square kilometers. However, we would prefer that those licensees that attest that they are using the spectrum for PCS backhaul should have the same construction period that applies to their PCS licenses. It would be inefficient to have different buildout requirements for components of the same service. With respect to 37 GHz licenses, the Commission agreed PCS licensees should not have a different buildout schedule from that prescribed by the PCS rules.[9] The Commission should apply the same reasoning to 39 GHz licenses. There is no reason to treat 37 and 39 GHz licensees differently.

B. The Freeze On Processing Pending 39 GHz Licenses Should Be Lifted.

The Commission is currently only processing 39 GHz applications that are not mutually exclusive. A number of commenters object to this policy. We agree. As some commenters pointed out in many cases mutual exclusivity exists because the Commission has not consistently applied its rules.[10]

In its Public Notice dated September 16, 1994, the Commission required that pending licenses be amended to be consistent with the policy contained in the notice.[11] The policy indicated that normally only one channel block would be authorized per applicant per rectangular service area. Many applicants, including Pacific Bell Mobile Services, amended their applications to reduce the number of channel blocks requested to one. However, not all applicants complied with September the policy statement. As Bachow and Associates, Inc. points out, "Nearly all of Bachow's remaining conflicts are largely attributable to the fact that the other mutually exclusive applicants have not

[9] NPRM, n. 177.
[10] See e.g., Bachow and Associates Inc., p. 5; Ameritech, p. 2.
[11] Public Notice, Mimeo No. 44787, released September 16, 1994.

complied with the Commission's direction to reduce their requests to a single channel pair per market."[12] This situation is patently unfair.

The Commission should dismiss without prejudice all pending applications that seek more than one channel pair. This will eliminate much mutual exclusivity and will facilitate the processing of applications by applicants that complied with the September policy statement.

In addition, we agree with those commenters that propose a period of time to allow those applicants that have mutually exclusive applications to resolve the mutual exclusivity. Commenters suggest a period from 3-6 months.[13] Six months would be preferable, but even three would be a vast improvement over the current situation in which there is no ability to resolve the conflicts.

One rationale given by the Commission for the freeze is that "resolving mutually exclusive applications requires greater expenditure of Commission resources than processing uncontested applications."[14] However, instituting the procedures outlined above would not require a great deal of resources and would be much fairer to the applicants who applied in good faith under the current set of rules and now are faced with completing the applications process under a different set of rules. By uniformly applying the rules, the Commission will allow applicants to resolve mutual exclusivity with a minimum of Commission resources.

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[12] Bachow and Associates, Inc., p. 5.
[13] AT & T Wireless, p. 13; Bachow and Associates, Inc., p. 6; Commco, p. 3.
[14] NPRM, p. 123.

III. LICENSING ON A BTA BASIS SHOULD BE LIMITED TO THE 37 GHz BAND.

The Commission has proposed that the 37 GHz band and the unlicensed areas of the 39 GHz band be licensed on a BTA basis.[15] In our comments we agreed.[16] However upon further reflection, we believe that only 37 GHz should be licensed on a BTA basis.

The Commission should reject Winstar's proposal to do licensing on an MTA basis.[17] An MTA is too large an area for efficient spectrum utilization for point-to-point microwave operations. If parties want an MTA service area, they can easily aggregate the BTAs.

With respect to 39 GHz, the Commission has proposed that all 39 GHz BTA channel blocks not encumbered with previously licensed rectangular service areas be auctioned at the same time as the 37 GHz band.[18] Those 39 GHz BTA bands that are encumbered will be auctioned at a later date after the Commission determines if other licensees must lose part of their service territory for failure to comply with the build out requirement.[19]

No Wire states that, in the more significant communities much of the 39 GHz band has already been licensed and in smaller markets valuing channels that are encumbered is problematic.[20] As noted above, we recommend that the Commission lift the freeze on processing pending applications, vigorously enforce its one channel pair per applicant policy and allow time for applicants to resolve any remaining mutual exclusivity. If the Commission does this, much of 39 GHz will be licensed. Remaining areas should be then licensed on a link-by-link basis because of the incompatibility of user selected rectangles and service areas based on county boundaries.

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[15] NPRM, paras. 1-2.
[16] Pacific Bell Mobile Services, p. 4.
[17] Winstar, p. 11.
[18] NPRM, para. 104.
[19] Id.
[20] No Wire, p. 6.

IV. INTERMEDIATE LINKS SHOULD NOT BE AUCTIONED.

In our comments we argued that intermediate links should not be auctioned. Many of the commenters that support the use of the links for PCS backhaul agreed.[21] However, there are a number of commenters that support auctions and many of them see the primary use of these links for broadband local loops.[22] We propose that in the 37 GHz band, the Commission set aside a number of channel pairs for PCS backhaul. AT&T Wireless and PCIA support a set -aside. AT&T Wireless recommends that 9 of the 14 paired broadband PCS channels be set-aside for exclusive application of and use by broadband PCS licensees.[23] PCIA recommends that the Commission designate six channel pairs as PCS support spectrum.[24] We recommend that nine of the sixteen channels (eliminating the unpaired collocation be set aside for PCS. This provides 5 pairs for unrestricted use and 2 pairs for link-by-link licensing. While we do not dispute that there are other valuable uses of the spectrum, the impetus for this docket was TIA's Petition for Rulemaking to provide additional support spectrum for broadband PCS.

As the Commission said in the NPRM, "We continue to believe that broadband PCS will provide a broad range of benefits and services and will be of vital importance to American businesses and consumers. Consequently, we believe it important that we provide every opportunity for broadband PCS to develop, including providing adequate spectrum to meet is infrastructure needs."[25] Thus, a set aside for PCS is consistent with the Commission's goals in this NPRM and is quite similar to the alternative proposal for licensing in lieu of auctions set forth in the NPRM. The alternative proposal would limit eligibility in 6 channel blocks to PCS licenses until 3 months after the

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[21] See e.g., PCIA, p. 6; TIA, p. 15; Harris Corporation - Farinon Division, p. 3.
[22] See e.g., Winstar, p. 14; Advanced Radio Telecom, p. 10.
[23] AT&T Wireless, p. 8.
[24] PCIA, p. 5.
[25] NPRM, para. 13.

last broadband PCS license is issued. Eligibility for 8 channel blocks would be limited to broadband PCS, cellular and SMR licenses for 3 years. Eligibility for 4 unpaired channels would be unrestricted.[26]

The major difference is that under the Commission's alternative proposal all channel pairs, even those designated for unrestricted eligibility, would not be auctioned. We propose instead that those channel pairs set aside for PCS be licensed on a BTA basis with the traditional licensing as proposed by the Commission. However, the channel pairs with unrestricted eligibility would be licensed by auction.

There is a strong legal basis for the distinction. The Commission has authority under Section 309(j)(2)(A) of the Communications Act to auction spectrum that enables subscribers to receive communications signals or to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate.[27] Internal communications such as the backhaul links sought by PCS providers do not allow subscribers to transmit directly communications signals or receive signals on the frequencies used for the backhaul links. These are truly intermediate links. The Commission was correct in its initial conclusion not to auction intermediate links.

On the other hand, the broadband local loop services discussed by some commenters will be subscriber-based services that can be sold directly to a subscriber of a local service. For example, Microwave Partners outlines the following services it intends to provide:

- high speed transmission of medical data between physician's offices and clinics and hospitals, laboratories and X-ray facilities.
- Interactive video conferencing between the primary care physician and the specialist/consultant, where all pertinent case data are instantly available, and where immediate feedback to the treating physician is possible....

[26] NPRM, para. 102.
[27] 47 USC Section 309 (j)(2)(a).

- Surveillance and security monitoring of high risk areas and of buildings and institutions with large elderly populations.

- Disaster recovery services, as well as the provision of highly specialized routine or emergency medial care for people in remote areas via multimedia concurrent and simultaneous transmissions.[28]

These are not intermediate links in an end to end service, but services themselves. Consequently, given the purported demand for spectrum for such services which would result in mutual exclusivity, channels pairs not set aside for PCS backhaul should be auctioned.

V. THERE SHOULD BE NO SHARING WITH SATELLITE SERVICES.

Motorola seeks allocation of the 37.5-38.6 GHz band to Fixed Satellite Services ("FSS").[29] We strongly object to Motorola's proposal, unless the allocation is accompanied by adoption of terrestrial interference standards as defined in Telecommunications Industry Association Bulletin 10. This will allow co-existence on a co-primary basis without giving the satellite services a "super" primary status based on interference objectives.

VI. LOCAL EXCHANGE CARRIERS ("LECs") SHOULD BE ELIGIBLE FOR SPECTRUM IN THE 37 AND 39 GHz BANDS.

Biztel argues that because many of the services in the 37 GHz and 39 GHz band represent a viable competitive alternative to the entrenched local exchange service provider, LECs should not be eligible to obtain 37 GHz or 39 GHz licenses covering any portion of their home operating territories.[30] At a minimum, Biztel recommends that any LEC with dominant market power be required to certify full compliance with the competitive checklist set forth in Section 271(c)(2)(B)

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[28] Microwave Partners, p. 4; see also, Winstar, pp. 38-39.
[29] Motorola, pp. 2-3.
[30] Biztel, p. 21.

of the Telecommunications Act of 1996 as a prior condition to its participation in an auction for any 37 GHz or 39 GHz license covering any portion of its home territory.[31]

The checklist is associated with the ability of a LEC to offer interLATA services. It has no relevance to eligibility for 37 and 39 GHz licenses. Moreover, there is no reason to restrict eligibility of the LECs.

Even Biztel recognizes that a safeguard against the warehousing of spectrum by a LEC is applying the same construction requirement on the LEC that applies to other 37 GHz and 39 GHz licensees.[32] We have no objection to LECs being subject to the same construction requirement. Warehousing of spectrum by any party must be avoided.

If a LEC has a need for the spectrum, they should be permitted to bid for it. Equal application of the construction requirement is the only safeguard needed to prevent the warehousing that Biztel fears.

VII. CONCLUSION.

The demand for spectrum in the 37 GHz and 39 GHz bands is apparent from the comments. The Commission should move quickly to make this spectrum available. In the 39 GHz band this can be accomplished by lifting the freeze on processing the applications, vigorously applying the one channel pair per applicant requirement, and allowing six months for the applicants to resolve issues of mutual exclusivity. Remaining unlicensed spectrum in the 39 GHz band should be licensed on a link by link basis.

In the 37 GHz band, the Commission should set aside nine paired channels for PCS backhaul to be licensed on a BTA basis as outlined in the alternative proposal. Five paired channels

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[31] Id., at p. 22.
[32] Id.

should be auctioned. The remaining two channel pairs should be licensed on a link-by-link basis. This division is consistent with the Commission's auction authority. Moreover, this structure will facilitate the availability of low cost PCS and will encourage other innovative services.

Respectfully submitted,

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