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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

October 25, 1994

VIA TELECOPIER

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Dear Messrs. Epstein and Barker:

This is in response to your letter dated ~~october~~ 20, 1994 regarding the FCC's Broadband PCS auction beginning on December 5, 1994.

After explaining the background of your inquiry, your **first** question asks whether the Commission's rules permit multiple applications by companies A, B, and C, **individually**, and also by ABCCo, an entity jointly owned by A, B, and C.

Currently, the Commission's **rules permit** the filing of multiple applications, as described. The FCC, however, does not intend to make **determinations** in advance of the auction with respect to whether the ABCCo bidding **arrangement** complies with applicable antitrust laws. Of course, such **arrangements** are subject to review by the Department of Justice. In addition, the FCC will thoroughly review the long **form** applications of all winning bidders to **determine** whether the grant of such applications would serve the public interest. This review will include an assessment of whether the grant of the applications would adversely **affect** competition.

Your second question asks whether there is any limitation on the kinds or scope of communications **or** information which can be shared among A, B, C, and ABCCo. Any discussions **between** applicants who have applied for licenses in any of the same markets would be **subject to the FCC's** auction rules and all applicable antitrust laws. **With** respect to the **FCC's auction rules**, this would mean that "cooperating, collaborating, discussing or disclosing in any **manner** the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other bidders until **after** the high bidder makes the required down payment" would not be allowed among A, B, C, or among A, B, C, and ABCCo, the consortium they have formed, "unless such **bidders** are members of a **bidding** consortium or other joint bidding **arrangement identified** on the bidder's short-form application...." See Section 1.2105 (c)(1) of the rules; **Paragraph 59** of the **Fourth Memorandum Opinion and Order** in Docket No. 93-253, released **October 19, 1994**.

With respect to the **antitrust** laws, the Commission indicated that it "would expect" that discussions with respect to bid **prices between any** applicants who **have** applied for licenses in the same **geographic** market would be prohibited **regardless** of the Commission's rules. See Footnote 125 **Of** the Fourth Memorandum Opinion and Order in Docket 93-253. The Commission also has indicated **that** agreements between two or more actual or potential competitors to submit collusive, non-competitive or **rigged** bids are **per se** violations of Section One of the Sherman Act. See Footnote 125 of the Fourth Memorandum Opinion and Order. Similarly, agreements between actual or potential competitors to divide or allocate **territories** horizontally in order to **minimize** competition are **per se** violations of the Sherman Act, and such agreements are anticompetitive **regardless** of whether the parties split a market in which they both do business or whether they merely **reserve** one market for one and another for the other. See Footnote 125 of the Fourth Memorandum Opinion and Order,

Your third question asks whether there are any limitations on changing the ownership of ABCCo during the period **from** October 28 through the **course** of the auction. As a part of this question, you asked whether there will be any transfer of **control** limitations **affecting** ABCCo, **given** that A, B, and C will each have filed **separately**, as well as jointly through ABCCo.

There are FCC limitations on changes in ownership of **ABCCo**, if A, B, or C have applied for any of the same licenses and therefore might have bid against **ABCCo**. There are similar **limitations** on **transfers** of control. See Paragraph 52 of the **Second** Memorandum Opinion and Order in Docket No. 93-253, released August 15, **1994**; Section 1.2105 (c) (2) of the rules, as clarified by an **erratum** issued **October** 19, 1994; and **Paragraphs** 56, 57, and 58 of the Fourth Memorandum Opinion and Order.

Your **fourth** question asks whether A, B, and C would be entitled to **get** their individual **upfront** payments back if A, B, and C **each** choose not to bid individually, but bid only through **ABCCo**., which will submit its own **upfront** payment. If A, B, and C choose not to bid individually, their **upfront payments** will be returned, assuming **there are** no penalties owed resulting **from** bid **withdrawal** or default. See Paragraph 27 of the **Second Memorandum Opinion and Order** and Section 1.2106 (d) and (e).

I hope this **explanation** helps **clarify** your understanding of the Commission's bidding procedures. Please contact me if you have additional questions.

Sincerely,

William E. Kennard  
General Counsel