

The following attachment(s) have been electronically scanned for your convenience in reviewing applicant information. However, in providing this service, the Commission does not represent that this information is 100% accurate. Due to recognition problems in scanning, applications filed manually involve potential inaccuracies. If you seek exact applicant information, the original attachments are available for review in the FCC Public Reference Room.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

October 25, 1994

VIA TELECOPIER

Mr. Alan F. Ciamporcero
Executive Director, Federal Relations
Pacific Telesis
1275 Pennsylvania Avenue, N.W.
Suite 400
Washington D.C. 20004

Dear Mr. Ciamporcero:

This is in response to your letter dated ~~october~~ 11, 1994 regarding the FCC's Broadband PCS auction beginning on December 5, 1994.

Your first question asks if people other ~~than your authorized~~ bidding representatives may enter the bidding room to assist your bidding ~~representatives~~ in placing bids. ~~The~~ FCC has determined that only the three ~~authorized~~ bidding ~~representatives~~ identified on an applicant's Form 175 will be allowed into bidding ~~rooms~~ during ~~the~~ auction. This policy is designed to encourage bidders to review all licenses and conclude all bidding decisions prior to entering the bidding rooms. This will ~~ensure that~~ bids are ~~placed~~ promptly and that all bidders will have ~~sufficient~~ time to place their bids. Bidders, their agents and other representatives can ~~confer~~ anywhere else on ~~the premises~~ prior to placing their bids.

Your second question asks ~~whether~~ bidders can file multiple applications. Wherein, one is a joint application that would disclose any ~~partnerships~~ or joint ventures regarding bidding and the second is an individual application ~~that~~ would not disclose any joint bidding arrangements. You ~~state that~~ you would only pursue ~~the~~ second application if the first is rejected by ~~the~~ FCC ~~based on~~ competitiveness ~~concerns~~.

The FCC ~~does not intend~~ to make ~~determinations~~ ~~with~~ respect to the competitiveness of particular bidding ~~arrangements disclosed on~~ an applicant's Form 175 ~~application~~ in advance of the auction. 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. Currently, ~~applicants~~ are not prohibited ~~from being~~ parties to more than one application. However, any discussions between applicants ~~who~~ have ~~applied~~ for licenses in any of the same markets would be subject to the FCC's auction rules. 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 **between** PacBell and any consortium in which **PacBell** is a party. "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.

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

Sincerely,

William E. Kennard
General Counsel