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.
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 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