

DISSENTING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: *Additional Information Regarding Broadband PCS Spectrum
Included in the Auction Scheduled for March 23, 1999*

In this decision, the Commission decides to deny relief to a small Hawaiian company that wanted to purchase C-Block PCS licenses from a bankrupt licensee. I dissent from this action in protest of the process that led to this decision.

Gloria Borland Hawaii PCS, Inc., ("Borland") allegedly acquired a partial equity interest in the Honolulu and Hilo, HI, BTA C-Block PCS licenses held by licensee DCR PCS, Inc./Pocket Communications, Inc. ("DCR/Pocket"). After DCR/Pocket filed for bankruptcy protection, Borland entered negotiations to purchase the remaining equity share of these two licenses. Contemporaneously, Borland began discussions with Commission staff on the process necessary to obtain these licenses.

Although the facts relating to discussions between Borland and FCC staff are in dispute, it became clear by late Fall 1998 that Borland's proposal to purchase the remaining interest in the Hawaii licenses would not be approved. This was in spite of the fact that, according to Borland, FCC staff had promised to support the proposal many months earlier.

Borland then attempted to have the matter addressed by the full Commission. The need for rapid resolution of this dispute between Borland and the agency's staff was obvious to all, because a re-auction of many C-Block PCS licenses, including the Hawaii licenses, was scheduled to begin March 23, 1999. Indeed, it would have been a hollow victory for Borland to prevail on the merits if the Hawaii licenses already were re-auctioned to another party.

Unfortunately, Borland could not get its claims addressed by the full Commission in a timely manner. Several members of Congress justifiably became alarmed when there was no resolution of the dispute even a few weeks before the scheduled re-auction. The Commission simply did not act on the matter. Until today. March 23rd. The day the re-auction begins.

For this reason, I respectfully dissent from today's decision. I would have preferred to spend some time -- many weeks ago -- discussing the substance of Borland's claim with my colleagues. Instead, we were presented a draft decision this morning, mere minutes before the re-auction began, and we probably will not issue the decision until sometime tomorrow, well after the re-auction is underway.

No person or company, large or small, should receive this sort of treatment from a government agency, but I fear that bureaucratic delays harm the small ones most. Here, a small company presented a colorable claim that demanded timely FCC action. I am well aware of the tremendous workload and pressures under which this Commission's dedicated staff operate. I only hope that, in the future, and in spite of these burdens, we can afford all entities more responsive decision making.

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