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June 22, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

HAND DELIVER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: ET Docket No. 93-266
PP Docket No. 93-253
GEN Docket No. 90-217
Ex Parte Presentation

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's Rules, this letter is to advise you that Douglas G. Smith, President of Omnipoint Communications, Inc., Ronald L. Plesser of this office, and I met today with Peter A. Tenhula of the Office of General Counsel. At the meeting, we discussed the following issues: (1) the definition and treatment of "small business" for purposes of designated entity status in the competitive bidding process for 2 GHz PCS; (2) arguments in favor of an "entrepreneurs band"; (3) the sequencing of the broadband PCS auctions; (4) the going-forward treatment of the pioneer's preference program, including alternatives such as bidding discounts, credits, and royalty payments for prospective pioneer's preference awardees. We left with Mr. Tenhula copies of three documents: (1) The attached "Pioneer's Program Summary"; (2) *Report and Order*, GEN Docket No. 90-217, 6 FCC Rcd. 3488 (1991); and (3) *Memorandum Opinion and Order*, GEN Docket No. 90-217, 7 FCC Rcd. 1808 (1992). We did *not* discuss issues related to the merits of Omnipoint's pioneer's preference award or the merits of any other PCS pioneer's preference application or any restricted proceeding.

In accordance with the Commission's rules, I hereby submit one original and one copy of this letter for each of the above-referenced dockets.

Sincerely,

Mark J. Tauber

cc: Peter A. Tenhula

Pioneer's Program Summary

- The U.S. Treasury Will Raise More Money with the PCS Auctions Because of the Pioneers Preference Program.

- The Pioneers Preference Program Increased the Value of PCS to the Government Because it Incented Over 200 Experimental License Requests for PCS and Unprecedented Innovation, Compared to Only 5 Experimental Requests in the 15 months Before the Pioneers Program.

- The Pioneers Preference Program Expedited the Rule Making on PCS By Years: PCS Took Less Than 4 years, Cellular Took 14 Years.

- Every Year Which PCS was Expedited Increases Total Future GNP by Billions of Dollars.

- Only 1/10th of 1% of the Licenses were Awarded to the PCS Pioneers.

- Only 3/10th of 1% of the PCS RF Spectrum was Awarded to the PCS Pioneers.

- Only 5% of the "Pops" x RF Spectrum was Awarded to the PCS Pioneers.

- 6 Rounds of Filings and Comments were Held in the Broadband PCS Pioneers Program. Plus Peer Review of Hundreds of Pages of Experimental Reports.

- A special FCC NPRM Was Undertaken to Re-evaluate the Pioneers Program After the Auction Legislation.

- 84% of the 46 Comments on the NPRM Supported the Pioneers Program.

- Only 4 Giant Telecom Companies - Which Received Licenses For Free - Opposed the FCC.

- No Party Sought Reconsideration of the FCC's Final Decision to Treat the PCS Pioneers Under the Original Rules, i.e. Without Payment.

- In Total, Over a Period of Years, Thousands of Pages of Comments and Replies Have Been Submitted Regarding the PCS Pioneers Preference Decision. Congress was Integrally Involved and Kept Up To Date.

- The FCC Unanimously Affirmed and Reaffirmed Their PCS Pioneers Decision Three Times In Light of a Full Record.

Omnipoint
CORPORATION

ARGUMENTS FOR CHARGING PIONEERS ARE BASED ON FALSE ASSUMPTIONS

- Auctions did not change any competitive pricing issues of Pioneers vs. Non-Pioneers.

- Non-Pioneers would have bought licenses from lottery winners.
  - 60,000 lottery applications in 2 days for 5 KiloHz licenses at 220 MHz
  - Southwestern Bell, for example, bought 20 cellular licenses awarded by lottery

- There is no "unfair" or "insuperable" competitive disadvantage to Non-Pioneers.
  - Non-Pioneers set the price of their licenses through bidding
  - No one is telling Non-Pioneers how much to pay, thus the market will establish competitive prices for PCS licenses
  - Long distance companies and those with infrastructure assets have far greater "cost advantages" than Pioneers
  - With 2,500 licenses, many may go "free" if no bid

WHY DISCOUNTS WILL NOT WORK FOR PIONEERS IN THE FUTURE

A "Discount" Is Not What Induced The Risks, Investments, and the Disclosure of Proprietary Ideas

The Award Is A "Guarantee to a License ... Not Subject to Competing Applications"

A "Discount" Does Not Guarantee A License To A Pioneer

A "Discount" Does Not Reflect The Differing Value Put On A License For Reasons Other Than Innovation or Even Offering the Pioneer's Service, For Example Long Distance Co.'s Can Use Their Licenses For Bypass

How Does A Small Pioneer Raise Money to Bid Against Giants With A Discount

Installment Payments Still Force the Pioneer to Value the License For Purposes Other Than Its Business

Small Business Pioneer's Would Have No Way to Raise Money Before an Auction Because They Would Have No Idea What the License Would Cost or Whether They Would Actually End Up With a License

POSSIBLE SOLUTIONS

Any Charging Mechanism Should Be Related to the Pioneer's Business and Use of the Spectrum Not to What Others Would Use the Spectrum For

Royalties or Similar Schemes Are Critical In Order To Tie Payments to the Pioneer's Success Rather Than the Speculation of Others