

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Review of Pioneer's)
Preference Rules)

ET Docket No. 93-266

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COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, files these comments in response to the Second Report and Order and Further Notice of Proposed Rulemaking ("FNPRM") released on March 1, 1995 in the above-referenced proceeding.

Omnipoint urges the Commission to adopt the following payment measures for small business pioneers:

1. payment terms that are more attractive than the terms offered to designated entities or entrepreneur-band applicants, so that small business pioneers have an incentive to take on the risks of innovation; *and*
2. the use of an installment plan with principal and accrued-interest obligations deferred until the end of the five-year period.

DISCUSSION

Omnipoint brings considerable experience to the issues raised in the FNPRM, as a small business¹ in the Commission's pioneer's preference program, its status as a pioneer's preference awardee, and as a participant in all of the Congressional proceedings that lead to the GATT legislation.² From the beginning of the pioneer's process in PCS through the final days before

¹ For purposes of these comments, the term "small business" is used as defined in the PCS auction regulations, 47 C.F.R. § 24.720(b).

² See 47 U.S.C. § 309(j)(13)(E) (Omnipoint was one of the three pending applicants referenced in the statute); Statement and Testimony of Douglas G. Smith, President, Omnipoint Communications, Inc., before the Committee on Commerce, Science, and Transportation, U.S. Senate (November 14, 1994).

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the passage of GATT, Omnipoint has actively represented the small business viewpoint in PCS and in the pioneer's program. The FNPRM raises issues of central importance to small business entrepreneurs, and so Omnipoint urges the Commission to adopt a payment plan, as discussed below, that keeps alive small business opportunities in the pioneer's program.

A. Payment Terms For Pioneer's Preference Small Businesses Should Be More Attractive Than Those Offered To Designated Entity Small Businesses.

Small businesses, whether they are licensed through a designated entity auction or the pioneer's preference program, will face extreme challenges in raising capital for the license payments. In addition, non-pioneer small businesses will compete directly in the service market with small business pioneers. For example, Omnipoint fully expects that its PCS system in the New York MTA will compete with the various Block C and F entrepreneur-band small business licensees. Therefore, it is patently unfair for the FCC to require a small business pioneer to pay a relatively greater amount than paid by its non-pioneer small business competitors. So long as the Commission uses discounts, interest rates, deferred payment schemes, tax credits or any other mechanism to encourage small businesses, it should offer better terms to small businesses that take on the great, and additional, risks of being a pioneer.

Subjecting a small business pioneer to higher interest rates and lower discounts is contrary to the entire pioneer's program.³ As the Commission has often expressed, "the pioneer's preference rules were promulgated to create *a significant incentive* for innovators to submit proposals for new services and technologies."⁴ However, if the small business entrepreneur is financially better off staying out of the pioneer's process and obtaining licenses as a designated entity, the program works as a *disincentive* for small businesses to innovate and publicly disclose new technologies. Further, it would be a perversion of the pioneer's program to impose higher

³ This disincentive is also contrary to Congress' mandate to encourage innovation in new technologies. 47 U.S.C. § 157(a) ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public."); see, also, id. at § 309(j)(6)(G).

⁴ FNPRM at ¶ 3 (emphasis added).

payments and interest rates on the pioneer awardee while small businesses that failed to secure a pioneer's preference could acquire competitive licenses at lower costs.⁵ For example, the Commission has established rules for entrepreneur-band PCS licensees that ensure that some small businesses will pay only the ten-year T-Bond rate, interest-only payments for six years, and receive 25% bid discounts.⁶ It would be wholly unfair to force a small business pioneer to pay more under the pioneer's program and forego the incentives offered to other small businesses.⁷

In light of the fact that the small business pioneer will have made significant contributions, at considerable expense, to the development of a service, it should be guaranteed *lower* payments than all other designated entity licensees.⁸ Indeed, a small business pioneer may well require lower interest rates and deferred installment payment terms because, unlike its designated entity counterparts, it may be forced, as a result of GATT, to pay a price for its license that is set by giant telecom conglomerates with huge financial resources.⁹ In contrast, the Commission has set-aside entrepreneur-band licenses, at least in broadband PCS, to ensure that entrepreneurs do not have to bid against the huge telecom companies in order to acquire

⁵ The statute itself is silent on the permissible rate of interest to be charged.

⁶ These terms would apply to minority/women-controlled small businesses. Other small businesses would pay interest at 2.5% above the ten year T-Bond rate, interest-only for the first two years of the license, and 10% bid discounts. All small businesses would be entitled to installment payments stretched out over the entire ten year term of the license. 47 C.F.R. §§ 24.711 & 24.712.

⁷ While the Commission's rules do not preclude pioneers from eligibility as a designated entity, the spectrum cap limits will very often prevent the pioneer-licensee from capitalizing on the benefits offered to similarly-situated small businesses in its pioneer license area.

⁸ Omnipoint recognizes that GATT leaves the Commission with little flexibility to fashion alternatives to the percentage discount on the principal owed by the pioneer. While Omnipoint finds it unfair that other small businesses may be entitled to greater discounts, we submit that the Commission can remedy this unfairness. Such remedial steps include lower interest rates and deferred installment payment plans, as described below, for the small business pioneer.

⁹ 47 U.S.C. § 309(j)(13)(B)(i) (pioneer payment is based on auction bids of licenses of similar scope, size, and technical characteristics, not on licenses in the same service won by entities of comparable financial resources as the pioneer).

licenses.¹⁰ Since the pioneer's program, and the GATT payment mechanism, may not shield a small business in the same way that the entrepreneur's band does, a reduction in other terms is necessary to offset the enormous license fees it will face.

B. Pioneer's Preference Small Businesses Should Be Entitled to A Five-Year Deferred Installment Payment Plan.

Omnipoint recommends that the Commission adopt a five-year deferred installment payment mechanism for the small business pioneer. This plan would work in a similar manner as installment plans commonly offered as a financing instrument (for example, a zero coupon bond) to provide entrepreneurs with the time needed to start earning revenues and establish a market presence before debt payments impact on available cash.¹¹ Under this plan, the pioneer faces a single payment obligation at the end of the five-year term, comprising both principal and accrued interest.

A deferred installment payment plan would allow the pioneer to focus resources on the cost of build-out and further research and development early in its license term. At the time of licensing, the pioneer is likely to have considerable existing debt from the costs of research and development related to the pioneer's program, and so its resources will already be strained. To pay for build-out costs, additional capital will be needed and, for the small business, this will require new infusions of outside capital. However, outside capital investors will be extremely difficult to obtain if the pioneer's cash-flow is also drained by license installment payments at a time in the license term when the revenues from the service are not yet established.

¹⁰ See 47 C.F.R. § 24.709(a), *et seq.* (Commission limits eligibility on broadband PCS license blocks C and F to exclude entities with large total assets or gross revenues.)

¹¹ The following is an example of how a deferred installment payment plan for pioneers would work: Pioneer has a license fee obligation of \$400 million, at an interest rate of 5%; in year 1, the interest owed is \$20 million, which is added to the \$400 million principal owed; in years 2 through 4, the interest is also rolled into the principal; in year 5 the Pioneer owes a payment equal to all outstanding principal and interest.

A deferred installment payment plan would also allow the licensee to get on with what is most important to the Commission: (1) implementing new services and technologies quickly and (2) ensuring stable service providers for the public. Without the massive drain on cash flow in the first years of the license, the licensee could concentrate its resources on rapid build-out and competition with the existing mobile service monopolies. Deferring the payment until five years into the license term would allow a small business pioneer to establish revenue-generating business which it could use to pay the license costs and/or as additional collateral for financing. To the extent that the Commission is also concerned about license revenues for the government, a pioneer licensee is much less likely to default on its license fee payments in the fifth year of its license, after significant build-out and service have begun, than at the very beginning of its license term.

Finally, a deferred installment payment plan is consistent with the statutory payment directives. Section 309(j)(13)(C) states that "[t]he Commission shall require such person [the pioneer] to pay the sum required by subparagraph (B) in a lump sum or in installment payments." We note that the GATT statute does not require that the "lump sum" payment be made at the beginning of the license term, nor does the statute preclude the deferral of installment obligations until the end of the five-year payment term. Both the auction statute generally¹² and the specific GATT statutory amendments for pioneers, provide the Commission with considerable latitude to devise installment mechanisms for small businesses.

CONCLUSION

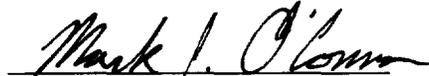
The Commission should implement the GATT legislation so that the pioneer's preference program continues as a source of small business opportunity in telecommunications. Omnipoint

¹² The auction statute evinces a strong Congressional preference for small business participation in services generally subject to license allocation through auction. See 47 U.S.C. §§ 309(j)(4)(D) & (C)(ii), and, 309(j)(12)(D)(iv).

submits that the measures detailed above can safeguard this small business opportunity,
consistent with the provisions of GATT.

Respectfully submitted,

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