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JUL 11 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 11, 1995

HAND DELIVER

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

Re: PP Docket No. 93-253; GEN Dkt. No. 90-314; GEN Dkt. No. 93-252
Ex Parte Presentation

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's Rules, this letter is to advise you that Mark Tauber, of Piper & Marbury L.L.P., and I met today with Peter Tenhula of the Commission's General Counsel's Office. At the meeting, we discussed Omnipoint's position on the issues raised by the Further Notice of Proposed Rulemaking, released June 23, 1995, as articulated in Omnipoint's comments filed in the above-referenced dockets on July 7, 1995. A two-page sheet (two copies attached hereto), largely summarizing Omnipoint's comments, was provided to Mr. Tenhula.

As an alternative to the "49% equity option" available to all entrepreneurs, we proposed in the meeting that the Commission permit all applicants to qualify only under the "25% equity option," but allow minority- and women-owned applicants to offer options of an additional 24% to large non-qualifying investors. The Commission could then proceed with the auction and concurrently make the showing necessary to meet the "strict scrutiny" standard; once that showing has been made, the 24% option could be exercised. In this way, existing deals, which seem to be the Commission's primary concern, would not be materially jeopardized, and yet this proposal would not encourage the use of "fronts." We also generally supported the idea of requiring "49% equity

option" auction winners to conform to the "25% equity option" within a set period of time.

In addition, we questioned whether existing deals would really be threatened by an elimination of the 49% equity option, and whether the record evidence supports that existing deals were dependent on the 49% equity option.

Finally, we stated that Omnipoint is strongly opposed to the 49% equity option as proposed, and that it is considering court action should the Commission adopt the proposed rule.

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. O'Connor
Counsel for Omnipoint Corporation

cc: Peter Tenhula

(July 11, 1995 Ex Parte Presentation -- PP Dkt. No. 93-253;
GEN Dkt. No. 90-314; GEN Dkt. No. 93-252.)

OMNIPOINT CORPORATION

I. The 49% Option Will Encourage The Use Of Fronts Both Pre- and Post-Auction

-- The 49% option will undermine the very purposes of the entire entrepreneur's band. The band was meant for minorities, women and small businesses, but this rule change only helps large companies.

-- A single 49% partner can push the applicant to the very line of de facto control. Rules should deter applicants from going to the very lower limit of control.

-- 25% equity limit allows the applicant to offset investors' demands for control, and keeps the band more independent.

-- The Commission previously determined that it would not be in the public interest to make the 49% equity exception available to non-minority and male-owned firms.

-- 49% Equity Exception was only intended to offset gender and racial discrimination.

-- With the 49% exception in place, fronts can be formed at any time. The fact that the auction rules will be implemented just days before the short-form date does not prevent a large company from investing in the applicant during or after the auctions close.

II. Extending the 49% Equity Exception Undermines the Existing Deals Formed Under the 25% Equity Exception.

-- Investors in 25% equity deals will want "out" in order to obtain an additional 24% equity. However, the applicant with investors under the 25% option cannot feasibly transform into a 49% equity structure.

III. The Commission Should Either Justify the 49% Equity Exception Under Strict Scrutiny or Eliminate It.

-- The proposed rules are only superficially race-neutral. The FNPRM establishes that the rules were intended to favor minority applicants.

-- If the Commission is committed to minority preferences, it should make the required strict scrutiny showing and retain the existing rules. If not, it should make the necessary changes to the rules so that all parties are treated equally.

IV. The Commission Does Not Need to Expand the 49% Option

-- 49% equity deals that have been struck can be re-negotiated. If the Commission goes to a 25% exception for all, parties with existing deals can renegotiate.

-- Existing minority deals are put in jeopardy as investors seek new deals. In effect, the extension to all applicants negates the advantage that minorities had to counteract the access to capital problems caused by racism, sexism.

V. The Commission Should Set the Short-Form Filing Date To Permit Enough Time For Applicants To Absorb Any Rule Changes and Avoid Legal Challenges.

-- With no final rules expected until mid-July, the July 28 short-form date is patently unreasonable.

-- Some parties will have had one year to negotiate for the 49% option, partnering with many of the investors interested in pre-auction strategies. To allow other applicant only a few days, after other parties have had one year, is grossly unequal treatment.

-- The fact that these two groups are divided on the basis of race and/or gender, and that the Commission intends this result, makes the plan constitutionally suspect.

(July 11, 1995 Ex Parte Presentation -- PP Dkt. No. 93-253;
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