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

In the Matter of	)	
	)	
Broadband Personal Communications	)	PP Docket No. 93-253
Services C Block Auction and	)	ET Docket No. 92-100
Grant of A and B Block Licenses	)	

To: The Commission

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REPLY TO OPPOSITION TO EMERGENCY MOTION

The Rural Ad Hoc PCS Consortium (the "Consortium"), by its attorneys, and pursuant to Section 1.45(b) of the Commission's Rules, 47 C.F.R. § 1.45(b), respectfully submits this reply to the oppositions and other pleadings filed in response to the Emergency Motion to Reschedule C Block Auction or Review and Condition Grant of A and B Block Licenses (the "Motion") filed by the Consortium on August 2, 1995.

I. BACKGROUND

On July 27, 1995, the Commission postponed the short-form application (i.e., FCC Form 175) filing date for the auction of the 493 Basic Trading Area ("BTA") C Block PCS licenses in response to a stay, issued by the U.S. Court of Appeals for the District of Columbia Circuit, of one of the Commission's PCS rules.[1] The Stay Order stayed the effectiveness of "[t]hose portions of the Implementation of Section 309(j) of the Communications Act -- Competitive

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[1] See Public Notice, released July 27, 1995 (citing Omnipoint Corporation v. FCC, No. 95-1374 (D.C. Cir. 1995)(Order Granting Motion for Stay, July 27, 1995), hereinafter the "Stay Order").

Bidding, Sixth Report and Order, 60 Fed. Reg. 37786 (July 21, 1995) [the "Sixth Report and Order"], allowing all applicants to utilize the 49 percent equity exception," pending judicial review. See Stay Order at 1.

In the Motion, the Consortium points out that the Stay Order did not specifically require the Commission to postpone the auction, but rather only stayed the effectiveness of a portion of one of several rules adopted in the Sixth Report and Order. See Motion at 2. Specifically, the Court of Appeals stayed the effectiveness of the rule by which the Commission allowed all C Block applicants to use the "Control Group Minimum 50.1 Percent Equity Option," whereas before the rule change only women-owned or minority-owned applicants were eligible to use that ownership structure option. See Sixth Report and Order at ¶ 16 (codified at 47 C.F.R. § 24.709(b)(6)). Therefore, so long as the eligibility of bidders which avail themselves of the Section 24.709(b)(6) "Control Group Minimum 50.1 Percent Equity Option," and the results of the auction for any C Block license on which such an applicant is the highest bidder, is conditioned on the outcome of the judicial review of that rule, the Commission would be in compliance with the Stay Order. See Motion at 3.

Accordingly, the Consortium urged the Commission to promptly reschedule the short-form application filing date and begin the C Block auction on the originally scheduled date of August 29, 1995,[2] or as soon as possible thereafter, with the eligibility of bidders and results of the auction conditioned on the judicial review of the Section 24.709(b)(6) "Control Group Minimum 50.1 Percent Equity Option." Id. In support of that position, the Consortium

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[2] The Commission has since postponed the August 29, 1995 auction date. See Public Notice (released August 9, 1995).

demonstrated that the prompt rescheduling of the auction would serve the public interest by speeding the introduction of new service and competition for consumers, and would not adversely affect any party or the outcome of the auctions. Id. at 3-4. Alternatively, in the event that the Commission chose not to reschedule the auction, the Consortium requested that the Commission reconsider the grant of the PCS licenses for the A and B Blocks on its own motion, and condition such grants so that the grant dates for those licenses coincides with the date of licensing the first C Block license. Id. at 5.

Only Cook Inlet Region, Inc. ("Cook Inlet") filed in opposition to the prompt rescheduling the C Block short-form application filing date, while the National Telephone Cooperative Association ("NTCA") filed in support of prompt rescheduling.[3] American Portable Telecommunications, Inc. ("APT") requested that the Commission dismiss the Motion insofar as it relates to A and B Block licensing.[4]

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[3] See Opposition to Emergency Motion to Reschedule C Block Auction, filed August 4, 1995 by Cook Inlet Region, Inc. ("Opposition"); and Comments of the National Telephone Cooperative Association to Emergency Motion to Reschedule C Block Auctions or Review and Condition Grant of A and B Block Licenses, filed August 10, 1995 ("NTCA Comments") Both the Opposition and the NTCA Comments were silent regarding the Consortium's request that the Commission review the grant of the A and B Block licenses on its own motion.

[4] See Response of American Portable Telecommunications, Inc., filed August 14, 1995 ("APT Response"). APT raises a number of procedural arguments that largely would be relevant only to an application for review filed by the Consortium pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115. See APT Response at 2-4. However, since the Motion only suggests that the Commission review the grant of the A and B Block licenses on its own motion, pursuant to Section 1.117 of the Commission's Rules, 47 C.F.R. § 1.117, see Motion at 5, such procedural arguments are misplaced.

II. ARGUMENT

Cook Inlet claims that rescheduling the short-form application filing date and going forward with the C Block auction would "risk further administrative and judicial delay" of the C Block licensing, violate the Stay Order and "expose the Commission to the ire of the Court." See Opposition at 1-2. Cook Inlet also asserts that "the Consortium fails to explain how its proposal would be consistent with the terms of the Stay Order." Id. at 2.

Contrary to Cook Inlet's claims, the Motion clearly sets forth that the Stay Order only stays the effectiveness of Section 24.709(b)(6), the "Control Group Minimum 50.1 Percent Equity Option" -- not the application filing deadline or the auction itself -- and that the auction may proceed without violating the stay order by conditioning the results of the auction. See Motion at 3. If the Court of Appeals wished to stay the application deadline or the auction, as requested by Omnipoint, see Motion at n.4, it would have done so, as it did in Telephone Electronics Corporation v. FCC, No. 95-1015 (D.C. Cir. 1995)("TEC"). In its Order in TEC, the Court of Appeals stayed the Commission's actions "establishing minority and gender preferences, *the C block auction employing those preferences, and the application process for that auction*," whereas in the Stay Order specifically applied only to "[t]hose portions of the Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Sixth Report and Order, 60 Fed. Reg. 37786 (July 21, 1995) allowing all applicants to utilize the 49 percent equity exception."[5] Clearly, based on its prior experiences in TEC, the Court of Appeals was cognizant of the mechanics of the application filing and auction process, and would have imposed a more specific stay of the filing deadline and auction if warranted.

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[5] Compare TEC Order (D.C. Cir., March 15, 1995)(emphasis added); Stay Order at 1.

III. CONCLUSION

WHEREFORE, the above premises being considered, the Consortium respectfully requests that the emergency motion to reschedule the PCS C Block short-form application filing date be granted, and that the C Block auction be held as promptly as possible.

Respectfully submitted,

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August 21, 1995

CERTIFICATE OF SERVICE

I, Laura Ann Campbell, hereby certify that on this 21st day of August, 1995, copies of the foregoing "REPLY TO OPPOSITION TO EMERGENCY MOTION" have been served by hand delivery (indicated with an *) or first class mail, postage prepaid, upon the following:

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