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MELODIE A. VIRTUE
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DUPLICATE

April 15, 1996

OUR FILE NO.
1094-101-63

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RE: WT Docket No. 96-59
GN Docket No. 90-314

Dear Mr. Caton:

Transmitted herewith, on behalf of Gulfstream Communications, Inc. are an original and nine copies of its **COMMENTS** in the above-referenced dockets.

Should further information be necessary, kindly communicate directly with this office.

Very truly yours,

Melodie A. Virtue

Melodie A. Virtue

Enclosures (9)
MAV/blr

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	)	WT Docket No. 96-59
	)	
Amendment of the Commission's Cellular PCS Cross-Ownership Rules	)	GN Docket No. 90-314

To: The Commission

COMMENTS OF
GULFSTREAM COMMUNICATIONS, INC.

Respectfully submitted,

GULFSTREAM COMMUNICATIONS, INC.

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April 15, 1996

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Summary

Gulfstream Communications, Inc., urges the Commission to hold the Block D, E, and F auctions as soon as possible. The auctions should be held simultaneously so that bidders can aggregate spectrum. Small business preferences need to be available on all three remaining 10 MHz blocks of PCS spectrum to encourage the widest possible variety of applicants to participate.

If small businesses are going to be successful in this last PCS auction, the Commission must exclude existing CMRS licensees, particularly holders of PCS Blocks A, B, and C licenses, from bidding on Blocks D, E, and F. The economic justification for those existing licensees to obtain the remaining 10 MHz blocks will be strong unless the Commission prevents it.

- If allowed, these licensees can eliminate potential competitors seeking 10 MHz licenses by outbidding them in the auctions.

- Existing licensees can easily warehouse the 10 MHz of spectrum within their existing systems. Hence, the statutory objective to foster efficient and intensive use of the spectrum will be undermined.

- Existing licensees of CMRS spectrum also have economic advantages in the auction not available to true small business entrepreneurs. Existing licensees have significant advantages in obtaining favorable terms from manufacturers. They can cross subsidize their existing operations to support the 10 MHz operation. These economies of scale work to force the small entrepreneur out of the bidding.

Consequently, the Commission needs to limit CMRS licensees from bidding on 10 MHz blocks and from acquiring such blocks for three years after the 10 MHz blocks are licensed. Otherwise, the Commission's Rules will work to hamper small businesses' ability to compete in the auctions.

Before the
Federal Communications Commission
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Amendment of the Commission's Cellular PCS Cross-Ownership Rules	)	GN Docket No. 90-314

To: The Commission

COMMENTS OF
GULFSTREAM COMMUNICATIONS, INC.

Gulfstream Communications, Inc. ("Gulfstream"), by counsel, hereby respectfully comments in the above-captioned rulemaking proceeding as set forth in the *Notice of Proposed Rule Making* ("NPRM"), FCC 96-119, released March 20, 1996. In support thereof, the following is submitted:

Background

1. The Commission seeks comments on a variety of matters governing the auctions of the 10 MHz Blocks D, E, and F of Personal Communications Services ("PCS") spectrum. Currently, the rules contain special provisions in the form of bidding discounts and installment payments for entities controlled by women, minorities and small businesses, so-called "Designated Entities," who bid on PCS Block F. Initially, the same rules were to have applied to bidding in PCS Block C but they were changed in light of the Supreme Court's decision in

Adarand Constructors, Inc. v. Peña, 115 S.Ct. 2097 (1995), by eliminating the preferences for minorities and women and applying those same preferences to all qualifying small businesses. Meanwhile, in response to the U.S. Court of Appeals for the Sixth Circuit's decision in *Cincinnati Bell Telephone Co. v. FCC*, 69 F.2d 752 (6th Cir. 1995), the Commission must also decide to retain or modify its cellular/PCS cross-ownership rules and attribution standard. Given the changes in the law, and the Commission's experience with conducting prior auctions, the above-captioned rulemaking, therefore, re-examines the Commission's rules for bidding on the remaining PCS spectrum blocks.

2. Among the proposed rules of particular interest to Gulfstream are the Commission's plans regarding the extension of the small business provisions to bidding on Blocks D and E as they are applied to Block F as well as PCS spectrum caps. Gulfstream urges the Commission to open all remaining PCS spectrum blocks to small business entrepreneurs and to auction the blocks simultaneously without delay. Further, Gulfstream believes the Commission must modify its eligibility rules to prohibit Commercial Mobile Radio Services ("CMRS") licensees, and particularly any holder of a Block A, B, and C license, from acquiring Block D, E, and F licenses for a period of three years as essential to ensuring that small business entrepreneurs obtain a viable opportunity at winning in the D, E, and F auctions.

3. A Gulfstream principal participated as an investor in a Block C applicant until Stage III of the auction and has a keen appreciation of the dynamics of the auction and its impact on small business' ability to

participate. Gulfstream's owner has been involved for many years in the mobile radio industry and Gulfstream holds a small limited partnership interest in a cellular company in Arizona.

Small Business Preferences Should be Available in Blocks D, E, and F.

4. In order to ensure the widest possible dissemination of licenses to a variety of entities, particularly small business entrepreneurs, the Commission's rules should not limit small businesses' ability to participate solely to Block F. Consequently, the bidding discounts and installment payments available to small businesses in Block F should also be available to them in the Blocks D and E auctions. For there to be a meaningful advantage, however, the installment payments should only be offered to qualifying small businesses, not to all bidders in the auction.

5. So far, the Commission's rules for PCS have hampered, or at least have not encouraged, successful small business participation in the auction process. No small business preferences were available in Blocks A and B. In Block C, all bidders were entitled to some degree of preference and everyone obtained installment payment preferences of some type. Virtually any company, however, could make itself eligible for small business preferences by setting up a new company that had no revenues or assets. 47 C.F.R. § 24.720(l)(11)(ii).[1] Hence, the bidding in

[1] The Commission's C block auction rules set forth various levels of installment preferences depending on the size of the applicant. 47 C.F.C. § 24.711(b). For example, companies with gross revenues exceeding $75 million were allowed to pay their bid amounts in installments, with interest at the 10 year Treasury obligation plus 3.5%, and with payments of principal and interest amortized over the entire 10 year (Footnote continued)

Block C has greatly surpassed the high bid amounts in Blocks A and B, even though the Block C licenses, with significantly smaller geographic service areas, should be far less valuable.[2] The cost of spectrum for the entrepreneur is therefore higher than the spectrum price for the large company that obtained A and B Block licenses. And, with such high bids for Block C, the true small entrepreneur is still squeezed out of the best markets, since only those bidders with very large company or foreign money backers are able to continue bidding.[3]

6. To counter the actual effect of the Commission's auction rules to discourage small businesses from winning PCS spectrum, small business bidders should be encouraged to acquire Blocks D and E licenses. Instead of relegating all small businesses to a single block with very large eligibility loopholes, true small businesses must be given preferences in the same auctions with the big companies in order to level the playing field.

(Footnoted continued)
period. *Id.* Rule 24.720(l)(11)(ii), however, excluded from the financial eligibility caps calculation defining small businesses an affiliate of an applicant if that affiliate did not also exceed the financial eligibility caps to participate in the Block C auctions. Hence, any company with gross revenues less than $125 million in each of the last two years and total assets of less than $500 million at the time of application was entitled to all of the maximum permissible small business preferences (*i.e.*, 25% bidding discount and the most favorable installment payment terms of interest-only payments for six years with interest calculated at the ten-year Treasury obligation (47 C.F.C. § 24.711(b)(3)) if that company simply set up a new company.

[2] A tabulation of the results from the A and B Block auctions, published in the June 1995 edition of *Wireless World*, is attached as Exhibit 1. The first page of the Round 93 results obtained off the Internet, for April 12, 1996, for the C Block auction is attached as well (Exhibit 2). Comparing the auction results shows that $16.76 per "pop" was paid for Block B in the New York City Major Trading Area; whereas, for the New York City Basic Trading Area in the Block C auction the gross price per person, so far, is $73.43. Even with a 25% bidding discount, the net C Block price per pop far exceeds the A and B Block prices.

[3] *See* "South Korean Money Pumps Up Auction for Wireless Licenses," *Washington Post*, pp. D9 & D14, April 4, 1996 (copy attached as Exhibit 3).

D, E, and F Block Auctions Should be Held Simultaneously

7. The Commission should auction off Blocks D, E, and F at the same time so that bidders can attempt to aggregate the spectrum in a single market. Blocks A, B, and C each have 30 MHz of spectrum. In order to be truly competitive with Blocks A, B or C licensees, bidders for the remaining spectrum will need to be able to attempt to combine the three 10 MHz blocks to be truly competitive with the other license holders in the market.[4]

Blocks D, E, and F Auctions Should Commence Without Delay

8. In addition, the Commission should endeavor to hold the Block D, E, and F auctions as quickly as possible and not wait until the Block C licenses have been issued. Judging by trade press articles, Gulfstream anticipates that there may be litigation at the FCC concerning the conduct of the Block C auction participants.[5] Any such litigation should not be allowed to forestall holding the 10 MHz auctions.

9. Recognizing the precarious balance among its statutory obligations, the Commission also tentatively concluded that it would not take the time to adduce evidence required to satisfy the standard announced in the *Adarand* case in order to justify gender and racial preferences, and, instead, tentatively chose to meet its other statutory

[4] Realistically, the single 10 MHz licensees will need to use CDMA technology to be able to maximize their capacity. CDMA systems, however, will take longer to construct because the technology is not yet ready for market. The lack of an available off-the shelf technology will create further delay for the 10 MHz licensees if they do not aggregate the spectrum.

[5] *See, e.g.*, "Nextwave, GO Seek FCC Probe of 'Front' Companies in PCS Auctions," *Wireless News*, March 7, 1996 (attached as Exhibit 4).

obligation to "facilitate rapid delivery of new services to the American consumer and promote efficient use of the spectrum."[6] The Commission can best serve both statutory duties by adopting generous rules for small businesses as suggested herein, which will also assist small businesses owned by women and minorities and promote dissemination of licenses to a wide variety of applicants, and by going to auction without delay.

10. Delay of the auction also hurts winners with their ability to obtain equipment in a timely fashion. Winners of Blocks D, E, and F will need to place orders with manufacturers and cannot do so until their auction has concluded. Those orders will be in a queue behind orders from Blocks A, B, and C licensees. Manufacturers are already pressuring would-be licensees to interconnect with Block A and B licensees as an inducement to getting an early equipment delivery commitment. Those who do not cooperate will be relegated to the end of the line in having equipment orders filled and, thus, face the concomitant risk of suicide in the market by being last to enter. By the time equipment is delivered and installed, the licensees who were first to market will have already skimmed the cream of the demand for digital mobile services. Delay of the Blocks D, E, and F auctions attributable to any kind of litigation, therefore, would only exacerbate the problems entrepreneurs will face in competing with entities who have already obtained Blocks A, B and C licenses.

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[6] NPRM at para. 26.

Spectrum Caps: CMRS Licensees, Particularly Blocks A, B, & C Winners, Should be Precluded from Bidding on Blocks D, E, & F

11. Licensees of Blocks A, B, and C, as with other CMRS license holders, will have an anti-competitive incentive to obtain another 10 MHz in their market areas. If they obtain the additional 10 MHz, they eliminate competition from 10 MHz block licensees. They can warehouse that additional 10 MHz by melding that spectrum into their existing system. Further, the 30 MHz licensee has an additional economic advantage over the standalone entrepreneur bidding for 10 MHz blocks because the cost of adding 10 MHz to an existing system is much cheaper than building a PCS system using only 10 MHz of spectrum. The relative economic efficiencies of the 30 MHz licensees taking over the 10 MHz blocks virtually precludes entrepreneurs from acquiring PCS spectrum.

12. Current PCS Spectrum Cap. The Commission's current rules have a spectrum cap of 40 MHz per PCS licensee in any given geographic area. 47 C.F.R. § 24.229(c). There are three spectrum blocks with 30 MHz of spectrum — A and B auctions have already been completed and the Block C auction is nearly complete. Each of those A, B, and C Block licensees will want to maximize their spectrum in each market. As there are three 10 MHz blocks remaining, the 30 MHz licensees can each obtain one, leaving none for the standalone entrepreneur. The temptation of those 30 MHz licensees to obtain that additional 10 MHz block in their area will be irresistible, and from a business standpoint, mandatory, unless the Commission prevents it.

13. Cellular Spectrum Cap. Currently, FCC Rule 24.204(a) prohibits a cellular licensee from obtaining more than 10 MHz of PCS broadband spectrum in its cellular service area until the year 2000, at which point the cellular licensee will be permitted to obtain 15 MHz of spectrum. In *Cincinnati Bell*, the court found the Commission's limitation on cellular licensees to be arbitrary because the FCC did not provide an economic rationale to support its conclusion that cellular licensees would act in an anticompetitive manner.[7] In the NRPM, paragraph 66, therefore, the Commission asks for comments on whether the PCS/cellular cross-ownership restriction should be retained or relaxed. Gulfstream submits that, for purposes of encouraging entrepreneurs in the Blocks D, E and F auctions, an economic basis exists for tightening the rules.

14. The Rules Encourage Warehousing and Spectrum Inefficiency. Allowing the 30 MHz PCS licensee or other CMRS licensee to obtain the 10 MHz block in the auction, or in the three-year period following the auction, allows them to warehouse the spectrum. The additional 10 MHz affords the existing licensee the ability to avoid having to maximize efficient use of the spectrum.

15. The Commission's rules for the build-out of the 30 MHz blocks require that service be provided "with a signal level sufficient to provide adequate service to at least one-third of the population" within the service area by year five and two-thirds by year ten. 47 C.F.R. §

[7] Rule 20.6(a) also limits PCS, cellular, and SMR services regulated as CMRS to a total of 45 MHz of spectrum in any given geographic area. The *Cincinnati Bell* court was not presented with a challenge to the 45 MHz cap. 69 F.3d at 765 n.6.

24.203(a). Build-out for 10 MHz blocks require service to one-quarter of the population in the license area within five years or a showing of "substantial service." 47 C.F.R. §24.203(b).

16. Despite the intent of the rules, it would be easy for the 30 MHz licensee to fold the 10 MHz of spectrum into their existing systems and demonstrate compliance with the build-out rules for both spectrum blocks simultaneously even though the need to use that spectrum does not yet exist. For example, the additional 10 MHz of spectrum affords the 30 MHz licensees added flexibility in designing their systems to avoid interference with microwave incumbents. The additional 10 MHz of spectrum also gives the 30 MHz licensees extra capacity so that they would not need to build additional cell sites to handle demand. It would be exceedingly easy to disguise the use of the 10 MHz of spectrum to meet the FCC's build-out requirements. Thus, they can warehouse that 10 MHz until some indefinite point in the future when their systems reach full capacity. The effect, however, results in less efficient use of the spectrum and fewer opportunities for small business entrepreneurs.

17. Warehousing is extremely difficult to prove. The FCC must take major steps to discourage warehousing because it is so mischievous. Proof of an improper motive is an essential element of warehousing, and the Commission has no standard for determining when warehousing occurs. *See Mahafey Message Relay, Inc.*, 79 FCC2d 399, 407, 408-09 (Rev. Bd. 1980), *review den.*, FCC 81-338, July 16, 1981. As it is nearly impossible to prove warehousing, the Commission must adopt rules that will avert it. By doing so, it will promote economic

opportunity and competition and ensure dissemination of licenses among a wider variety of applicants. 47 U.S.C. § 309(j)(3)(B). Moreover, the Commission will maximize the efficient use of the spectrum in accordance with the dictates of Section 309(j)(3)(D) which states the Commission's objective to be the "efficient and intensive use of the electromagnetic spectrum." 47 U.S.C. § 309(j)(3)(D).

18. The Current Rules Permit the Elimination of New Competition. The 30 MHz PCS, SMR/ESMR and cellular licensees cannot lose by entering the 10 MHz block auctions. They either maximize their spectrum in the market and eliminate a competitor, or they drive up the auction prices for the 10 MHz blocks so high that the new standalone winner in the D, E, and F auctions cannot compete because their entry prices are so high.[8] The economic efficiencies available to the existing CMRS licensees discussed below further erode the ability of the new entrant to compete effectively in the auction.

19. Existing Licensees have an Economic Advantage in an Auction. Allowing the 30 MHz licensee to be eligible for the D, E, and F auction gives them an economic advantage. Having the additional 10 MHz reduces the cost of network design and operations, since fewer cell sites would be needed to service customers. Gulfstream's research shows that the cost of building out a 10 MHz system is 130% to 150% greater than the cost of building out a 30 MHz system. A 10 MHz system needs more cell sites than a 30 MHz system. Consequently, the 30 MHz

[8] Likewise, the wireline carrier has the same incentive to enter the auction since it is feasible to use PCS spectrum to compete with the local loop.

licensee has an advantage because its capital cost per MHz will be less. In addition, the 30 MHz licensee is likely to obtain more favorable terms from manufacturers because, by and large, the major telecommunications entities in this nation are the licensees.[9] Given that the large telecommunications entities have multiple systems and will place large orders, they are able to obtain volume discounts from manufacturers and favorable delivery terms. The small business cannot negotiate for those advantages, but must currently compete in an auction with existing carriers that have those cost saving benefits.

20. Cellular licensees, wireline providers, and SMR/ESMR licensees, too, will have an economic advantage over the small business, besides the obvious access to capital. They can cross subsidize their operations. Their PCS services can be operated at a loss and be carried by their existing operations. Consequently, their financial strategy in an auction will permit them to place higher bids than a small business will be able to do, since the small business will not have the ability to subsidize its PCS operation.

21. All of these factors benefit the existing licensee at the expense of the standalone bidder for a 10 MHz license. Thus, the economies of scale work to force the small entrepreneur out of the auction.

22. Limit Trafficking and Swapping for Three Years. Restricting CMRS licensees from the 10 MHz auctions is crucial to small business

[9] In *Cincinnati Bell*, the court noted that the A and B Block auctions resulted in award of 99 licenses to 19 companies: "AT&T, Nynex, Bell Atlantic, and Sprint were among the largest bidders, hardly a broad diversification of ownership." 69 F 3d at 764.

participation. Moreover, for the same reasons listed above, these licensees and wireline carriers should not be permitted to acquire 10 MHz licenses for a period of three years after the licensing of the 10 MHz blocks. Otherwise, existing licensees could bid in an area in which they do not have a license, and if they win an "other area" license, they could swap them after the auction for the 10 MHz license in their area. Without a restriction, the major entities can benefit from their strategy of obtaining the spectrum and selling it to a few entities for consolidation in the after-market.[10] As a result, the Commission needs to adopt post-auction sale restrictions on all 10 MHz spectrum blocks, regardless of whether they are acquired by small entrepreneurs, so that they cannot be acquired by CMRS licensees and wireline carriers for a period of three years. The three-year time period restriction will avoid the abuse of the Commission's procedures by existing licensees, maximize efficient use of the spectrum, and enable small business entrepreneurs a realistic chance at winning a 10 MHz license.

23. Limiting Existing Licensee Participation in the 10 MHz Auctions will Serve the Objectives of the Communications Act. Section 309(j)(3) of the Communications Act charges the Commission with the objectives of (A) rapidly deploying of the service without delay; (B) promoting economic opportunity and competition and avoiding excessive concentration of licenses by disseminating licenses to a wide variety of

[10] Ironically, the impact of the FCC's unjust enrichment rule and restrictions on transfer imposed on entrepreneurs hurts them and benefits the large company. Companies seeking to acquire spectrum after the auction will approach the entity that did not have a bidding discount so that they will not have to pay the value of the discount back to the government. Yet, the small business bid amounts have so far exceeded or "bid through" the amounts bid on spectrum acquired without the discount. Thus, the spectrum acquired by entrepreneurs has a premium on it in the after market.

applicants, including small business, women, and minorities; (C) recovering value from the spectrum for the public and avoiding unjust enrichment; and (D) using the electromagnetic spectrum efficiently and intensively. 47 U.S.C. § 309(j)(3). Gulfsteam's proposal to limit eligibility to exclude existing carriers and PCS licensees enhances the ability of small business to obtain a license. It promotes economic opportunity and competition.[11] A wider variety of applicants will be successful in the auction. The spectrum will also be used more efficiently by new entrants than by existing licensees who can easily warehouse the additional 10 MHz of spectrum or can obtain unjust enrichment by selling the spectrum without restriction after the auction. The Commission's current rules have failed to satisfy all of those objectives.

WHEREFORE, THE PREMISES CONSIDERED, Gulfstream respectfully requests that the Commission allow entrepreneurs to have the benefit of small business preferences on all three remaining spectrum blocks, that it auction those blocks simultaneously without delay, and that it prohibit existing licensees from participating in the

[11] If past is prologue, the price per pop per megahertz will be higher for the 10 MHz blocks, judging by the increase in Block C prices over prices for Blocks A and B. The Commission's preferences increased the ability of entities to participate, thereby increasing competition in the Block C auction. Thus, the Commission will maximize the value of the spectrum for the public if it encourages the widest possible participation by small businesses in all three remaining PCS blocks.

auctions for Blocks D, E, and F and from acquiring those licenses for a period of three years.

Respectfully submitted,

GULFSTREAM COMMUNICATIONS, INC.

By _____
Henry A. Solomon
Melodie A. Virtue

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April 15, 1996

Stats

EXHIBIT 1

MKT #	FREQ. BLOCK	LICENSE AREA	TOP BIDDER	BID AMOUNT	PRICE PER POP
1	A	NEW YORK	OMNIPOINT	$347,518,309	*
	B		WIRELESSCO	$442,712,000	$16.76
2	A	LOS ANGELES/SAN DIEGO	COX ENTERPRISES	$251,918,526	*
	B		PACIFIC TELESIS	$493,500,000	$25.78
3	A	CHICAGO	AT&T WIRELESS	$372,750,000	$30.88
	B		PCS PRIMECO	$385,050,583	$31.90
4	A	SAN FRANCISCO/OAKLAND/	WIRELESSCO	$206,500,000	$17.37
	B	SAN JOSE	PACIFIC TELESIS	$202,150,000	$17.00
5	A	DETROIT	AT&T WIRELESS	$81,177,000	$8.12
	B		WIRELESSCO	$86,107,000	$8.61
6	A	CHARLOTTE/GREENSBORO/	AT&T WIRELESS	[illegible]	$6.83
	B	GAINESVILLE/RALEIGH	BELLSOUTH	[illegible]	$7.27
7	A	DALLAS/FT. WORTH	PCS PRIMECO	[illegible]	$9.03
	B		WIRELESSCO	[illegible]	$9.12
8	A	BOSTON/PROVIDENCE	AT&T WIRELESS	[illegible]	$12.87
	B		WIRELESSCO	[illegible]	$13.44
9	A	PHILADELPHIA	AT&T WIRELESS	[illegible]	$9.07
	B		PHILLIECO	[illegible]	$9.52
10	A	WASHINGTON/BALTIMORE	AMERICAN PERSONAL	[illegible]	*
	B		AT&T WIRELESS	[illegible]	$27.23
11	A	ATLANTA	AT&T WIRELESS	[illegible]	$28.58
	B		GTE MACRO	[illegible]	$26.60
12	A	MINNEAPOLIS/ST. PAUL	WIRELESSCO	[illegible]	$6.63
	B		AMERICAN PORTABLE	[illegible]	$6.11
13	A	TAMPA/ST. PETERSBURG/	AMERICAN PORTABLE	[illegible]	$16.57
	B	ORLANDO	PCS PRIMECO	[illegible]	$18.33
14	A	HOUSTON	AMERICAN PORTABLE	[illegible]	$16.16
	B		PCS PRIMECO	[illegible]	$15.93
15	A	MIAMI/FT. LAUDERDALE	WIRELESSCO	[illegible]	$25.64
	B		PCS PRIMECO	[illegible]	$24.53
16	A	CLEVELAND	AMERITECH	[illegible]	$17.59
	B		AT&T WIRELESS	[illegible]	$17.36
17	A	NEW ORLEANS/BATON ROUGE	WIRELESSCO	[illegible]	$19.07
	B		PCS PRIMECO	[illegible]	$18.17
18	A	CINCINNATI/DAYTON	AT&T WIRELESS	[illegible]	$8.89
	B		GTE MACRO	[illegible]	$9.06
19	A	ST. LOUIS	AT&T WIRELESS	[illegible]	$25.48
	B		WIRELESSCO	[illegible]	$24.51
20	A	MILWAUKEE	WIRELESSCO	[illegible]	$18.73
	B		PCS PRIMECO	[illegible]	$18.94
21	A	PITTSBURGH	WIRELESSCO	[illegible]	$7.00
	B		AMERICAN PORTABLE	[illegible]	$7.72
22	A	DENVER	WIRELESSCO	[illegible]	$16.60
	B		GTE MACRO	[illegible]	$16.62
23	A	RICHMOND/NORFOLK	AT&T WIRELESS	[illegible]	$8.75
	B		PCS PRIMECO	[illegible]	$8.59
24	A	SEATTLE	GTE MACRO	[illegible]	$27.79
	B		WIRELESSCO	[illegible]	$27.48
25	A	PUERTO RICO/	AT&T WIRELESS	[illegible]	$15.70
	B	UNITED STATES VIRGIN ISLANDS	CENTENNIAL CELLULAR	[illegible]	$15.09
26	A	LOUISVILLE/LEXINGTON/	AT&T WIRELESS	[illegible]	$13.85
	B	EVANSVILLE	WIRELESSCO	[illegible]	$13.10
27	A	PHOENIX	AT&T WIRELESS	[illegible]	$22.32
	B		WIRELESSCO	[illegible]	$21.54
28	A	MEMPHIS/JACKSON	POWERTEL PCS	[illegible]	$12.46
	B		SWBELL MOBILE	[illegible]	$12.46
29	A	BIRMINGHAM	WIRELESSCO	$35,597,000	$10.97
	B		POWERTEL PCS	$35,278,000	$10.87
30	A	PORTLAND	WESTERN PCS	$34,155,030	$11.16
	B		WIRELESSCO	$34,139,785	$11.16
31	A	INDIANAPOLIS	WIRELESSCO	$70,433,000	$23.34
	B		AMERITECH	$71,100,000	$23.56
32	A	DES MOINES/QUAD CITIES	WESTERN PCS	$22,100,031	$7.35
	B		WIRELESSCO	$21,042,973	$7.00
33	A	SAN ANTONIO	WIRELESSCO	$54,394,123	$18.21
	B		PCS PRIMECO	$51,950,059	$17.39
34	A	KANSAS CITY	WIRELESSCO	$23,619,168	$8.11
	B		AMERICAN PORTABLE	$23,611,837	$8.10
35	A	BUFFALO/ROCHESTER	WIRELESSCO	$18,893,000	$6.80
	B		AT&T WIRELESS	$19,864,000	$7.15
36	A	SALT LAKE CITY	WESTERN PCS	$45,847,030	$17.82
	B		WIRELESSCO	$46,179,852	$17.95
37	A	JACKSONVILLE	POWERTEL PCS	$46,000,000	$20.22
	B		PCS PRIMECO	$44,500,544	$19.56
38	A	COLUMBUS	AT&T WIRELESS	$22,290,000	$10.39
	B		AMERICAN PORTABLE	$22,176,837	$10.34
39	A	EL PASO/ALBUEQUERQUE	WESTERN PCS	$8,634,030	$4.08
	B		AT&T WIRELESS	$8,634,000	$4.08

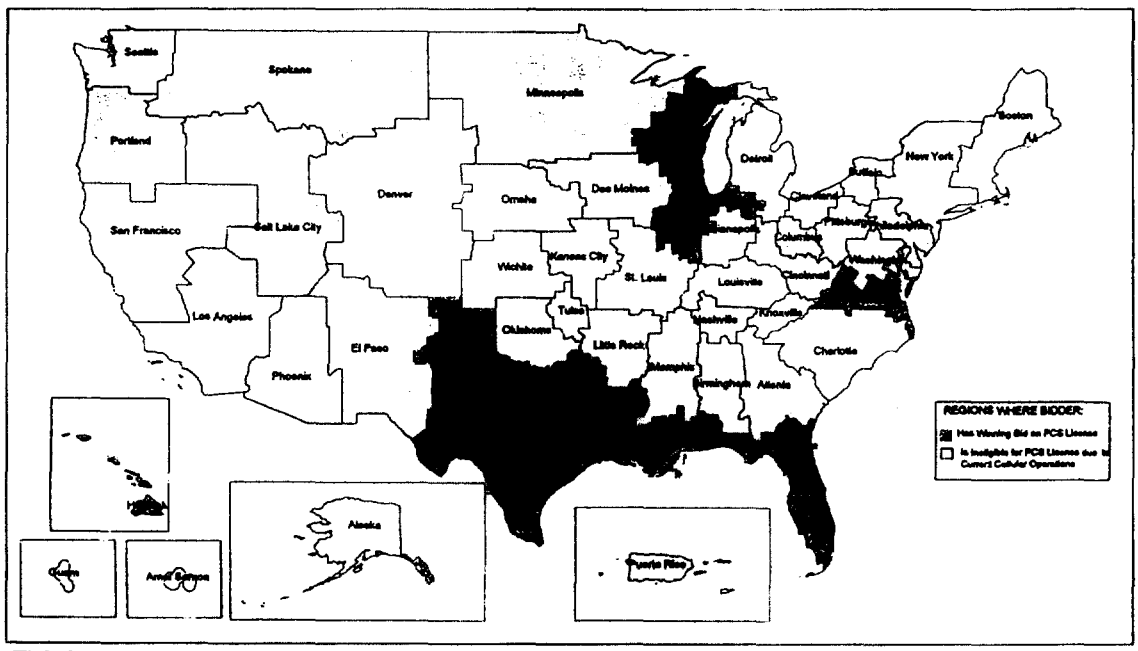
Nationwide PCS Broadband Licensees

This chart includes the bid amount and price per POP for each market.

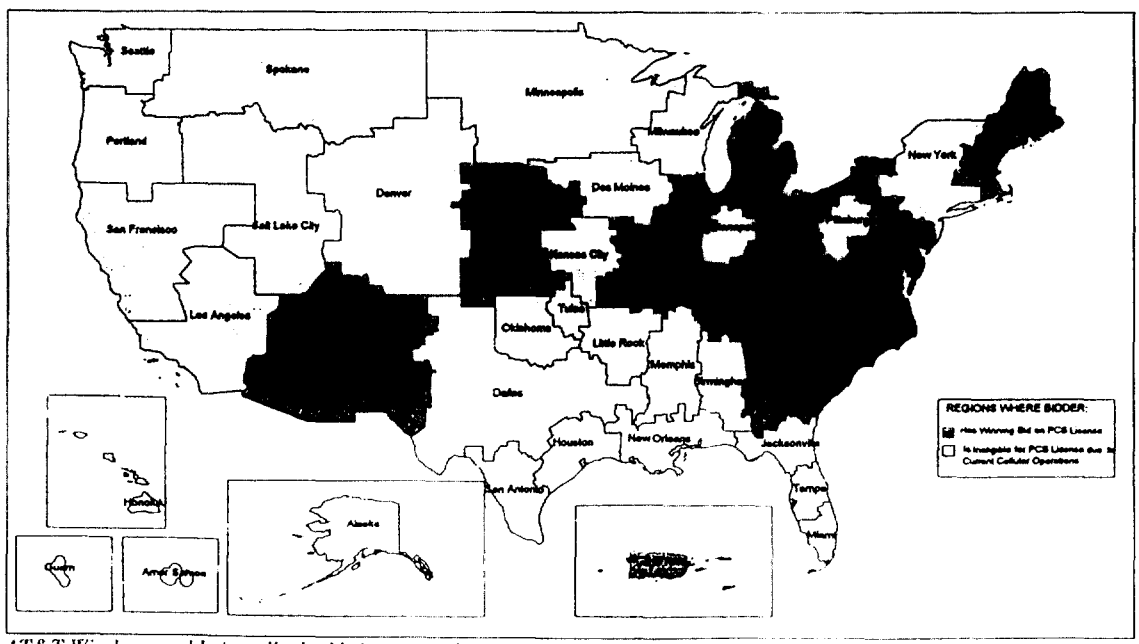
* Pioneer Preference

Stats

40	A	LITTLE ROCK	SWBELL MOBILE	$12,732,501	$6.21
	B		WIRELESSCO	$12,321,000	$6.01
41	A	OKLAHOMA CITY	WESTERN PCS	$11,111,111	$5.92
	B		WIRELESSCO	$13,142,346	$7.00
42	A	SPOKANE/BILLINGS	POKA LAMBRO	$5,688,000	$3.05
	B		WIRELESSCO	$6,191,000	$3.32
43	A	NASHVILLE	WIRELESSCO	$16,374,000	$9.26
	B		AT&T WIRELESS	$15,810,000	$8.95
44	A	KNOXVILLE	AT&T WIRELESS	$10,635,000	$6.18
	B		BELLSOUTH	$11,149,000	$6.47
45	A	OMAHA	AT&T WIRELESS	$4,647,000	$2.80
	B		COX CABLE	$5,078,000	$3.06
46		WICHITA	AT&T WIRELESS	[redacted]	$3.91
			WIRELESSCO	[redacted]	$4.36
47		HONOLULU	WESTERN PCS	[redacted]	$20.18
			PCS PRIMECO	[redacted]	$19.56
48		TULSA	SWBELL MOBILE	[redacted]	$16.02
			WIRELESSCO	[redacted]	$15.32
49		ALASKA	AMERICAN PORTABLE	[redacted]	$1.82
			GCI COMMUN.	[redacted]	$3.00
50		GUAM-N. MARIANA ISLANDS	POKA LAMBRO	[redacted]	$0.61
			AMERICAN PORTABLE	[redacted]	$0.81
51		AMERICAN SAMOA	SOUTH SEAS	[redacted]	$4.57
			COMMUNICATIONS INT'L	[redacted]	$4.85



With the addition of its PCS licenses, PCS PrimeCo's coverage would completely border the country.



AT&T Wireless would virtually double its national coverage with its PCS licenses

EXHIBIT 2

Block C Round 93

High Bids as of Round 93 -- PCS Block C -- April 12, 1996

bid_type	market	freq_block	round_num	bid_amt	bidder_num	date	time
H	B321	C	59	1325513000	2146	3/25/96	9:35:32
H	B184	C	79	56296000	2164	4/8/96	9:08:23
H	B007	C	91	45362000	2146	4/12/96	9:13:25
H	B318	C	91	55850000	2146	4/12/96	9:13:25
H	B438	C	74	22552000	2271	4/3/96	14:07:58
H	B010	C	75	24278000	2146	4/4/96	10:10:06
H	B412	C	71	21215000	2146	4/2/96	9:46:11
H	B361	C	92	13506000	2238	4/12/96	12:14:59
H	B063	C	88	11628000	2293	4/11/96	9:18:39
H	B319	C	81	10172010	2146	4/8/96	15:14:03
H	B043	C	68	9203005	2271	3/29/96	14:05:29
H	B453	C	69	7037000	2242	4/1/96	9:29:56
H	B127	C	53	5551100	2293	3/20/96	9:18:37
H	B463	C	58	2942000	2010	3/22/96	15:09:51
H	B352	C	58	1168000	2010	3/22/96	15:09:51
H	B164	C	57	1500000	2227	3/22/96	9:22:49
H	B333	C	62	1190000	2318	3/26/96	14:37:38
H	B388	C	88	2836000	2293	4/11/96	9:18:39
H	B435	C	93	1970000	2339	4/12/96	15:03:17
H	B208	C	57	1630000	2164	3/22/96	9:51:51
H	B262	C	44	884730000	2146	3/11/96	11:21:11
H	B402	C	71	164112000	2146	4/2/96	9:46:11
H	B245	C	72	76158101	2358	4/2/96	14:32:19
H	B028	C	91	32582100	2301	4/12/96	9:10:30

BUSINESS

South Korean Money Pumps Up Auction for Wireless Licenses

Foreign Investors' Help to High Bidder NextWave Communications Has Some Rivals Grumbling

By Mike Mills
Washington Post Staff Writer

After weeks of dizzying, multibillion-dollar bidding, federal officials are about to wrap up an auction for 493 wireless communications licenses that have been reserved for U.S. "small businesses."

And a big winner seems to be: South Korea.

Large banks and industrial companies from the Pacific Rim nation have pledged a hefty share of the financing behind several bidders, so much that some Wall Street analysts have dubbed the proceedings the "Asian auctions."

Korean money, they say, is a big reason why bidding has so far totaled $9.7 billion, more than double what was commonly expected at the start of the contest for licenses to provide "personal communications services," a kind of next-generation cellular service.

"A lot of us initially thought that it would be traditional venture capital money funding these auctions," said Jonathan Foxman, director of strategic business planning for BIA Consulting Inc., an industry research firm, referring to funds from U.S. firms that make bets on risky ventures.

"If one of these large South Korean companies demands a much lower return [than venture capital firms demand], and doesn't need it until far off in the future, it allows the bidder to pay far more."

What are the Koreans up to? They want in on what they expect to be a huge growth industry. And if their U.S. clients win, Korean companies might finally break into the U.S. market for wireless handsets, which is now dominated by U.S. manufacturer Motorola Inc. and Scandinavian firms Nokia Corp. and Ericsson Inc.

The Federal Communications Commission, which runs the auctions, has restricted the bidding to companies that qualify as "small businesses"—less than $125 million a year in revenue. But the bidders have wide latitude to get loans or other financing from investors anywhere. And while FCC rules limit foreign companies to no more than a 25 percent ownership stake in a U.S. communications company, loans don't count toward that total.

Leading the auctions is NextWave Personal Communications Inc., a San Diego-based company that is the high bidder in 66 markets and has pledged $4 billion so far.

NextWave has a half dozen South Korea-based backers, including Pohang Steel America Corp. ($20 million), Korea Electric Power Corp. ($20 million), Iljin Diamond Co. ($15 million) and handset maker Lucky Goldstar ($30 million). Another investor is Japan's Sony Corp. ($10 million), which also is hoping to break further into the wireless

See AUCTION, D14, Col. 1

WIRELESS BIG BIDS

TOP FIVE BIDDERS BY DOLLAR VALUE OF BIDS

Bidder	TOTAL BID (IN MILLIONS)	NUMBER OF HIGH BIDS
NextWave Personal Communications	$4,111	66
DCR PCS	$1,426	44
GWI PCS	$973	9
BDPCS	$722	8
Omnipoint PCS	$520	29

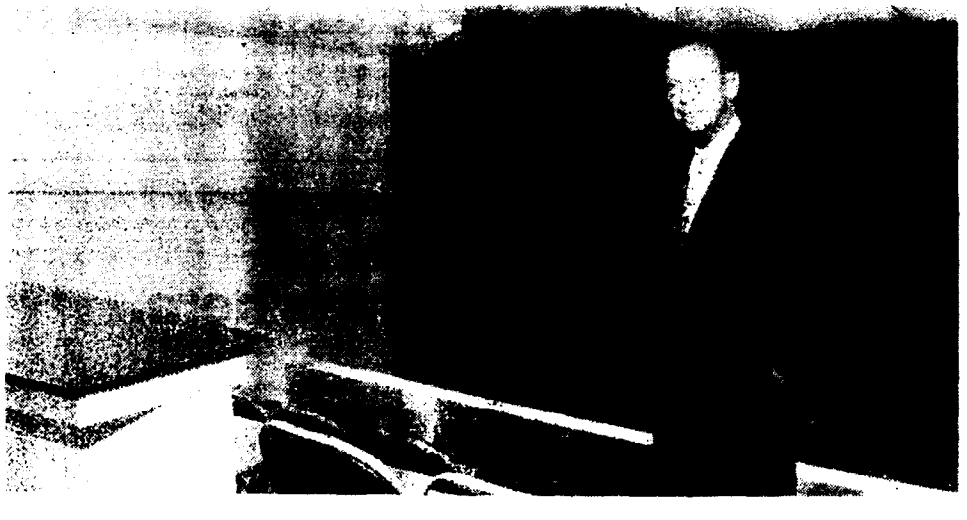
TOP FIVE MARKETS BY BID (IN MILLIONS)

Market	COMPANY	BID
New York	NextWave	$994
Los Angeles	NextWave	$663
Chicago	DCR PCS	$461
San Francisco	GWI PCS	$403
Philadelphia	Omnipoint PCS	$320

SOURCE: Federal Communications Commission

THE WASHINGTON POST

EXHIBIT 3



THE LAP OF LUXURY

Abe Pollin's MCI Center will have 12 founders' boxes, 98 luxury suites and 3,000 club seats.

FOUNDERS' BOX
- Seats 12 people near center court.
- $1 million for 10 years, paid in advance.

LUXURY SUITE
- Seats 12 people.
- $100,000 to $175,000 per year (minimum five-year commitment).

Judge Overturns Calif. Conviction of Keating

Court Cites Errors in Instructions by Judge Ito

By E. Scott Reckard
Associated Press

LOS ANGELES, April 3—A federal judge overturned the state court conviction of Lincoln Savings and Loan boss Charles H. Keating Jr. today, ruling that Judge Lance Ito's jury instructions were flawed.

The decision came from U.S. District Judge John G. Davies, who received the case after state appeals tarred the reputation of the "Keating Five" senators and for selling high-risk, high-yield "junk bonds" that became worthless to elderly investors who previously had owned insured CDs.

"We're still pressing ahead on oth-

He also was convicted on federal

Korean Firms Back Bidders For Licenses

AUCTION, From D9

handset market. Investment figures are according to a private memo to potential investors issued in December and other sources.

Those and other Korean investors, including affiliates of the Samsung and Hyundai industrial conglomerates, also are helping to bankroll other bidders in the auction.

"The Asian investors who have invested . . . are willing to absorb risk because they realize that wireless is a growth area," said Janice Obuchowski, NextWave's co-founder and executive vice president.

Eun-Young Yu, president of LG InfoComm, a San Diego-based affiliate of Lucky Goldstar in South Korea, said the auction prices "seem to be high." But he added, "We strongly believe that NextWave has a sound business plan. Even at this price range, NextWave is going to be a success."

Yu added that he hoped that Lucky Goldstar eventually would convert loans it has made to NextWave into a formal ownership stake in the company. "That's up to NextWave and the FCC," he said.

Though most of the Korean money is in loans, critics say NextWave has so little of its own money that it may be forced to seek FCC waivers of the 25 percent foreign ownership limit. The FCC, not wanting the auctions to be tarred by the default of the star bidder, would be under pressure to grant it, this theory goes.

"The Asian investors who have invested ... are willing to absorb risk because they realize that wireless is a growth area."

— Janice Obuchowski of NextWave

Indeed, on Feb. 23 NextWave told the FCC it might ask for a waiver of the 25 percent limit. The company also is planning a public stock offering.

Some competitors have harsh words about NextWave. NextWave "has behaved as if it has deeper pockets than AT&T," said Steven Zecola, president of Go Communications, an Alexandria-based company that dropped out of bidding on Friday. "They're just playing a massive risk game."

Zecola argues that even if no waiver is granted, the Koreans might exercise de facto control over NextWave through their loans. He says that the level of loans that NextWave has accepted already may have violated the rules in effect.

NextWave denies this. It has not disclosed the amount of Korean loans it has received, but does say that if it wins, roughly 75 percent of the money it will need to make initial installment payments on the licenses would come from abroad. Obuchowski said that if existing foreign loans and loan commitments were converted to shares, the foreign parties would own 29 percent to 35 percent of her company.

"The real point is we can't and we won't convert [the Korean debt] unless we receive FCC waivers," Obuchowski said.

She added that NextWave is able to bid higher not just because of Korean money, but because her operating costs will be lower than others. NextWave plans only to be a "wholesale" seller of wireless services, she said, and won't face the marketing costs that other carriers will.

Behind the sniping between NextWave and the other bidders is a war over competing standards for digital wireless telephones. The outcome could help determine whether jobs are created in the United States, Europe or East Asia.

NextWave and Korean companies back a new standard called CDMA (Code Division Multiple Access), which is largely unused in the United States. Sprint Corp., the regional Bell telephone companies and others have committed to developing new CDMA networks but have yet to do so.

NextWave has promised to buy 60 percent of its equipment from a joint venture between Sony and Qualcomm Inc., the inventor of CDMA technology. Obuchowski is a Qualcomm board member and NextWave founder Alan Salmasi is a former Qualcomm executive.

The rival standard known as TDMA (Time Division Multiple Access) is favored by AT&T Corp. and other cellular carriers and is being installed in new wireless systems.

Roughly $40 billion will be spent in the United States alone in the next few years on new wireless systems and handsets, according to Alex Cena of investment firm Bear, Stearns & Co. in New York.

TELECOMMUNICATIONS REPORTS

EXHIBIT 4

Wireless News™

Exclusive Intelligence on Spectrum-Based Communications Services

Sample, Abbreviated Issue

March 7, 1996

Inside This Issue

Regulatory Front: USTA, NARUC raise red flag over FCC's 'bill-and-keep' interconnection proposal 3

CTIA presses Clinton, GSA on siting rules for antennas 4

FCC proposes amendments to fixed microwave rules 5

Spectrum Update: Key lawmakers oppose McCain's plan to auction ATV spectrum 6

Fate of ATV channels tops list of unfinished legislative business 7

TRWN Sample Issue

We've enclosed this short, 8-page excerpt to show you the kind of coverage **TRWN** readers get in every issue. Regular issues run 16-18 pages, 25 times a year.

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Auction Update

NextWave, GO Seek FCC Probe of 'Front' Companies in PCS Auction

A sale of radio licenses reserved for small businesses appears to be facing new problems as two major bidders last week questioned the financial viability of companies competing for PCS (personal communications service) licenses. NextWave Telecom, Inc., and GO Communications Corp. have asked the FCC to investigate the bidding activities of alleged "front" companies participating in the ongoing PCS auction.

NextWave's wholly owned subsidiary, NextWave Personal Communications, Inc., has been the top-ranked bidder in the "C" block PCS auction for more than two weeks, submitting net high bids between $1 billion and $2 billion daily. GO's subsidiary GO Telecommunications Corp. I, has been among the top five bidders for several rounds, bidding more than $800 million for licenses every day. At *TRWN*'s Monday news deadline, net revenue in the PCS auction already had exceeded $7.6 billion.

In a Feb. 29 letter to Michele C. Farquhar, acting Chief of the Wireless Telecommunications Bureau, NextWave stated that a number of PCS auction participants are bidding against entities "whose bids exhibit very substantial resources but whose Form 175s do not disclose any source of funding." Auction participants were required to submit "Form 175" applications before the auction of 493 licenses began in December. FCC rules also require bidders to update those forms during the course of the auction as their equity structures change.

NextWave asked the Commission to take three specific steps to ensure that the C block auction is not undermined by "improper bidding." The Commission "should immediately investigate, using its