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

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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

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Comments of NextWave Telecom Inc.

NextWave Telecom, Inc (NextWave) respectfully submits its comments in response to the above-captioned Federal Communication Commission (FCC or Commission) Notice of Proposed Rule Making.[1] NextWave, structured to comply with the FCC regulations governing small business enterprise, is currently an active participant in the C block auctions through its subsidiary, NextWave Personal Communications, Inc., and as such has substantial interest in the modifications that the Commission proposes.

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[1] *In the Matter of 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 and Amendment of the Commission's Cellular PCS Cross-Ownership Rules*, Notice of Proposed Rule Making, WT Docket No. 96-59, GN Docket 90-314, (rel. Mar. 20, 1996) (*Notice*).

I. NextWave Supports the Commission in Its Tentative Conclusion That It Should Auction the D, E and F Blocks Together

NextWave agrees with the Commission that there is good reason for the Commission to combine the D, E and F block auctions. As the Commission mentions in its *Notice*, these arguments include efficiency advantages, administrative and cost savings, and an equal timeline for start-up and deployment of all 10 MHz licensees. Furthermore, as the Commission has stated, these licenses are also complementary and combining them at auction would allow a bidder to aggregate them to create a 30 MHz system, thus giving entrepreneurs who were "interested in obtaining a 30 MHz system a second opportunity to do so."[2] NextWave believes these are valid reasons for combining the three blocks. In particular, if the Commission were to auction the F block licenses separately from the D and E blocks it would further exacerbate the disadvantage C block licensees face as a result of delays in that auction.

The Commission also seeks comment on whether it should auction the D and E block licenses together in one auction and the F block licenses at the same time, but in a separate auction. Although the Commission suggests that this would serve to accommodate the differences in eligibility requirements, we note that it would likely undermine some of the very efficiencies that the Commission seeks to create by combining the auctions. For those bidders who wish to participate in both auctions, it would require keeping pace with two separate sets of data, two different login procedures, and, at some point in the auctions, possibly different stages and numbers of rounds per day. Separating the F from the D and E

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[2] *FCC Announces Short Form Date for 493 BTA Licenses Located in the C Block for Personal Communications Services in the 2 GHz Band and Requests Comment on Auction of F Block Licenses*, Public Notice (rel. December 23, 1994) (*Public Notice*).

block auctions could result in a situation where a bidder would still have to evaluate and place bids simultaneously on 1500 licenses, but in twice as many rounds per day as would be the case if there were only a single auction. Presumably a simpler solution would be to design the bidding software in such a manner that it would "lock out" ineligible bidders, so that, if a bidder were ineligible to bid in the F block, it could not access those licenses to place bids.

II. The Commission Should Allow Any Qualified C Block Bidder to Bid on F Block Licenses

In its *Notice* the Commission suggests that there might be reasons to make adjustments to the financial eligibility threshold for the F block auction. NextWave believes that it is consistent with prior Commission policy and is most fair to allow qualified C block bidders to bid in the F block auctions and not to artificially exclude such bidders based on the "valuation of their C block licenses."[3]

There are a number of reasons why we reach this conclusion. In the first place, the Commission has always connected the two auctions. For example, entrepreneurs are not limited to a set number of markets in each block, but to 10 percent of aggregated Basic Trading Areas (BTAs) in both blocks, or 98 C and F block licenses total. Clearly the Commission envisioned such aggregation of C and F block licenses since, in its *Fifth Report and Order*, the Commission states that "since the C and F blocks are adjacent, they can be

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[3] *Notice* at ¶ 33. In addition to the inequity of changing treatment of eligibility for the F block auction, it would seem that the winning bid could not conceivably be treated as assets until the licenses are granted. This may not occur until after the start of the 10 MHz auction.

aggregated efficiently by one or more licensees."[4] Furthermore, in the *Fifth Report and Order*, the Commission indicated that it would divide the licenses into three groups "combining those licenses that are most closely related"[5] and thus determined that it would auction the C and F blocks together. It was not until December 1994, that the Commission decided to auction the blocks separately, and only then because of "excessive administrative complexity" and the Commission's lack of experience with auctions.[6]

Moreover, such Commission action would be inconsistent with its rules that allow, after the three year period, transfer of licenses to assignees or transferees that meet "the eligibility criteria set forth in § 24.709 at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency Blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in §24.709."[7] Since C block licensees are considered eligible as license transferees three years after license grant, any consideration of them as ineligible to participate in the F block auction three months after the close of the auction, and possibly even prior to license grant, would be unfair and illogical.

The Commission has also stated that "normal projected growth of gross revenues and assets, or growth such as would occur . . . **as a result of a licensee acquiring additional licenses** . . . would not generally jeopardize continued eligibility as an entrepreneurs' block

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[4] *See In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, (Competitive Bidding Proceeding)*, Fifth Report and Order. 9 FCC Rcd 5532, 5588 (1994).

[5] *Id.* at 5546.

[6] *See, gen., Public Notice.*

[7] 47 C.F.R. § 24.839(d).

licensee."[8] It is inconsistent that acquiring the initial licenses would jeopardize continued eligibility, while acquiring additional licenses would not.

Furthermore, this provision is further complicated by the Commission's proposal to further shorten the holding requirement for F block licenses, such that they would be immediately transferrable to "an entity that qualifies as an entrepreneur."[9] A scenario might arise where a C block licensee, which is certainly "qualified as an entrepreneur" could not participate in the F block auction, but could acquire F block licenses immediately post-auction. In the alternative, the Commission would have to establish two separate categories of qualified entrepreneurs, "C block" and "F block" entrepreneurs.

Until the Commission released its *Notice*, it had given no indication that it might consider licenses acquired in the C block to be assets for purposes of entrepreneurs' block eligibility. Because the two spectrum blocks are highly interdependent, many bidders have made decisions regarding C block eligibility and markets to purchase based on a reasonable expectation of participating in the F block. For these reasons, we believe the Commission should allow any qualified C block bidder to bid on F block licenses.

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[8] *See Competitive Bidding Proceeding*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 420 (1995) (emphasis added).

[9] *Notice* at ¶ 62.

III. Conclusion

For the foregoing reasons, NextWave Telecom Inc. respectfully urges the Commission to auction the D, E and F blocks at the same time and as part of the same auction, and not to limit C block winners' participation in the F block auction.

Respectfully submitted,

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April 15, 1996

CERTIFICATE OF SERVICE

I, Laura E. Magner, hereby certify that on the 15th day of April, 1996, a true copy of the foregoing Comments of NextWave Telecom Inc. was hand delivered to the following:

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