

EX-100 (REV. 11-27-80)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

HAND DELIVER

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

Re: WT Docket No. 96-59; GEN Dkt. No. 90-314;
Ex Parte Presentation

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's Rules, this letter is to advise you that Omnipoint met with several Commission staff persons yesterday afternoon. Attending the meeting on behalf of Omnipoint were Douglas Smith, Andrew Arnoff, and Thomas Jones, as well as Casey Anderson, a law clerk for Piper & Marbury, L.L.P., and myself; Commission staff persons at the meeting were Rosalind Allen, Kathleen Ham, Sandra Danner, David Nall, Sue McNeil, Jay Markley, and Wendy Chao. During the meeting, we discussed Omnipoint's position on the issues raised by the Notice of Proposed Rulemaking, released March 20, 1996, as articulated in Omnipoint's comments and reply comments in the above-referenced dockets (copies of the comments/replies were made available to Commission staff). Omnipoint also distributed the attached list of discussion points and, during the course of the meeting, discussed issues under sections I, II, III, and V of the list.

Omnipoint's primary position in the meeting was that the Commission should permit successful Block C applicants to participate in the Block D, E, and F auction and subsequent entrepreneur auctions, as reflected in Section I of the attached list of discussion points. While Omnipoint believes the Commission should allow only legitimate Block C applicants to participate, and so it recommends the Commission

Mr. William F. Caton
May 1, 1996
Page 2

commence the Block D, E, and F auction after long-form applications for the Block C have been decided, Omnipoint does not recommend significant delay, *i.e.*, nine months, for the Block D, E, and F auction.

During the meeting, Omnipoint presented three maps, attached hereto, depicting three current Block C high bidders' geographic coverage in order to demonstrate the need for successful Block C bidders to participate as entrepreneurs in the Block D, E, and F auction in order to "fill in" geographic areas

Finally, Omnipoint discussed with Commission staff its experiences during the Block C auction with the Commission's auction procedures, including auction activity of "parking" and "drafting" used by bidders to maintain eligibility. In Omnipoint's view, the Commission should amend auction closure procedures, as outlined in Section V of the attached list of discussion points. Omnipoint also looks forward to discussing these auction procedure issues with other Commission staff.

In accordance with the Commission's rules, I hereby submit one original and three copies of this letter for inclusion in the above-referenced dockets.

Sincerely,



Mark J. O'Connor
Counsel for Omnipoint Corporation

cc: Rosalind Allen
Kathleen Ham
Sandra Danner
David Nall
Sue McNeil
Jay Markley
Wendy Chao

PCS BLOCK D, E, and F AUCTION RULES

- I. Legitimate Block C Applicants Should Be Deemed Eligible to Participate in Subsequent PCS Entrepreneur Auctions, Including the Block D, E, and F Auction.**
- A. Participation in the subsequent entrepreneurs auctions is necessary to ensure that strong, regional PCS entrepreneurs can compete with cellular and Block A and B PCS operators.
- "We emphasize that we have a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace." Fifth M.O. & O., PP Dkt. No. 93-253, 10 FCC Rcd. 403, 420 (1995).
 - regional geographic coverage is necessary for new entrants, and 40 MHz may be necessary
 - successful Block C participants need to "fill in" areas of coverage
- B. FCC rules already allow legitimate Block C applicants to grow and maintain eligibility -- the Block D, E, and F auction should be no different
- Block C license eligibility is not affected by "debt financing, revenue from operations or other investments, business development or expanded service." 47 C.F.R. § 24.709(a)(3); *id.* at § 24.715(a)(3) (same for Block F eligibility).
 - Entrepreneur licensee is eligible for transfer of Block C or F license if it was eligible at the time of its initial licensing. 47 C.F.R. § 24.839(d)(2).
- C. Reasonable reliance and fairness dictate that successful Block C applicants should be permitted to participate in Block F auction
- Participants in the Block C acted in reliance on the fact that they were entrepreneurs entitled to participate in entrepreneur's band (Block C and F)
 - The Commission never suggested that Block C bidders must keep a \$500 million cap on their bidding or their fundraising activities to pay for and build out the licenses.
 - In separating the two auctions, FCC never suggested that the same entities may not be eligible for both entrepreneur auctions

- It is unfair to penalize Block C winners relative to Block F winners. If successful Block C auction participants will have their licenses and "normal growth" counted against them for entrepreneur eligibility, Block D, E, and F winners will not face that same constraint.

II. Final Decisions of the Block C Long-Form Applications Should be Issued Before the Short-Forms Are Due for the Blocks D, E, and F Auction

All auction participants, both large and small businesses, must know the Block C licensee in each market in order to bid appropriately.

- Each bidder needs to know its competitors in a given market.
- 10 MHz auction participants need to know with whom they can partner in any given market -- compatible technology issues.
- Small businesses and large business "passive investors" need to know if there are any opportunities for Block C re-auctioned licenses as they bid for Block F licenses.
- Block F small businesses are likely to be the same entities that applied for Block C, and so they must know if their financing and equity structures are valid. If invalid structures were used, all Block F applicants need time to re-organize before the short-forms are due.

Most importantly, if the Block D, E, and F auction commences first, the possible denial of one or more Block C applicants could devastate the on-going auction, causing instability of financing arrangements.

III. A. Block C Entrepreneur Bidding Credit and Installment Payment Plan Provisions Should Extend to Blocks D and E Licenses

B. Block D, E, and F Licenses Should Be Auctioned Simultaneously in a Single Auction

Extending entrepreneur incentives to Blocks D and E and conducting a single auction of all three blocks will promote the public interest by:

- Allowing technology fill-ins for 30 MHz licenses.
- Allowing successful Block C bidders to participate without overwhelming the Block F licenses. Example: Assuming Nextwave wins nearly 60 Block C licenses, it would be limited to at most 38 additional licenses out

of a total of 1,500 (which could be equivalent to only 13 BTAs of 30 MHz each).

- Increasing opportunities for small business participation in PCS.
- Increasing competition in PCS generally by allowing small businesses to obtain D and E licenses on an equal footing with Block A and B operators.
- Maximizing the recovery for the public of a portion of the value of the public spectrum at auction. Otherwise, entrenched operators are not likely to engage in active bidding on Blocks D and E in one another's markets.

IV. Cellular Eligibility Restrictions Should Be Preserved

A. In order to encourage a more balanced and competitive CMRS market, cellular should be restricted from capturing more than 10 MHz of PCS spectrum.

- Cellular has had a tremendous 10-year headstart in mobile service, allowing them to build up a strong customer base, an operating and profitable business, and access to key site locations
- Cellular paid nothing for their 25 MHz of commercial mobile spectrum

B. Cellular is now a duopoly and it will seek to stop PCS new-entrant competition to maintain that market dominance, unless restricted by the FCC. FCC's First Report on CMRS Competition, 10 FCC Rcd. 8866 (1994) found that the cellular market was not fully competitive. Department of Justice and GAO studies concur.

V. Block D, E, and F Auction Should Be Closed in Groups of Licenses when Bidding Ceases for Some Reasonable Number of Rounds.

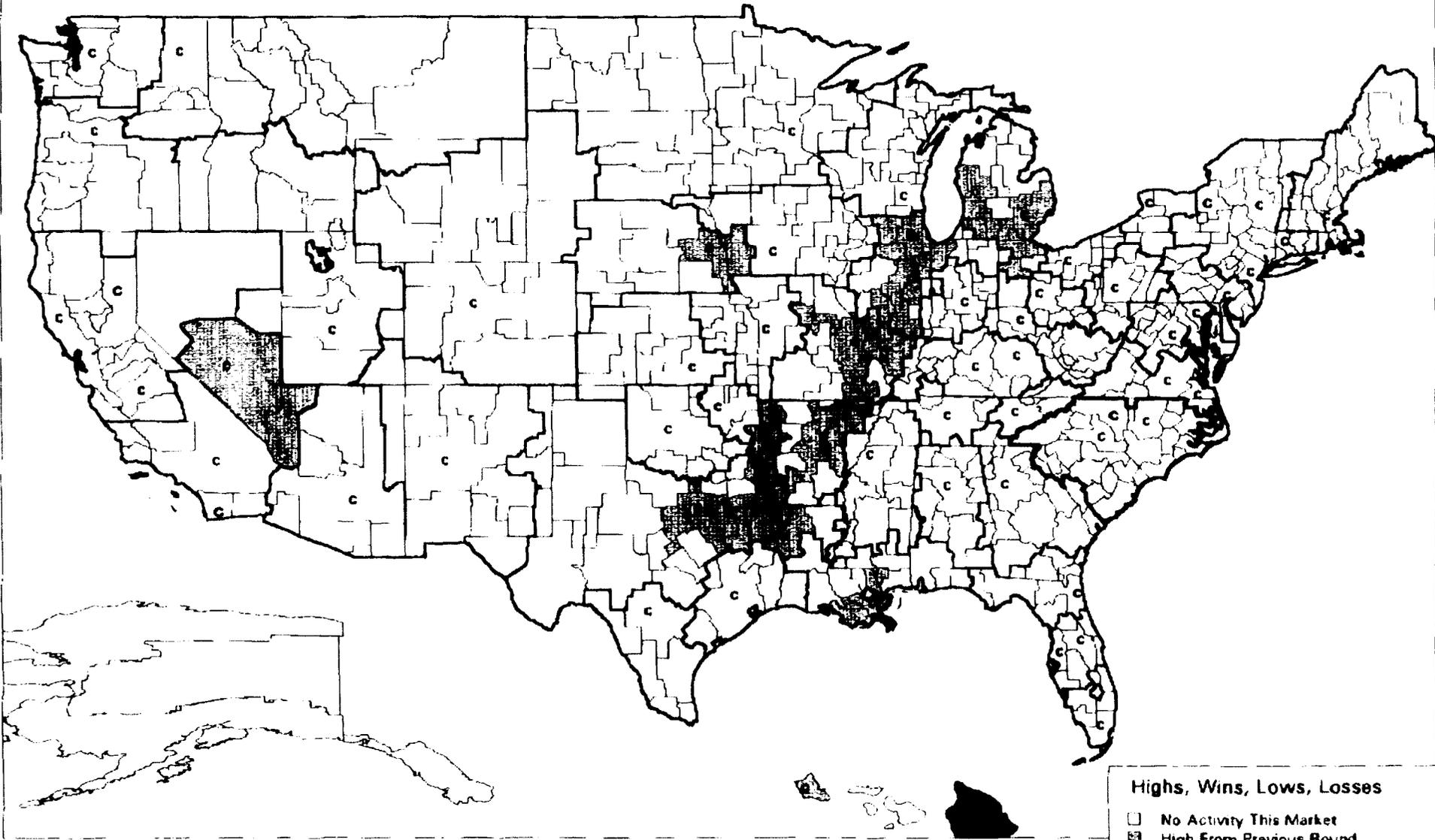
A. The closing procedures of Block C auction need improvement.

- Multiple rounds-per-day leave bidders with inadequate time to analyze results or make decisions, increasing the likelihood of mistakes and loss of opportunities.
- Small businesses need more orderly closure of the auction to conduct other business. Increasing rounds-per-day only ties up schedules for key decisionmakers even though the vast majority of markets were inactive.

B. FCC should close the bidding in stages, after bidding on groups of licenses subsides.

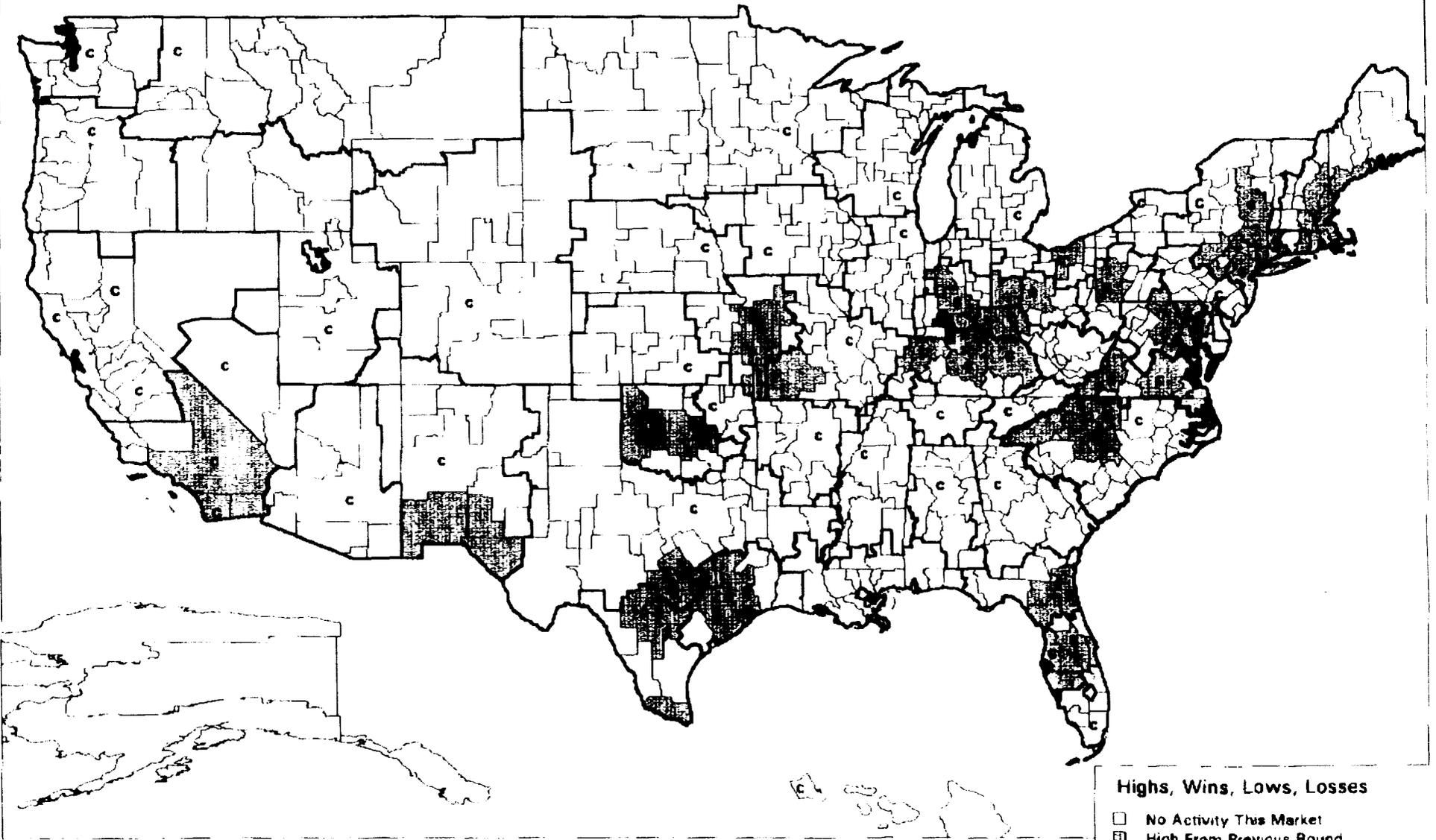
- FCC could close out licenses as a group starting with the largest BTAs (based on population) since activity on these licenses will always stop first and will affect the fewest bidders.
- After round 40, FCC could provide bidders with adequate notices - such as 20 rounds in advance - of closure of license group.
- Close top 25 markets, for example, then next 50 markets, then next 50-100 markets, then next 150 markets, and then last 150 markets.
- Closing auction in stages eliminates the 5% reserve problem currently keeping all bidders on full alert for weeks.
- Closing auction in stages allows entrepreneurs to start business planning and fund-raising.
- Closing auction in stages still allows the FCC to issue all the licenses simultaneously to avoid any head start issues.
- Thus, auction will still be simultaneous with simultaneous closing, except using logical groups.

DCR PCS At Risk, Net Exposure and Withdrawals Round 158 (Stage III)



- Highs, Wins, Losses**
- No Activity This Market
 - High From Previous Round
 - Loss (A Previous Round High)

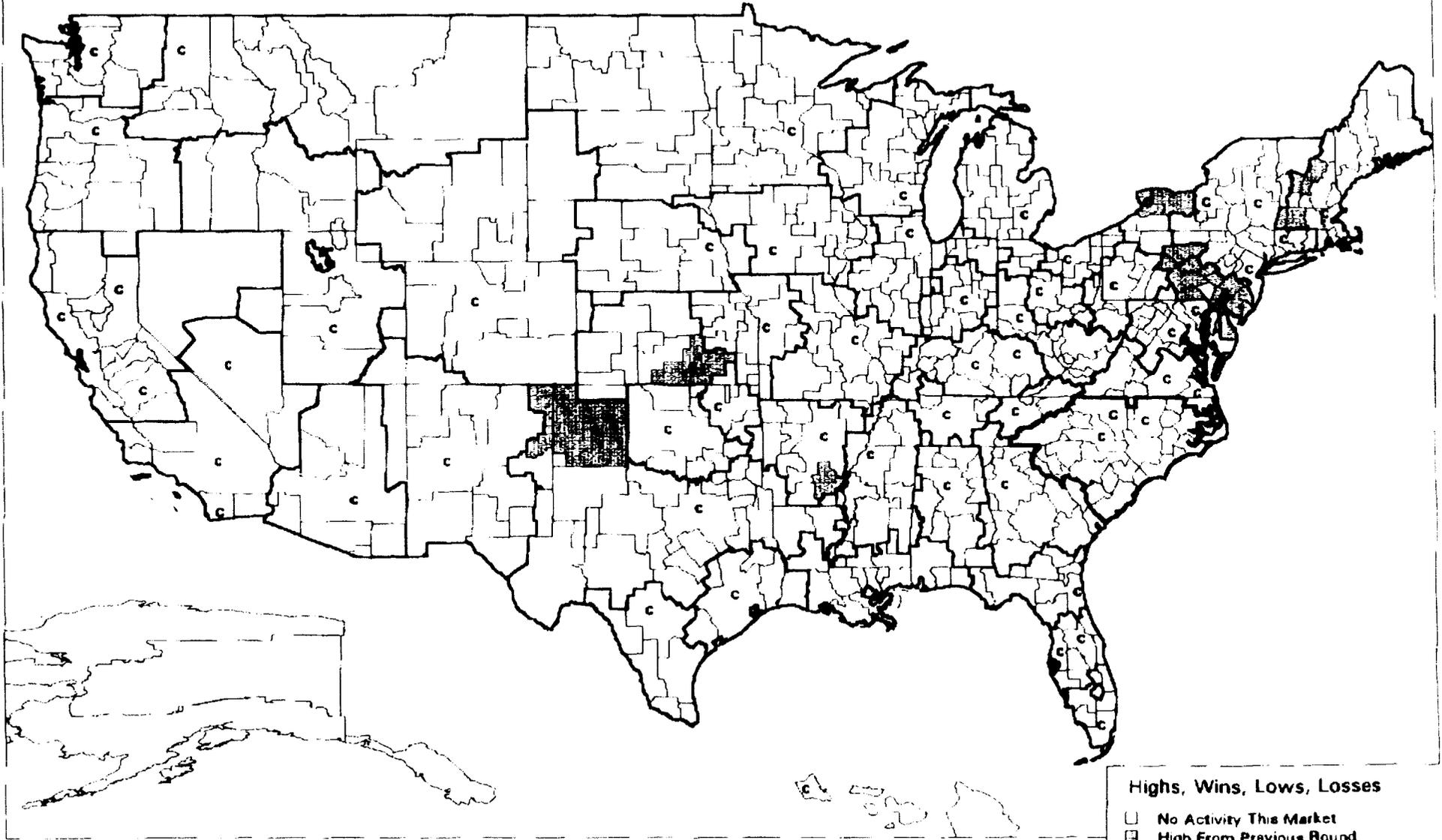
NextWave
At Risk, Net Exposure and Withdrawals Round 158 (Stage III)



Highs, Wins, Losses

- No Activity This Market
- High From Previous Round
- Loss (A Previous Round High)

Omnipoint At Risk, Net Exposure and Withdrawals Round 158 (Stage III)



Highs, Wins, Losses

- No Activity This Market
- ▨ High From Previous Round
- Loss (A Previous Round High)