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May 14, 1996

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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 Douglas G. Smith, of Omnipoint Corporation, Mark J. Tauber and I met today with Suzanne Toller, advisor to Commissioner Rachelle Chong, to discuss Omnipoint's views on the pending rulemaking proceeding for PCS Block D, E, and F auction rules in the above-referenced dockets. We also provided Ms. Toller with a copy of the attached list of discussion points for the meeting.

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, as reflected in Section I of the attached list of discussion points. Omnipoint presented its view that the auction process is part of a greater contest between competing PCS technologies. 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. Omnipoint explained that the Block C entrepreneur benefits, including installment payments and discounts, should be retained for Block F licenses and extended to the Block D and E licenses, as

well. Omnipoint also presented its view that the Commission should retain the cellular eligibility restrictions.

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: Suzanne Toller

PCS BLOCK D, E, and F AUCTION RULES

I. Legitimate Block C Applicants Should Be Deemed Eligible to Participate as "Small Businesses" in the Block D, E, and F Auction.

A. Participation in the Block D, E, and F auction as a small business 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. Thus, 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 licensee." 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.

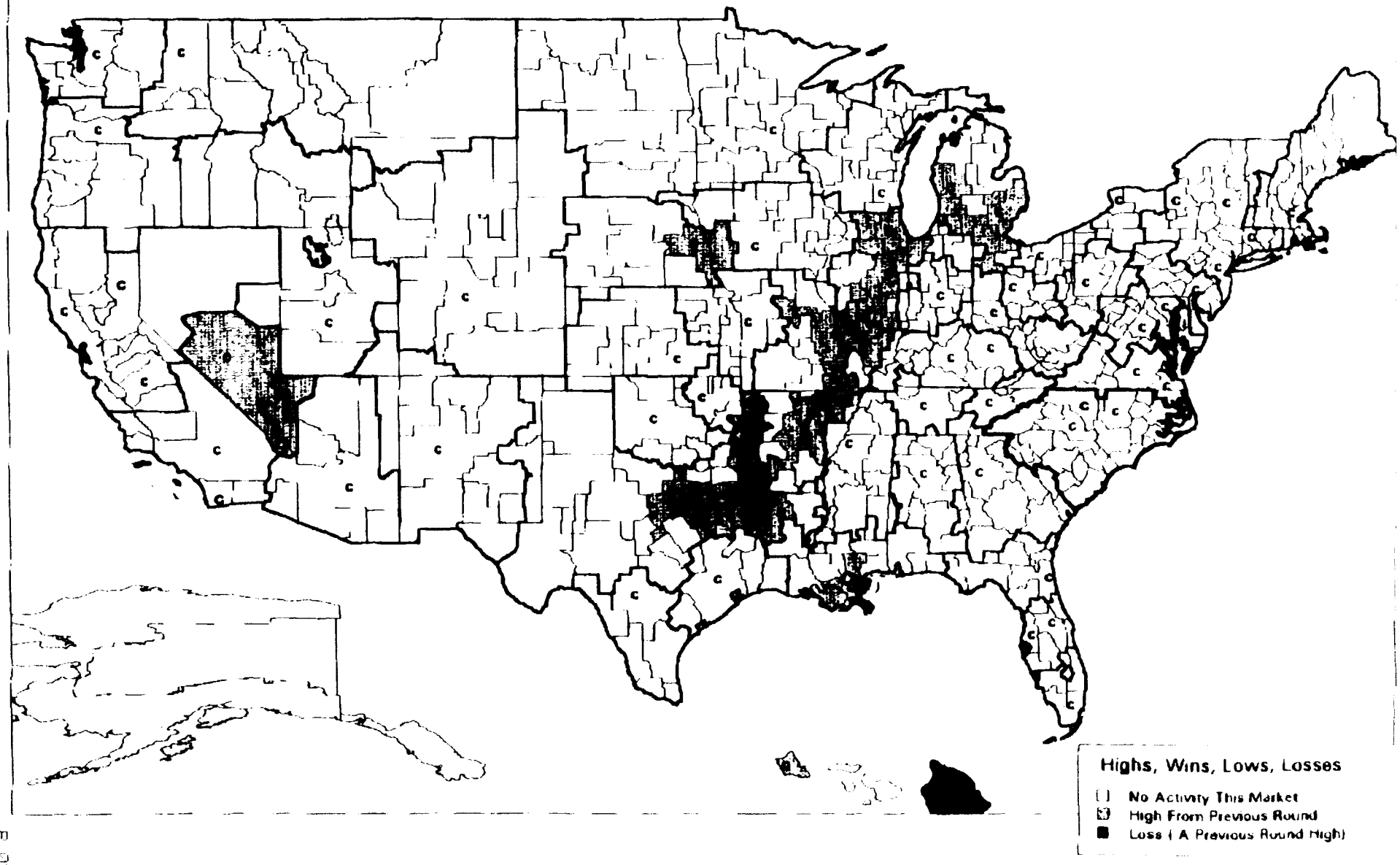
- In separating the two auctions, FCC never suggested that the same entities may not be eligible for both entrepreneur auctions, or that applicants would lose eligibility from auction to the next.
- Block C applicants would be disadvantaged relative to Block F applicants. For example, a small business that chose to drop out or never entered the Block C auction can now use its entire $500 million cap toward bidding. But, a company that started with $50 million in net assets, was successful in the Block C auction, is then excluded from "small business" status.

II. Block C Entrepreneur Bidding Credit and Installment Payment Plan Provisions Should Extend to Blocks D and E Licenses; 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.
- 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, each entrenched operator is not likely to bid on markets where other in-region entrenched operators are already bidding (*i.e.*, conscious parallelism).

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



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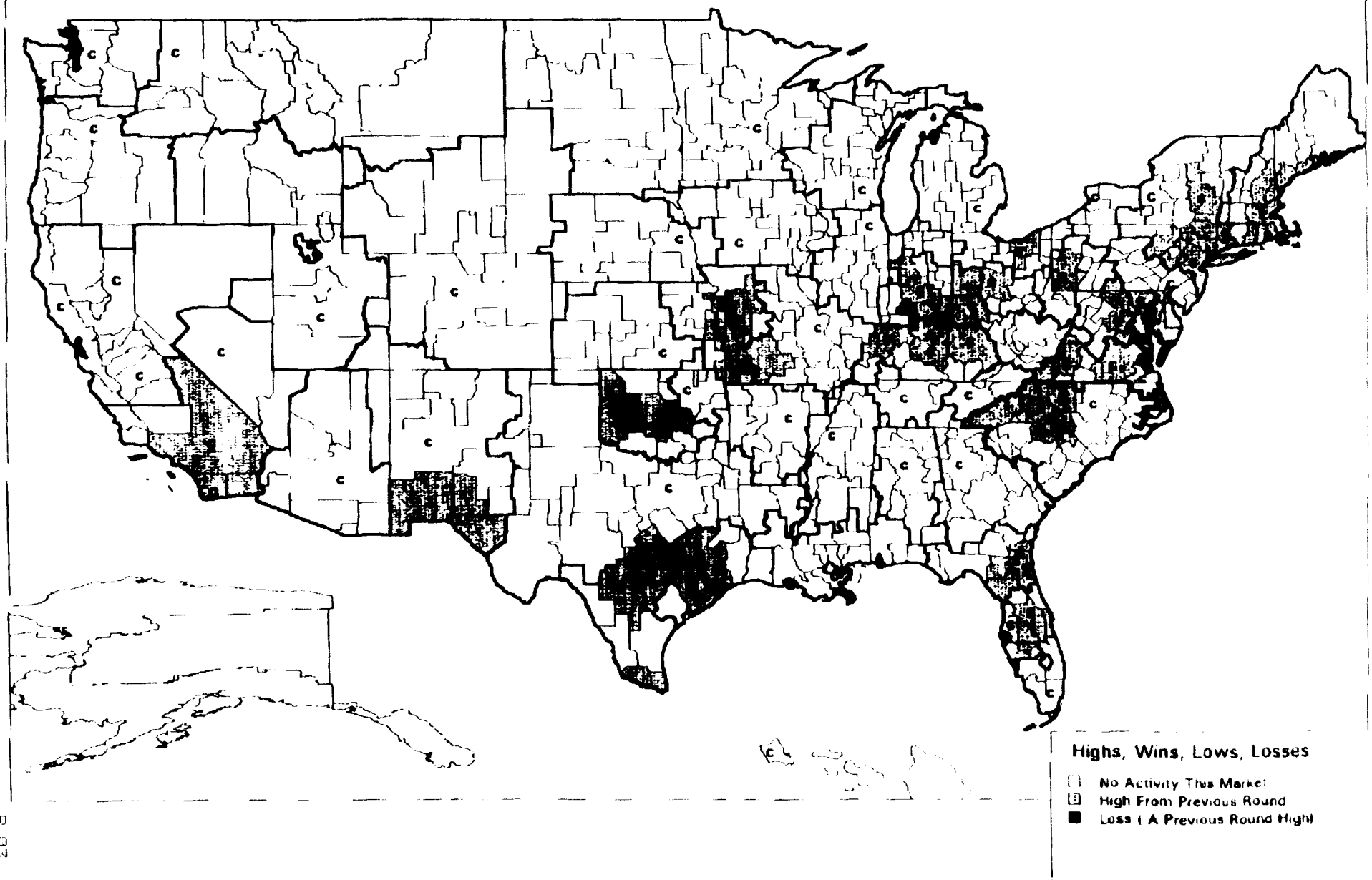
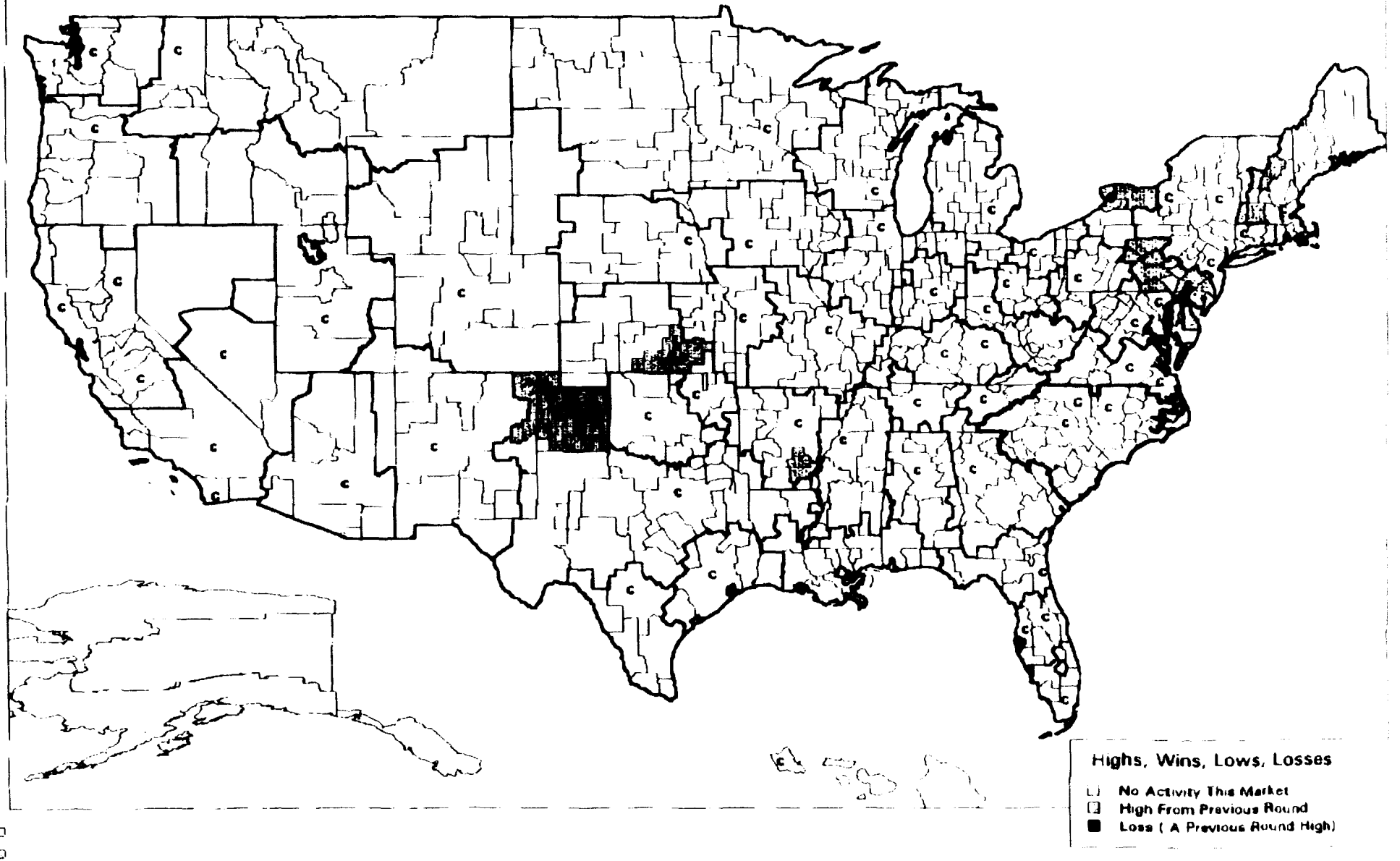
At Risk, Net Exposure and Withdrawals Round 158 (Stage III)



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