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May 29, 1996

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

Re: **Notice of Oral Ex Parte Presentation**
WT Docket No. 96-59
GN Docket No. 90-314

Dear Mr. Caton:

On behalf of the Coalition of New York Rural Telephone Companies ("Coalition"), this notice is submitted in accordance with Section 1.1206(a)(2) of the Commission's Rules, with the original and one copy submitted to the Commission's Secretary.

On May 29, 1996, the Coalition was represented by Larry S. Roadman, President of Margaretville Telephone Co., Inc., in an oral ex parte presentation to Rudolfo M. Baca, Legal Advisor to Commissioner James H. Quello, concerning the above-referenced dockets. David Nace of Lukas, McGowan, Nace & Gutierrez, served as attorney for the Coalition.

Written comments were filed by the Coalition in this proceeding. At today's meeting, the Coalition's written comments were supplemented with discussion of the points summarized in an

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attachment to this letter and in a New York Times article published
May 7, 1996 (copy attached).

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. Nace", written in dark ink.

David L. Nace

cc: Rudolfo M. Baca (by hand-delivery)

In the next few weeks, the FCC will establish eligibility rules for the Personal Communications Service (PCS) 10Mhz spectrum auction. We are concerned that the expressed intent of Congress, that small businesses be afforded realistic opportunities to obtain PCS licenses, has not, and will not be realized in the PCS spectrum auctions. We are asking members of Congress to convey these concerns to the FCC and to encourage the FCC to adopt eligibility rules which will ensure a substantive licensing opportunity for small businesses in the remaining portion of the PCS spectrum auctions (the D, E and F-block auctions).

The reservation for "entrepreneurs" of the C (30Mhz) and F (10Mhz)-block auctions was the FCC's attempt to meet the Congressional small business mandate. Analysis of the recently-completed C-block auction shows that small businesses did not fare well, unless they were the "control group" in new business ventures with large companies having virtually unlimited sources of bid financing. (See the attached New York Times article) True small business bidders were virtually precluded from success in any market chosen by the large bidders.

We recommend that the FCC modify the eligibility rules for the F-block auction. Only small businesses should be allowed to apply for and hold these licenses for at least a three-year period. The terms afforded the C-block winners should be made available to the F-block winners. These include discounted up-front payments, bidding credits and installment payments. Finally, the definition of rural telephone company used in the C-block auction should be retained in the F-block auction.

The small business opportunities mandated by Congress serve more than just the interests of the small businesses bidding for PCS spectrum:

- Many of the small businesses will be located in the BTA(s) (Basic Trading Area) for which they will be bidding. Particularly in the rural areas, this represents a significant economic development opportunity.
- In the rural areas, these small business licensees represent the most likely opportunity for early, timely build out of rural PCS systems. The A, B and C-block licensees have urban-focused build out plans, and most of the interest of the large companies in the upcoming 10Mhz auction has focused on augmenting PCS or cellular spectrum used to serve urban or high-density travel corridors.
- The presence of these small businesses will increase competition by introducing a competitor whose service plans are locally-oriented and distinguishable from those of the large, absentee, possibly foreign-owned licensees of the other PCS and cellular spectrum blocks.

Reservation of the F-block license for small businesses will not preclude anybody from access to PCS spectrum. Large businesses have had and will have ample access through the already completed A, B and C-block and the upcoming D and E-block auctions. If shut out of the F-block auction, it is the small businesses who will have been de facto precluded from access to PCS spectrum.

(over)

(2)

Finally, we believe that reservation of the F-block license for small businesses will enhance competitive bidding for the remaining 10Mhz licenses. Increased competition between the large bidders in the D and E-block auctions, along with the small business bidding in the F-block, will produce substantial additional revenues for an auction process that has already far exceeded expectations.

The New York Times

Winners in the Wireless Auction

Four of the five companies that spent the most in the F.C.C. auction for licenses for personal communications services have the backing of Asian companies or partners. In all, \$10.2 billion was raised.

TOTAL WINNING BIDS \$4.2 billion

Nextwave Personal Communications

REACHING 93.8 million potential customers in 56 markets.

LARGEST WINNING BIDS \$994 million for the New York metropolitan area, \$864 million for Los Angeles.

BACKERS Qualcomm Inc., the Sony Corporation, Peco Energy, Triumph Capital Group, and Korean companies like Pohang Iron and Steel and the LG Group, an electronics maker.

DCR Communications

REACHING 33.6 million potential customers in 43 markets.

LARGEST WINNING BIDS \$461 million for Chicago, \$291 million for Dallas.

BACKERS Westinghouse Electric, Teleconsult and an Asian investment partnership called MASA Telecom.

EWI PCS

REACHING 17.9 million customers in 14 markets.

LARGEST WINNING BIDS \$403 million for San Francisco, \$200 million for Miami and \$199 million for Atlanta.

BACKERS Financial institutions and the Hyundai Corporation, with which it has reached a tentative financing agreement.

BDPCS (Questcom's bidding name)

REACHING 15.5 million potential customers in 17 markets.

LARGEST WINNING BIDS \$199 million for Seattle, \$178 million for Phoenix.

BACKERS Samsung, the South Korean electronics maker, and the US West Corporation, a regional telephone company.

Omnipoint Corporation

\$599 million

REACHING 13 million potential customers in 18 markets.

LARGEST WINNING BIDS \$320 million for Philadelphia; \$34 million for Buffalo.

BACKERS Raised nearly \$120 million in an initial public offering earlier this year.

Sources: Federal Communications Commission; company reports

The New York Times

Big Bidders Win Auction For the Small

F.C.C. Licenses Go to Asian-Backed Groups

By EDMUND L. ANDREWS

WASHINGTON, May 6 — It was billed as one of the Federal Government's biggest small-business programs in history, a chance for corporate have-nots to become players in the booming business of wireless communications.

But today, two years and \$10.22 billion later, as the Federal Communications Commission concluded a special auction of wireless licenses reserved for "small business," it looked more like an investment program for Japanese and South Korean industrial conglomerates.

Five companies, four of them backed heavily by Asian corporations, bid more than \$8 billion among them and are poised to walk away with a batch of licenses for geographic markets covering more than two-thirds of the United States' population.

One company alone, an eight-month-old entity called Nextwave Communications Inc., bid more than \$4.2 billion to capture licenses covering nearly 40 percent of the population. Well over half of Nextwave's money has come from the Sony Corporation of Japan and four big Korean companies. And the South Korean Government, which has a large stake in one of them, could end up owning 10 percent of Nextwave.

F.C.C. officials have contended that no winner will be allowed to exceed foreign-ownership rules. And officials say that the auction will benefit the American public by bringing a group of strong competitors into the market for the next generation of wireless technology, called personal communications services, which will link hand-held computers, electronic notebooks and advanced two-way paging devices.

"Now we have at least five major additional players," Reed E. Hundt, the F.C.C. chairman, said. "That's incredible. That's wonderful."

But many small American businesses,

Big Companies Win an F.C.C. Auction for the Small

Continued From First Business Page

particularly ones owned by minority groups, are grumbling that the auction left them with little more than the crumbs on the table. And at least one disgruntled bidder is vowing to sue the Federal Communications Commission and Nextwave.

Nextwave's own financial disclosures to the Government indicate that foreign companies could acquire up to 28 percent of the company, which would exceed the current 25 percent foreign-ownership limit for holders of United States communications licenses.

That has prompted Go Communications Inc., in Alexandria, Va., to accuse Nextwave of being the instrument of a "cabal" of big foreign and American corporations.

Nextwave executives insist that they intend to comply with the Federal rules. But even those who assume that Nextwave will obey the law say the auction failed to live up to its initial promise for small businesses and minorities.

"This is an opportunity missed, a most important opportunity missed, and I don't think it will ever be recovered," said Patricia M. Worthy, professor of communications law at Howard University in Washington, who advised several African-American-led companies participating in the auctions.

Mr. Hundt, however, argued that the auction had enabled nearly 100 new companies to enter the wire-

less industry, even if some will operate in only one small market. "I look at this as a huge success," Mr. Hundt said.

Whatever one's view of the public-policy implications of the outcome, the winning bidders in this "small" company auction, will spend more than twice as much, on average, as telephone giants like AT&T and Sprint paid for similar licenses in a personal communications services auction last year. In that auction, two licenses were awarded for each market; this time there was only one for each market.

Part of the high-octane bidding stemmed from the fact that companies in today's auction can pay for their licenses over 10 years, which cuts the effective price by one-third to one-half. Last year's auction required winning bidders to pay the full amount almost immediately.

But that hardly explains the bidding frenzy. The license for the New York metropolitan area, which drew the single biggest bid, sold for \$984 million to Nextwave Communications — nearly three times what Sprint paid last year for a New York license. The licenses for the Dallas-Fort Worth area sold for \$421 million, nearly five times what Sprint and AT&T each paid for Dallas-Fort Worth licenses last year.

And many of the top bidders in the latest auction are still scrambling for money. Indeed, Nextwave and several other big bidders have been racing in the last few weeks just to line up enough cash for a mandatory

10 percent down payment on their licenses, which will be due 60 days after they get them.

Beyond that, the companies will need to spend billions of dollars on network construction, operations and marketing — all just to compete with at least four other big wireless companies that are expected in every major market within a few years. Besides, the other two personal communications services operators in each city, the new licensees will be going up against the two long-established cellular-telephone networks in each market.

That could make these billion-dol-

In this round of bidding, wireless licenses fetch far higher prices.

lar bets hard to cover.

Industry executives say that Nextwave has already hired Bear, Stearns as its lead investment banker, and hopes to raise additional cash through an initial public stock offering. Other top bidders are expected to try the same thing.

All this is a far cry from what nearly everybody predicted two years ago when the F.C.C. announced plans for the auction, which Mr. Hundt described as an opportunity that would "leave the action to small business, minorities and women."

To a great extent, that goal was thwarted by the Supreme Court's decision last June to sharply restrict so-called affirmative action programs. After that ruling, known as *Adarand Constructors v. Peña*, the F.C.C. abruptly abandoned special preferences for companies owned by women and minorities and said the auction would be simply for companies that qualified as "small."

But the F.C.C. made it easy for companies to raise huge sums of money from big corporations, by allowing big investors to own up to 75 percent of the equity without disqualifying a bidding company's status as a "small" business.

In the results announced today, though, the F.C.C. did estimate that minority-owned companies captured about 30 percent of the licenses available. But many analysts say the agency's definition of "minority-controlled" is so loose that it greatly overstates the results.

For example, DCR Communications, the second-biggest bidder, is listed as a "minority" company even though its founder is Daniel C. Riker, a white former executive at MCI Communications, and most of its money came from giant corporations. The "minority" tag is based on the fact that a Hispanic-American investor owns 24 percent of the stock.

Meanwhile, many prominent African-American businessmen — from the producer Quincy Jones to Clarence Smith, publisher of *Essence* magazine — simply stayed out of the bidding altogether after they sized up the prospects.

The big surprise was the intensity of interest by Asian companies, particularly those from South Korea. Some big bidders, like Sony and the LG Group, are apparently hoping to increase their positions in the global wireless equipment market while others seem intent on building experience in order to become wireless networks in Asian markets.

Asian investors contributed about three-quarters of the money for Nextwave, all in the form of convertible debt. The investors include the Pohang Iron and Steel Company; the LG Group, the huge Korean electronics manufacturer; a big Korean power company, and a Korean trading company.

From Japan, Nextwave lined up big investments from the Sony Corporation.

Nextwave was not alone, however. Except for the Omnipoint Corporation, all of the other top five bidders got at least some money from investors in Korea or Japan.

Nextwave executives point out that the Asian investors cannot convert their loans to stock without first getting F.C.C. approval, and they say the company's core founding group invested \$10 million and continues to hold 25 percent of the company's stock and 51 percent of the voting power — the government's minimum ownership requirements for this auction.

"I think we did exactly what the F.C.C. wanted us to do," said Janice Obuchowski, executive vice president of Nextwave. "The whole idea was that this is an infrastructure business and that to succeed you had to have substantial capital."

Thus far, Nextwave's corporate investors do not own any stock. But the company's disclosure documents say that Korean and Japanese investors have warrants and options to buy as much as 28 percent of its equity.

Nextwave executives say that none of the foreign loans will convert

to stock unless they pass muster with the F.C.C. — a process they say will probably not be necessary because they are busily raising more money from American investors.

F.C.C. officials have refused to comment on the foreign-ownership issue, though Mr. Hundt, the agency's chairman, made it clear in a recent interview that he was sympathetic to Nextwave.

"If there is a problem with foreign ownership, we will look into it and look into it seriously," Mr. Hundt

said. But, he added, "Companies have been borrowing money from overseas for years, though usually it has only been the global corporations, and there is nothing wrong with that."