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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
)
Omnipoint Communications, Inc.)
New York MTA)
Frequency Block A)
)

DOCKET FILE COPY ORIGINAL
File No. 15002-CW-L-94

To: The Commission

REPLY TO RESPONSE OF OMNIPOINT TO PETITION FOR CLARIFICATION

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Date: February 7, 1996

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REPLY TO RESPONSE OF OMNIPOINT TO PETITION FOR CLARIFICATION

1. The Wireless Communications Council ("WCC"), through counsel, hereby replies to the "Response of Omnipoint to Wireless Communications Council's Petition for Clarification" ("Omnipoint Response") filed by counsel to Omnipoint Communications, Inc. ("Omnipoint") on January 31, 1996. In its Petition for Clarification, the WCC asked the Commission to clarify the meaning of the phrase "substantial use" as used in the conditions specified in Omnipoint's PCS license. Omnipoint offers no information to suggest that clarification is unwarranted.¹

¹Indeed, much of Omnipoint's response consists of venomous attacks against the WCC and Mr. James I. Valentine. Such personal attacks fail to offer any substantive information and have no place in a pleading before the Commission.

Omnipoint argues that the WCC has not demonstrated how its interests, or those of the public generally, are adversely affected by Omnipoint's build-out plans. As explained in the Petition for Clarification, Omnipoint received substantial financial benefits as a recipient of a pioneer's preference, in return for complying with specific Commission requirements regarding the use of its technology. See Petition for Clarification at 10, n.26. Should Omnipoint fail to comply with the requirements, grant of the preference would be unwarranted and the United States Treasury would have foregone almost \$100 million in revenue.

2. Omnipoint attempts to frame the Petition for Clarification as asking whether the company may deploy IS-661 in conjunction with other technologies in the New York MTA. Omnipoint Response at 13.² The WCC does not maintain that Omnipoint must use only IS-661 technology; rather, the WCC is asking the Commission to define a specific condition associated with the authorization.³

3. Omnipoint flatly states that the "substantial use" condition of its authorization is to be measured at the five year build-out period, and that it will make a showing of compliance at that time. Omnipoint Response at 11-12. This statement is at odds with Omnipoint's statement in its registration filing with the Securities and Exchange Commission, in which Omnipoint notes that "the FCC has never defined the phrase ["substantially uses"]." It is difficult to comprehend how Omnipoint can claim with certainty that this condition has been fully defined in one filing, yet claim the opposite in a second document.

4. As the WCC explained in its Petition for Clarification, Omnipoint is apparently constructing a PCS network in the New York

²Omnipoint incorrectly asserts that the WCC is "aiming to harm Omnipoint as a technology competitor by seeking 'clarification' from the Commission that Omnipoint, separate and apart from all other broadband PCS licensees, is prohibited from deploying any other technology." Omnipoint Response at 5. Omnipoint is, of course, separate and apart from all but two broadband PCS licensees, as it received its license through the pioneer's preference. In return for the pioneer's preference and the significant financial benefits associated with the preference, Omnipoint must substantially use its own technology.

³Nor is the WCC asking the Commission to revisit its decision in Amendment of the Commission's Rules to Establish New Personal Communications Services, Third Report and Order, 9 FCC Rcd 1337 (1994), as Omnipoint suggests.

MTA which will initially use GSM equipment, rather than its IS-661 technology. Omnipoint does not attempt to clarify the extent to which it will use its IS-661 technology in the New York MTA, either initially or over a five-year period. Rather, Omnipoint simply justifies its deployment plan by stating, "because deployment of GSM equipment will make Omnipoint's system operational, revenue-generating, and compatible with many PCS operators choosing GSM, it will actually speed-up the deployment of Omnipoint's technology and advance the Commission's goal of PCS interoperability." Omnipoint Response at 9. Such a justification, however, does not answer the question of whether Omnipoint is initially using its IS-661 technology.

5. Omnipoint argues that there is no sound public policy reason for the Commission to evaluate Omnipoint's compliance with the "substantial use" condition at this time. Omnipoint Response at 12. Again, Omnipoint has missed the point. In 1992, Omnipoint stated that it had operational, spread spectrum pocket phones and wireless systems incorporating its IS-661 technology, and that its system could be commercially fielded in 1992.⁴ While it intends to launch its New York system in 1996, it appears that Omnipoint's IS-661 technology will initially play a negligible role in that system.⁵ If so, then Omnipoint will be able to offer service in

⁴Petition for Clarification at 6, citing Reply Comments of Omnipoint Communications, Inc., GEN Docket No. 90-314, filed June 26, 1992, at 3-4.

⁵Petition for Clarification at 9, citing Engineering Statement of Dr. Charles L. Jackson.

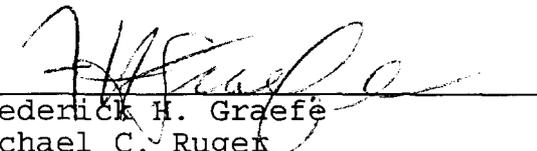
the New York MTA prior to any other PCS licensee, without having fulfilled the condition upon which its license is based. Such an outcome is grossly unfair not only to competing PCS licensees in the New York MTA, but also to American taxpayers who have subsidized the costs of the Omnipoint system through the discounted cost of the license and an installment payment program not available to participants in the A and B Block auctions.

6. Therefore, the WCC again requests the Commission to clarify the meaning of the "substantial use" condition attached to the Omnipoint PCS license. This will ensure that Omnipoint is in full compliance with the conditions associated with its PCS license, and that it is deserving of the substantial financial benefits attached to its license.

Respectfully submitted,

THE WIRELESS COMMUNICATIONS COUNCIL

By: _____


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Date: February 7, 1996

CERTIFICATE OF SERVICE

I, Roberta Messinger, a secretary at Baker & Hostetler, hereby certify that the attached Reply to Response of Omnipoint to Petition for Clarification has been delivered by hand to the following parties on February 7, 1996.

The Honorable Reed E. Hundt
Chairman
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Washington, DC 20554

The Honorable James H. Quello
Commissioner
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Room 802
1919 M Street, N.W.
Washington, DC 20554

The Honorable Andrew C. Barrett
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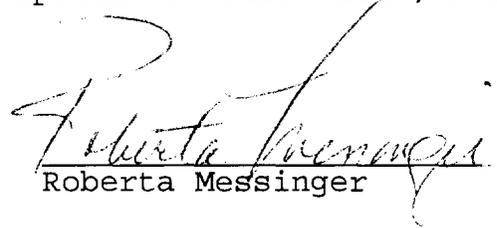
The Honorable Susan Ness
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Roberta Messinger

Certificate of Service

I, Catherine C. Ennels, certify that a copy of the foregoing "Response of Omnipoint to Wireless Communications Council's Petition for Clarification" was hand-delivered this 31st day of January, 1996 to the following:

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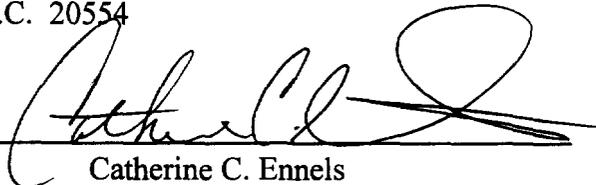
The Honorable Reed E. Hundt, Chairman
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