Before the DOCKET FILE COPY ORIGINAL
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Petition for Rulemaking	)
Regarding the Administration	)
and Disposition of Competitive	)
Bidding Installment Payment	)
Obligations	)

RM-9093

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Federal Communications Commission
Office of Secretary

COMMENTS OF AIRGATE WIRELESS, L.L.C. IN SUPPORT OF
COOK INLET REGION, INC.'S PETITION FOR RULEMAKING

AirGate Wireless, L.L.C. ("AirGate Wireless") hereby files these comments in support of Cook Inlet Region, Inc.'s ("CIRI's") Petition for Rulemaking filed with the Commission on May 7, 1997. AirGate Wireless is the F block PCS licensee for four BTAs in North and South Carolina including Charlotte and Greensboro. AirGate Wireless bid for its licenses as an entrepreneurial company that qualified as a very small business under the FCC's rules. An affiliate of AirGate Wireless, AirLink, participated in the C block auction as a small business and placed a $20 Million up-front payment to participate in the auction. AirLink ultimately withdrew from the C block auction prior to its conclusion based on its firm belief that the bid prices were too high to support a viable PCS business.

AirGate Wireless urges the Commission to grant CIRI's Petition for Rulemaking to initiate a rulemaking proceeding that will permit careful and reasoned evaluation of a process to deal with the financial defaults of spectrum licensees including, most specifically, PCS licensees in the C and F blocks. The Commission's decision on how to proceed in the face of

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financial defaults by certain licensees has significant public policy issues for spectrum licensing though the auction process as well as the integrity of past and future auctions. These issues are not issues that can be dealt with fairly or reasonably through a waiver process on a case-by-case basis without the benefit of full public comment and the rulemaking process. Accordingly, AirGate Wireless encourages the Commission to grant CIRI's Petition for Rulemaking. Furthermore, to maintain the integrity of the auction process and the current rules, AirGate Wireless encourages the Commission to reinstate the current terms of the installment payments for all spectrum licensees and to apply any rules adopted through the rulemaking process to all licensees prospectively.

I. The Commission Should Grant CIRI's Petition for Rulemaking To Safeguard the Public Interest and Protect the Integrity of the Auction Process

Only the uniform approach of adopting revised rules through a rulemaking process will ensure that the Commission's policies for addressing financial defaults are developed in the public interest and not to ease the dire financial conditions of certain licensees. The award of licenses is a process endowed with the public interest because it involves the allocation of a public resource -- scarce radio spectrum. In the auction process, the "value" of spectrum is determined by awarding it to the highest bidder. For the public interest to be served, however, the high bidder must also be able to pay the price or the public interest will be undermined. The financial terms of a licensee's payment obligations are an integral part of the license and the stewardship that the licensee assumes in receiving the license. These financial terms also are known and the license cost can be quantified throughout the auction process. If the licensee fails to meet its obligations, consistent with the FCC's rules, the license should be canceled, the

spectrum reclaimed and the licenses re-auctioned. Variance from these financial terms provides a government safe harbor that undermines the integrity of the auction process and will set a harmful precedent for future auctions as bidders seek to rely on the prospect for a government workout to limit their license liability post-auction instead of limiting their bidding in the auction.

A rulemaking proceeding to develop more detailed rules for addressing financial defaults on licenses is appropriate and consistent with the process initially used by the Commission in developing the auction rules. In developing rules to implement the mandate for a wide dissemination of licenses under Section 309(j) of the Communications Act, the Commission engaged in an extensive rulemaking process that provided ample opportunity for public comment.[1] Many of the current licensees were active participants in the rulemaking and provided comments on the Commission's proposed rules. Modification to the financing terms developed in those rulemaking is a significant rule change that should receive at least the same consideration and public comment used in developing the rules. Furthermore, as demonstrated by the requests filed by certain licensees, MCI, CIRI's Petition for Rulemaking and the position of AirGate Wireless, there is a wide divergence of opinion by licensees on how and whether the Commission should permit modification of the financing terms of PCS licenses beyond the relief permitted under the FCC's current rules.

Public comment and a rulemaking process also is warranted because a wavier or change

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[1] *See e.g. Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Report and Order,* 9 FCC Rcd 2348 (1994); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Fifth Memorandum Opinion and Order*, 10 FCC Rcd. 403 (1994).

of the financing terms represents a dramatic change in the Commission's stated policy. Throughout the auction process and the development of the auction rules, the Commission repeatedly emphasized the vigor with which it would enforce payment obligations. Any leniency on the payment terms would fly in the face of the Commission's continued commitment to stringently enforcing the payment obligations of licensees. The Commission's position was relied upon by bidders such as AirGate Wireless in bidding in the auctions. A change in this stated policy should only be made after the evaluation of public comment and through the rulemaking process.

Any waiver in the Commission's commitment to enforcing the financing terms of licenses based on competitive forces in the market and the skepticism of the financial markets toward new licensees undercuts the entire reliance on the free market system in the auction process. Such an approach also runs counter the Commission's stated goals of increasing competition in the wireless market. Licensees claim of fierce competition and the competitive advantage of other established licensees were facts known during the auction process. The competitive structure of PCS (and cellular) has not changed since the PCS rules were adopted by the Commission. Before the C block auction, during the C block auction and after the C block auction there were six potential PCS licensees in each market. This competitive structure was well known to the C block licensees as they placed each bid for PCS licenses. This competitive structure is also one that benefits consumers of wireless services. Of all agencies, the FCC as a proponent of competition in all sectors of the communications industry should not assume the mantle of a protector *against* robust competition.

II. The Commission Should Immediately Reinstate the Installment Payments for All PCS Licensees

In addition to initiating a rulemaking to address the issues raised by CIRI in its Petition for Rulemaking, the Commission should also reinstate the current payment terms of all PCS licensees. AirGate Wireless opposes the Commission's action suspending the installment payments on March 31, 1997, as indicated in the attached letter to Kathleen O'Brien-Ham filed with the Commission on April 8, 1997. This suspension is not in the public interest nor is it in the best interest of entrepreneurs or small businesses. A number of small businesses that participated in the C block auction and persevered through the rulemaking process, including AirGate Wireless' affiliate, AirLink, GO Communications, and U.S AirWaves, withdrew from the auction based on the escalating auction prices that no longer met the financial parameters of their business plans. The Commission, by its action in suspending the installment payments, has sent a message to these entrepreneurs that their reasonable, prudent behavior miscalculated the safety net of the FCC. This is not the message that these entrepreneurs deserve nor is it the message the Commission should send to future licensees.

The public interest and the goals of Section 309(j) of the Communications Act are best served by a prompt reauctioning of the licenses to companies capable of building the PCS networks and providing service to the public. Section 309(j) does not require the Commission to reward certain bidding behavior-- that may have proven excessive -- nor does it require the government to bail out these bidders. Consistent with its obligations under 309(j), the Commission should not stray from its role as the auctioneer into that of credit counselor but should enforce the installment payments.

III. Conclusion

In conclusion, AirGate Wireless encourages the Commission to:

(1) grant CIRI's Petition for Rulemaking; and

(2) reinstate the installment payments for all PCS licensees.

Respectfully submitted,

AIRGATE WIRELESS, L.L.C.

By: Shelley Spencer

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Date: May 30, 1997

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ATTACHMENT

AirGate Wireless

APR 8 '97

April 8, 1997

By Hand
Kathleen O'Brien Ham
Chief
Auctions Division
Federal Communications Commission
2025 M Street, N.W.
Room 5322
Washington, D.C. 20554

Re: Opposition to Suspension and Postponement of Installment Payments for C Block PCS Winners

Dear Ms. O'Brien Ham:

AirGate Wireless, L.L.C. ("AirGate Wireless") strongly opposes the Commission's decision to suspend the installment payments due from PCS licensees who were the high bidders in the C block auction. The suspension has cast doubt on the integrity and fairness of the auction process and puts in question the sincerity of the Commission's commitment to stringently enforce the financial obligations of auction licensees. In order to restore order and reasonableness to the auction process, and to deter future speculation and regulatory gaming, the Commission must take a strong stand in enforcing the financial obligations of C block licensees. AirGate Wireless encourages the Commission to:

(1) immediately reinstate the quarterly interest payment obligations of all C block licensees;

(2) declare in default all C block licensees that have failed to make their downpayment or interest payments;

(3) rescind and reauction the licenses once the grace period for curing defaults on the licenses has expired and the payment obligations have not been cured.

Anything less sends a message to existing licensees and future auction bidders that the FCC will provide a financial safety net for bidders that bid beyond their financial capabilities. This practice will fuel speculative bidding and put the government in the permanent position as a bill collector.

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I. C Block Bidders Licensees Should Not Be Shielded By the Government From The Discipline of the Financial and Competitive Markets

AirGate Wireless is a very small business that participated in the D, E and F block auction and was declared the final, high bidder for four licenses in the F block. An affiliate of AirGate Wireless, AirLink, participated in the C block auction and placed a $20 Million up-front payment to participate in the auction. As the auction progressed, AirLink encouraged the Commission to move the auction to successive stages to increase the sincerity of bidding and to speed the auction. In meetings with Commission staff, however, the staff expressed a firm reluctance to exercise control over the auction's progress and auction prices on the competitive market theory that bidders were basing their bidding on sound business plans that would be constrained by investors and market discipline. In a 1996 speech given before CTIA near the end of the C block auction, Chairman Hundt acknowledged his concern about C block prices and his corresponding reliance on the bidder's voluntary actions:

> I am also concerned about the level of the bidding in the C block auction. I'm indifferent to the prices: people are bidding of their own free will. But I have heard that some bidders believe that the FCC will forgive the down payment due when the auction is over and even may forgive the principal payments which begin six years later. In the event that anyone knows anyone who thinks such thoughts, I have some advice you can pass on to them: Forget about it. And what if there are defaults? We have long had plans to re-auction defaulted licenses away. (Speech of Chairman Reed Hundt Before the Cellular Telecommunications Industry Association, March 26, 1996).

Now, however, these very bidders who voluntarily placed their bids in the auction with their free will seek aid from the Commission to shield them from the reality and the discipline of the financial markets. The scrutiny being applied by the financial markets is appropriate and the true test of a sound business and financial strategy. The Commission should not pick and choose when to rely on market forces.

Similarly, the Commission should not cast the cloak of government protection over these licensees to shield them from the realities of competition. As has often been repeated by Chairman Hundt and the Wireless Telecommunications Bureau staff, the auctions provide an opportunity to compete not a guarantee. It is ironic that shortly one year after the anniversary of the Telecommunications Act of 1996 -- an act designed to usher in robust competition -- the C block licensees seeking relief from the quarterly payment obligations, claim that competition has hurt their ability to raise funds and increased their need to divert funds from license payments (interest only) to installation of infrastructure.

Despite their cries of fierce competition, the competitive structure of PCS has not changed since the C block auction was held. Before the C block auction, during the C block auction and after the C block auction there were six potential PCS licenses in each market. This competitive structure was well known to the C block licensees as they placed each bid for PCS licenses. Of all agencies, the FCC should not assume the mantle of a protector *against* robust competition.

II. Moving to Annual Payments Will Only Delay Not Eliminate Potential License Defaults

Unless the Commission stands firm on the payment obligations of C block licensees, the financial and regulatory dilemma the Commission now faces will only get worse. The Commission must set a precedent consistent with its statements in the past that the payment terms are non-negotiable. In their letter requesting modification of the payment terms to provide for annual installments, the C block licensees seeking relief claim that they will divert more money to installing network equipment. Rather than reduce the risk, however, network construction can also increase the risk as additional debt is assumed to acquire and deploy the network. In addition, once a network is launched it will have subscribers to the service increasing the public interest cost of rescinding the license and eliminating the service. The longer the Commission waits the harder and "uglier" it will be to revoke licenses in default.

The increasing investment in network infrastructure by companies in financial difficulties also has ramifications for other entrepreneur block bidders that have not sought financial relief from the Commission . Vendor financing is commonly used by carriers to fund the purchase and installation of network equipment. As vendors fund companies of high risk, such as those seeking the installment payment extension, the vendors will be unwilling to fund other entrepreneurial companies, even those with more stable financial conditions. This shrinking pool of vendor financing will hamper the ability of other small business entrepreneurs to obtain debt financing from equipment vendors.

Deferral of the installment payment obligations of C block licensees is unlikely to aid those licensees that chose to amass significant liability for licenses in the C block auction. The deferral is likely to only delay eventual defaults on larger interest amounts and postpone delivery of service. Based on their high bid price, AirGate Wireless estimates the annual interest obligation of the top five licensees seeking this relief range from in excess of $2.3 Million to up to $245 Million for NextWave. The amounts payable by the top two licensees are staggering

whether paid on a quarterly or annual basis. The probability of collection is likely to decrease as the obligation increases.

Licensee	Net Bid	Amount Fin.	Annual Interest	Quarterly Interest
NextWave	$4.2 Billion +	$3.7 Billion +	$245 Million +	$61 Million +
DCR	$1.9 Billion +	$1.2 Billion +	$ 89 Million +	$22 Million +
Mercury	$94 Million +	$ 70 Million +	$ 4.4 Million +	$1.1 Million +
R&S PCS	$84 Million +	$ 63 Million +	$ 3.9 Million +	$ 993,207
Alpine PCS	$50 Million +	$ 34 Million +	$ 2.3 Million +	$ 550, 945

Furthermore, the C block licenses were awarded under what has been shown to be the most generous government financing, six years deferral of principal payments. This deferral was shortened to two years in the F block auction. Even under the most favorable financing plan, these licensees are seeking relief demonstrating the significant credit risk that they pose to the government.

III. Suspension of the Installment Payments is Not in the Public Interest

The Commission's action suspending the installment payments is not in the public interest nor is it in the best interest of entrepreneurs or small businesses. A number of small businesses that participated in the C block auction and persevered through the rulemaking process, including AirGate Wireless' affiliate AirLink, GO Communications and U.S AirWaves, withdrew from the auction based on the escalating auction prices that no longer met the financial parameters of their business plans. The Commission, by its action in suspending the installment payments, has sent a message to these entrepreneurs that their reasonable, prudent behavior miscalculated the safety net of the FCC. This is not the message that these entrepreneurs deserve nor is it the message the Commission should send to future licensees.

The public interest and the goals of Section 309(j) are best served by a prompt reauctioning of the licenses to companies capable of building the PCS networks and providing service to the public. Section 309(j) does not require the Commission to reward certain bidding behavior-- that may have proven excessive -- nor does it require the government to bail out these bidders. Consistent with its obligations under 309(j), the Commission should not stray from its role as the auctioneer into that of credit counselor but should enforce the installment payments.

We look forward to a firm commitment by the FCC to enforcing the terms of the government financing provided to C block licensees by immediate reinstatement of the quarterly payment obligations.

Sincerely,

Shelley Spencer

Shelley Spencer
Manager

cc: Chairman Reed Hundt
Commissioner James Quello
Commissioner Rachelle Chong
Commissioner Susan Ness
Mr. William Caton

CERTIFICATE OF SERVICE

I, Shelley Spencer, hereby certify that a copy of the foregoing letter to Kathleen O'Brien Ham was sent via regular mail to the following:

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