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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	
	)	
Broadband PCS C and F Block	)	WT Docket No. 97-82
Installment Payment	)	
Restructuring		

COMMENTS OF ALPINE PCS, INC.

Gerald S. McGowan
George L. Lyon, Jr.
Lukas, McGowan, Nace &
Gutierrez, Chartered
Suite 1200
1111 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 857-3500

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Summary

Alpine PCS, Inc. ("Alpine") submits its comments on certain broadband PCS Block C and F installment payment issues. As a C and F Block licensee, the resolution of the installment issues raised herein will vitally affect Alpine and its ability to expeditiously institute broadband PCS service in its various markets. The various requests filed to date present a compelling basis for the Commission to restructure PCS Block C and F installment payments, not to provide individual relief to particular licensees who may have overbid for certain markets, but rather to facilitate the overall health of the industry, foster diversity in spectrum ownership and service offerings, and insure the success of future spectrum actions.

Although the intent of the auction rules was to facilitate entry by minorities and small businesses, the effect was to allow numerous under-funded bidders to participate and escalate prices. The results of this process have been numerous defaults, artificially high prices based on under-funded bidders and a naive knowledge of the financial markets, resulting in a C Block concept which is in grave danger of imploding. Restructuring of C and F Block payments is required to ease the unforeseen lack of capital available for system construction and commencement of operation. Failure to do so will have dire effects on both PCS licensees and the public.

As the Commission is well aware, circumstances beyond either the Commission's or the licensees' control contributed to substantial delay of the C Block auction, which was to have been

held shortly after the close of the A and B Block auctions. The delay in the C Block auction substantially increased demand for these licenses compared to the A and B Blocks and bid them up beyond any expectation, with the result that capital which was expected to be used for construction and initial operation, went instead for license acquisition. The delay in holding the C Block auction resulted in a further squeeze due to A and B Block winners soaking up available financing. Hence, C Block licensees generally paid more for their licenses than A and B Block licensees, and have experienced higher costs of capital than the earlier auction winners. Moreover, because the C and F Block high bidders are by definition small businesses, their access to capital is substantially restricted compared to the huge established concerns who were the high bidders for Blocks A and B. As a result of these factors, C Block licensees have been running near the end of the pack in the race for capital to construct and commence operations.

Given these and other factors which have served to make financing for C Block licensees scarce, the Commission should exercise its discretion to restructure the installment obligations of Block C and F licensees to prevent the potential for a wholesale default, which would severely impact the entire block of licenses.

The Commission should make available several potential restructuring alternatives, including: lengthening license terms to 20 years; modifying principal and interest payments to an annual basis; placing a five year moratorium on interest payments;

modifying the interest rate to that existing when the C Block auction commenced; and subordinating installment payment notes to vendor and working capital financing.

In sum, restructuring C and F Block payment obligations is necessary to ensure an opportunity for C Block PCS licensees to offer meaningful competition to the established cellular and headstarting PCS Block A and B licensees. Finally, the need exists to expedite this restructuring to the fullest extent possible. Substantial additional delay in addressing the issues raised in this proceeding will only exacerbate the difficulties Block C and F licensees are experiencing in capital formation, with the attendant risk that they will be unable to effectuate their business plans. Congressional and Commission goals in establishing the C Block of encouraging entrepreneurship and participation by designated entities would thus be thwarted.

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To: The Commission

COMMENTS OF ALPINE PCS, INC.

Alpine PCS, Inc. ("Alpine"), by its attorneys and pursuant to the FCC's Public Notice, DA 97-679 (June 2, 1997), submits its comments on certain broadband PCS Block C and F payment issues raised by various parties. In support, the following is shown:

I. Alpine's interest.

1. Alpine is a broadband PCS licensee in the C, E and F Blocks. As a C and F Block licensee, the resolution of the installment issues raised herein will vitally affect Alpine and its ability to expeditiously institute broadband PCS service in its various markets. Alpine was a signatory to the request filed with the Commission March 13, 1997, to modify the installment payment obligations from quarterly to annually.[1/] Alpine has also reviewed other requests for restructuring of PCS broadband installment payments. The requests taken together, or separately, present a compelling basis for the Commission to restructure PCS Block C and F installment payments, not to provide individual relief to particular licensees who may have overbid for certain markets, but rather to facilitate the overall health of the industry, foster

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1/ *See* Letter from Thomas Gutierrez, Esq., et al to Michele C. Farquhar, Esq., Chief, Wireless Telecommunications Bureau.

diversity in spectrum ownership and service offerings, and insure the success of future spectrum actions.

II. Necessity for C and F Block restructuring.

2. Although the intent of the auction rules was to facilitate entry by minorities and small businesses, the effect was to allow numerous under-funded bidders to participate and escalate prices. In some cases these were de novo small businesses with naive notions as to the financial markets; in other cases they were mega "small businesses" who did not realize what impact the billions they needed to fund the development of their markets would have on the financial markets. In many cases bidders lacked sufficient capital to begin to develop the licenses on which they were bidding. The results of this process have been numerous defaults, artificially high prices based on under-funded bidders and an insufficient knowledge of the financial markets, resulting in a C Block concept which is in grave danger of imploding.

3. Restructuring of C and F Block payments is required to ease the unforeseen lack of capital available for system construction and commencement of operation. Failure to do so will have dire effects on both PCS licensees and the public.

4. As the several requests for restructuring make clear, there currently exists a severe shortage of capital to finance Block C and F PCS ventures. This arises from several factors that in the aggregate neither the industry nor the Commission foresaw. The first reason arises from the very efficiency of auctions in distributing spectrum. Cellular licenses have been distributed in

a tediously long process starting in 1982, which is still not complete. Because of the time consuming process the Commission took to award cellular licenses, first through comparative hearings and later by lottery, cellular licensees have not significantly taxed the capital markets as they have built-out their systems over this 15 year period.[2/] By contrast, the Commission awarded all PCS licenses within an approximate two-year period. This alone would have strained the ability of PCS licensees to adequately finance their systems. However, this is not the only institutional factor contributing to scarce capital.

5. A second factor is that cellular licensees received their licenses for free. Although significant numbers of Block A licensees may eventually have sold their systems, a substantial amount of such lottery winners at least initially put their systems on the air.[3/] Moreover, as to many sellers, they often received significant amounts of stock in publicly traded companies, or participated in roll-ups with other lottery winners, thereby conserving capital for construction and operation. PCS licensees, however, have pledged enormous amounts of capital to the government for the right to construct and operate their systems.

2/ This is not to say, however, that there were not significant periods when capital was tight for start-up cellular enterprises. For example, two significant multiple market holders of A Block licenses were forced into reorganization proceedings as a result of lack of adequate financing stemming from the 1990-91 recession.

3/ B systems were awarded to well capitalized telephone companies, which have generally not engaged in sales of those assets.

6. A third factor weighing on the capital markets for PCS entities is the overhang of supply from the sheer number of PCS licenses and the effect such a supply of licenses has on the demand for capital. While the FCC has been issuing two cellular licenses over a 15 year plus period, the agency has issued six PCS licenses over an approximate two-year period. With several more licensees per market competing for scarce construction and working capital financing, licensees are simply not finding the dollars available to effect construction and operation of their systems.

7. A fourth factor adversely affecting PCS capital formation is the high infrastructure costs of PCS facilities compared to cellular. Since 2 GHz propagation is substantially inferior to 800 MHz, PCS licensees must build substantially more transmission sites to cover an area than cellular licensees. This results in substantially higher facilities' costs for PCS licensees.

8. And if that were not enough, a fifth factor with which PCS licensees must contend is that they must compete immediately with mature cellular systems in terms of overall and portable coverage and other system enhancements that existing cellular licensees have had more than a decade to perfect and build out.

9. The end result is that there are very many PCS licensees chasing very few investment dollars. Unfortunately, in the race for investment dollars, Block C and F licensees are falling behind. Not only do they have the various established cellular licensees ahead of them, they also must compete in the capital markets with A and B Block licensees, almost all of whom are affiliates of Bell

Operating Companies or major interexchange carriers. The entities also enjoy a significant, unplanned head-start on the entrepreneur block licenses.

10. As the Commission is well aware, circumstances beyond either the Commission's or the licensees' control contributed to substantial delay of the C Block auction, which was to have been held shortly after the close of the A and B Block auctions. Specifically, on March 15, 1995, the D.C. Circuit stayed the Block C auction on Constitutional grounds.[4/] After the petitioner withdrew its petition, the court dissolved the stay on May 1, 1995.[5/] However, on June 12, 1995, three days before the rescheduled auction was to begin, the Supreme Court issued its decision in *Adarand Constructors, Inc. v. Pena*,[6/] holding that strict scrutiny must be applied to all racially based governmental classifications. As a result of that decision, the C Block auction was once again postponed, and rescheduled, only to be stayed once again at the end of July.[7/] As a result of this extraordinary set of circumstances, the C Block auction did not begin until December 18, 1995, some nine months after the close of the A and B Block auctions.

4/ *See Telephone Electronics Corp. v. FCC*, No. 95-1015, 1995 WL 364043 (D.C. Cir. March 15, 1995).

5/ *See id.* (May 1, 1995) (order granting dismissal of petition for review).

6/ 115 S.Ct. 2097 (1995),

7/ *See Omnipoint Corporation v. FCC*, No. 95-1374 (D.C. Cir. July 27, 1995) (order granting stay).

11. The delay in the C Block auction is important in at least three significant respects. First, as a result of it being held substantially beyond the close of the A and B Block auctions, rather than contemporaneously with those auctions as the Commission originally intended, there was a substantially increased demand for these licenses compared to the A and B Blocks. This resulted in the prices for C Block licenses being bid up beyond any expectation, with the result that capital which was expected to be used for construction and initial operation, went instead for license acquisition.[8/]

12. Second, the delay in holding the C Block auction resulted in a further squeeze due to A and B Block winners soaking up available financing. Hence, C Block licensees generally paid more for their licenses than A and B Block licensees, and have experienced higher costs of capital than the earlier auction winners. Similar problems have beset F Block high bidders who experienced even more delay in completion of their auction.

13. Third, because the C and F Block high bidders are by definition small businesses, their access to capital is substantially restricted compared to the huge established concerns

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[8/] Winning C Block high bidders on average bid almost four times as much for their licenses on a MHz/pop basis than did A and B Block licensees. Indeed, a total of $13.4 billion was bid for the C Block alone, compared to some $7 billion for the A and B Blocks combined. F Block licensees, by contract, bid slightly less on average for their licenses than did the high bidders for the contemporaneously held D and E Blocks. This appears to support the conclusion that delay in holding the C Block auction artificially raised the bids for licenses in that block.

who were the high bidders for Blocks A and B. As a result of these three factors, C Block licensees have been running near the end of the pack in the race for capital to construct and commence operations.

14. There is very little the Commission can do with respect to most of the factors discussed above. The Commission cannot change the past, or the laws of physics, or the inclination of the markets. But what the Commission does have control over is the terms and conditions of C and F Block licensees' installment obligations. The Commission should exercise its discretion to restructure the installment obligations of Block C and F licensees to prevent the potential for wholesale default.

15. Although not every C and F Block licensee's situation is dire, if the Commission allows wholesale defaults to occur in the C and F Block it would severely impact the entire block of licenses. This is because wireless customers expect to be able to use their PCS phones roaming into other markets. If they cannot, they will go to the provider who can assure roaming. For example, as the C Block licensee of the Santa Barbara BTA, Alpine's business plan is predicated on its customers being able to roam on the neighboring Los Angeles MTA Block C PCS system, as well as on other nearby Block C systems. If Alpine's customers are unable to do so because the Los Angeles Block C licensee defaults or is severely delayed in constructing its system, Alpine will likely lose the bulk of its subscribers to a carrier which can assure roaming.

Thus, for better or for worse, the fortunes of all C and F Block licensees are tied together.

16. This being the case, unless the Commission is prepared to allow substantial segments, perhaps even a majority, of C and F Block licensees to go into default, a course of action with no public interest benefit, it should restructure the payment obligations of those licensees.

III. Comments of Specific Proposals.

17. The issue is then in what respect should payment obligations be restructured. Because the individual circumstances of licensees will likely differ, Alpine suggests the Commission should make available several of the restructuring alternatives discussed below:

18. *Lengthening license term to 20 years.* Extending the license term for broadband PCS entities to 20 years and spreading principal and interest payments over that period would have a variety of beneficial effects, including encouraging investment and innovation in the service by ensuring a longer time horizon in which licensees may execute their business plans. *See Revision of Direct Broadcast Satellite Service Rules*, 11 FCC Rcd 1297, para. 71 (1995). As such, an extension of licensing term would be fully justified pursuant to Section 303 and 4(1) of the Act. Accordingly, and in view of the public interest benefits that would flow therefrom, the Commission should exercise its discretion to lengthen the license term for broadband PCS entities to 20 years.

19. *Modification of principal and interest payments to an annual basis.* Adoption of this suggestion originally contained in Alpine's March 13, 1997, request would have no effect on revenues generated for the government, while offering relief for PCS licensees who are experiencing short term financing difficulties.

20. *Moratorium on interest payments.* Placing a moratorium on interest payments for at least a five year period will substantially free necessary capital to allow system construction and commencement of operations for the bulk of C and F Block licensees. Having effected system construction and commenced operations, licensees should by then be in a sufficient position to generate sufficient cash flow to allow interest only and subsequently principal payments.

21. *Modification of interest rate to that existing when the C Block auction commenced.* When the C Block auction commenced in December of 1995, the yield on the 10 year Treasury Note was 5.56 percent. It subsequently rose to 6.53 percent when Alpine's Block C licenses were awarded. The Commission, however, set the interest rate for Alpine's installment payments at the coupon rate of the Treasury Note, seven percent, which had no relation to the government's actual cost of funds. The installment payment interest rate should be reset to 5.56 percent, which was the government's cost of funds when the auction began. This was the rate on which Alpine and other PCS ventures based their bidding strategy. Licensees should know their cost of funds when they bid. The choice of the coupon rate, which is arbitrarily set by the

Treasury, or the yield when the licenses were issued well after bidding closed, is unfair to licensees and serves to add unnecessary uncertainty to the auction process. The Commission should, therefore, modify the interest rate to the yield existing when the C Block auction commenced.

22. *Subordination of installment payment notes to vendor and working capital loans.* A significant impediment to financing the construction and operation of C and F Block PCS facilities is the inability under current notes with the Commission for equipment suppliers and lenders of working capital to take a first secured position in a PCS system's assets. The realities of the marketplace are such that equipment suppliers will not provide vendor financing without at least a purchase money lien on the equipment sold to a licensee. Banks and other financial institutions are similarly unwilling to lend to a startup PCS entity without a first secured position, especially given the recent weakness in the wireless market.

23. Thus, it is essential to the ability of PCS C and F Block entities to successfully compete against cellular and A and B Block PCS licensees that the Commission allow installment payment notes to be subordinated to equipment purchase and working capital financing. In so doing, the Commission will not be increasing the risk of licensee default. The Commission, after all, holds the first and only security interest on the licensee's most valuable asset, the system license itself. Given its first position with respect to the license, the Commission's ability to take back the

license and re-auction it if a licensee defaults is more than adequate security. If anything, subordinating the installment payments as to a licensee's other debts, will decrease the risk of default as it will lower a licensee's overall cost of capital. Thus, the Commission would give up very little in allowing licensees to subordinate equipment and working capital debt while it would gain added assurance that PCS licensees will, in the long run, be able to pay their installment payment obligations.

IV. Conclusion.

24. In summary, restructuring C and F Block payment obligations is necessary to ensure an opportunity for C Block PCS licensees to offer meaningful competition to the established cellular and headstarting PCS Block A and B licensees. Moreover, the need exists to expedite this restructuring to the fullest extent possible. Markets loath uncertainty. Substantial additional delay in addressing the issues raised in this proceeding will only exacerbate the difficulties Block C and F licensees are experiencing in capital formation, with the attendant risk that they will be unable to effectuate their business plans. Congressional and Commission goals in establishing the C Block of encouraging entrepreneurship and participation by designated entities would thus be thwarted.

25. Congress has delegated to this Commission the authority to conduct spectrum auctions. 47 U.S.C. Sec. 309(j). In so doing, it specifically tasked the Commission to develop and rapidly deploy new technologies, products, and services for the public benefit

without administrative or judicial delay, to promote economic opportunity and competition, to ensure that new and innovative technologies are readily accessible to the public by "avoiding excess concentration of licenses, by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. §309(j)(3)(A) & (B). The C and F Block auctions have been successful to date at achieving these goals. Absent grant of the restructuring relief sought here, however, it is unlikely that these goals will be realized fully.

26. Should C and F Block licensees fail for lack of capital, it may result in large part in their markets being acquired by wireline affiliates. A re-concentration of the telephone industry, especially this emerging technology which promises real competition in the local loop, is neither in the public interest nor consistent with the very core Congressional mandate that accompanied the Congressional grant of auction authority to the Commission.

27. For all of these reasons, the Commission should grant the pending requests for restructuring of installment payment obligations as discussed above.

Respectfully submitted,

ALPINE PCS, INC.

By: _____
Gerald S. McGowan
George L. Lyon, Jr.
Its Attorneys

LUKAS, McGOWAN, NACE & GUTIERREZ, CHARTERED
1111 19th Street, NW, Suite 1200
Washington, DC 20036

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(202) 857-3500