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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Broadband PCS
C and F Block
Installment Payment
Issues

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FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF
GENERAL WIRELESS, INC.

GENERAL WIRELESS, INC.

Roger Linquist
President and Chief Executive Officer
8144 Walnut Hill Lane
Suite 600
Dallas, Texas 75231
(214) 265-2550

Of Counsel:

JAY L. BIRNBAUM
JENNIFER P. BROVEY (Admitted in New York only)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
WASHINGTON, D.C. 20005
(202) 371-7288

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SUMMARY

General Wireless, Inc. ("GWI") reiterates its support for rule modifications to give C block licensees a fair chance to pay the Commission for their licenses, finance their businesses, and begin providing commercial service to the public as quickly as possible. The clear majority of commenters in this proceeding support debt restructuring. GWI's proposal provides a logical framework for restructuring that would re-set the present value of the net cash bids to an average of \$10.33/POP and provide licensees with a pre-payment option. Such a plan represents the best means to respond to the financing problems that have stalled the progress of a majority of C block licensees.

GWI's proposal is also consistent with the recommendations of the financial panel convened at the June 30 Public Forum. This panel recommended that the Commission significantly reduce C block licensees' net cash bids from their current level of approximately \$40 per POP to approximately \$10 per POP or less. The panel also recommended that the Commission act quickly to remove the Commission's senior creditor position and to implement other changes to the C block rules that would encourage new investment. GWI's proposal addresses each

of these recommendations while remaining consistent with the Commission's previously stated policy objectives.

As the financial panel confirmed, the C block bidding was predicated on detailed financial plans that were fundable based on financial conditions that existed during the auctions and through the balance of 1996. Due to the material adverse change in public valuations for PCS licenses, however, such financial plans are not currently fundable.

Opponents to debt restructuring contend that the Commission would be providing an unfair advantage to a select group of irresponsible bidders. They also argue that debt restructuring is doomed to failure and that the Commission has no legal basis to effectuate a restructuring. The Commission should reject these contentions. Precedent clearly establishes that changes in factual and legal circumstances impose upon the Commission an obligation to reconsider existing rules and policies. Moreover, as evidenced by three letters of intent already received by GWI and proposing to fund GWI based on a subsequent Commission adoption of GWI's proposal, the proposed debt restructuring is not doomed to fail.

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**REPLY COMMENTS OF
GENERAL WIRELESS, INC.**

General Wireless, Inc. ("GWI") submits this Reply in response to written comments filed by other parties on June 23, 1997, and statements made at the Public Forum on June 30, 1997 in the above-captioned proceeding. GWI reiterates its support for rule modifications to give C block licensees a fair chance to pay the Commission for their licenses, finance their businesses, and begin providing commercial service to the public in the shortest possible time frame. GWI strongly recommends that the Commission adopt the provisions set forth in GWI's initial June 23 Comments regarding C block debt restructuring and pre-payment inasmuch as they represent the best means of providing a fair, flexible and pragmatic response to the financing problems that have stalled the progress of a majority of C block licensees and jeopardized the realization of various Commission objectives.

GWI urges the Commission to reaffirm its commitment to the public policy objectives that gave rise to the C block. The primary objectives, as stated by the Commission and mandated by

Congress, are to promote increased competition in wireless services and remove the barriers to small business participation. See GWI Comments at 4-5. GWI's proposal provides the Commission with a blueprint to address these objectives in as even-handed and fair manner as possible and in a manner that also maximizes the value that the federal government can receive for C block licenses. The proposal is also consistent with the recommendations of the financial panel at the June 30 Public Forum.

C block licensees have paid over \$1 billion to the U.S. Treasury in license payments to date; made substantial progress toward network build-out, including attracting billions of dollars in vendor financing commitments; and stand the best chance of providing the public with innovative and competitive wireless services in the shortest time frame. Due to the material adverse change in market conditions which occurred subsequent to the auction, these licensees, who have acted responsibly and in good faith, are unable to finance their business plans without substantial modification to the debt terms.

GWI's proposed debt restructuring is consistent with the Commission's mandate to remove the barriers to small business participation in the wireless industry. The purpose of such restructuring is to write the debt down to a current fair market value that would provide for market-based compensation to the federal government for the licenses and allow for financing by licensees.

The financial panel convened by the Commission at the June 30 Public Forum provided a clear set of recommendations on C block debt restructuring that would best ensure that licensees obtain financing. These recommendations included the need to act quickly, to significantly reduce the present value of debt obligations, to remove the senior creditor position of the Commission as an impediment to financing, and to implement other changes to the Designated Entity rules that would encourage new investment in the licensees. GWI's proposal addresses each of these recommendations while remaining consistent with the Commission's previously stated policy objectives.

The objections to debt restructuring include such arguments that the Commission would be providing an unfair advantage to a select group of irresponsible bidders, that the debt restructuring is doomed to failure, that any change to the C block rules would undermine the integrity of the auction process and the Commission itself, and that the Commission has no legal basis to effectuate a restructuring. The Commission should reject these contentions. The proposed restructuring is a rational response to problems caused by radical changes in external circumstances to those that prevailed when the debt terms were set. GWI has received three letters of intent from major financial institutions expressing their desire to provide GWI financing based on GWI's proposal. See Attachment I. Such commitments refute the contentions that debt restructuring is doomed for failure.

Moreover, large scale defaults and re-auctions of the licenses would cause much longer delays in bringing competition to the marketplace than would debt restructuring. First, there would be the delays associated with the re-auction itself; lengthy bankruptcy court proceedings; the time required for new bidders to formulate business plans and assemble financing prior to auctions; and the time needed for the auctions themselves. Second, once the re-auctions were completed, additional time would be required as new license holders attempted to duplicate the vendor commitments and funding head-start that current license holders have already obtained. Third, once the new licensees selected vendors, they would have to play catch-up on the system design and construction activities already begun by the existing licensees. Simply put, there is no way that a default/re-auction scenario could expedite bringing competition to the marketplace as quickly as a restructuring of the debt.

Regarding the assertion that debt restructuring would undermine the integrity of the Commission and the auction process, GWI submits that the Commission's failure to act responsibly and decisively on debt restructuring would open the Commission to far greater criticism. A failure by the Commission to implement the necessary amendments needed to achieve previously stated public policy goals would be an abandonment of its Congressional mandate with respect to the C block. Further, a restructuring based on pre-payment of C block debt would

strengthen the Commission's position as impartial regulator by removing the burden of its creditor role.

The self-interest of opponents to debt restructuring is evident. C block auction bidders that were unsuccessful in achieving their business objectives in many cases ceased bidding in the auction at levels that similarly could not be financed today and now seek to claim re-auctioned licenses at "distress sale" prices. Thus, their claims that debt restructuring for successful bidders would be inequitable are untrue. Opposition from A and B block licensees and other non-Designated Entities is simply an attempt to delay the entrance of additional competition in the market, given that a default and re-auction process would take substantially longer than restructuring to get C block businesses operational across the nation.

The central issue for the Commission is choosing a course of action that best achieves its policy objectives. Strong opposition will attend whatever action is decided. The overriding importance of telecommunications policy must be the Commission's guide, however, and the implementation of such policy should reside primarily with the Commission and not with the courts, as would result from a wave of licensee bankruptcies if no restructuring were to occur.

I. GWI'S PROPOSAL MEETS THE RECOMMENDATIONS OF THE PUBLIC FORUM'S FINANCIAL PANEL

At the June 30 Public Forum, the Commission convened a panel of financial experts to discuss debt restructuring issues. The panel provided a general consensus on a clear set of guide-

lines required for a successful restructuring of C block debt. GWI's June 23 proposal addresses each of the panel's recommendations and provides a comprehensive, pragmatic approach to the problem facing the Commission.

First, the financial panel urged that the Commission significantly reduce C block licensees' net cash bids from their current level of approximately \$40 per POP to approximately \$10 per POP or less. This recommendation recognizes that the fair market value of C block spectrum has decreased significantly since the time of the auction. Restructuring must reduce the present value of the debt to a level low enough to give licensees a reasonable expectation of attracting commercial financing. GWI's proposal provides a logical framework for restructuring that would re-set the present value of the net cash bids to an average of \$10.33/POP.

Second, the panel stated that those licensees seeking additional third party debt financing would be successful only if the Commission eliminated its position as senior creditor. Such adjustment could take the form of a subordination of all or a portion of the government debt to that of other lenders, a sharing of the collateral value of licenses, or the total removal of the Commission as creditor through pre-payment of the debt. GWI has demonstrated that pre-payment offers the most attractive and practical way for the Commission to make commercial lending available to licensees. This solution also relieves the Commission of the costly and difficult burden of monitoring a multitude

of debtor licensees and of negotiating and managing inter-creditor relationships with other lenders. In addition, pre-payment would completely free the license value for collateral in securing commercial credit, thus removing one of the biggest impediments to licensees obtaining new debt capital.

Third, the panel endorsed a variety of other changes to the C block rules that would further enhance licensees' efforts to obtain additional investment. Such changes include an increase in the single investor ownership limit to 49.9%, an immediate implementation of World Trade Organization ("WTO") guidelines on foreign ownership, and a reduction in the required level of control group ownership from 15% to 10%. These changes are recommended in a number of proposals, including GWI's, and would aid licensees in obtaining new capital. By themselves, however, these changes cannot eradicate the hurdles precluding C block licensees from accessing the necessary capital to build out their networks and commence service. Instead, they could serve only as useful and logical enhancements to full-scale debt restructuring and pre-payment.

Finally, the requirement that the Commission act quickly and decisively to implement the restructuring was an important element urged by all panelists. The Commission has provided an open process to discuss the issues and consider all viewpoints. Having obtained this input, the Commission should now recognize that speed of implementation is essential to the

success of restructuring in view of the substantial head-start enjoyed by A and B block licensees.

II. THE COMMISSION HAS AUTHORITY TO RESTRUCTURE THE DEBT

Contrary to those commenters suggesting the Commission lacks the authority to revisit its rules concerning installment payments, precedent clearly establishes that changes in factual and legal circumstances impose upon the agency an obligation to reconsider a settled policy. Bechtel v. FCC, 957 F.2d 873, 881 (1992). Indeed, the Commission's "necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise" includes a "correlative duty to evaluate its policies over time to ascertain whether they work -- that is, whether they actually produce the benefits the Commission originally predicted they would." Id.

In the matter at hand, the critical importance of facilitating winning bidders' timely access to capital provides more than a sufficient basis for Commission review, particularly since the Commission's rules were designed in part to ensure that small businesses could access the capital necessary to launch competitive telecommunications businesses. In fact, given multiple C block licensees' requests for relief and in view of the second largest C block licensee's on-going bankruptcy, the Commission would clearly be remiss not to address the effectiveness and propriety of its existing rules.

Congress directed the Commission to design its spectrum auctions in such a manner as to further certain objectives,

including "promoting economic opportunity and competition" and "disseminating licenses among a wide variety of applicants, including small businesses."¹ Several commenters, however, allege that the Commission lacks the authority under 31 U.S.C. § 3711(a) to modify the C block licensees' debt obligations.² This is not true. Section 3711(a) applies to "an executive, judicial, or legislative agency." The Commission, in contrast, is an independent agency and thus is not subject to Section 3711(a).³ In any event, even if Section 3711(a) were applicable, in restructuring the C block licensees' debt obligation the Commission will not be "compromising" a claim as commenters suggest. Compromising a claim under Section 3711(a) envisions a commercial transaction, not a broad-based rulemaking such as the proposed restructuring. When the Commission revises its rules and such revisions result in a modification to a debt obligation, the Commission is not compromising a claim under the intended meaning in Section 3711(a).⁴

¹ 47 U.S.C. § 309(j)(3)(B). See also 47 U.S.C. §§ 303(j)(4)(C)&(D).

² See, e.g., Comments of Cook Inlet Region, Inc. at 28.

³ See 47 C.F.R. § 1.1904(b) (clarifying that 31 U.S.C. § 3701 does not universally apply in commission proceedings).

⁴ See generally 47 C.F.R. § 1.1915; 4 C.F.R. § 103.1, 103.2, 103.6.

Several commenters cite to the Commission's prior decisions pertaining to the Interactive Video and Data Services ("IVDS") auction to support their claims that the Commission should not restructure the C Block debt.⁵ These decisions, however, fail to support such commenters' claims. After the IVDS auction closed, numerous IVDS licensees sought waivers of the requirement for timely down payments for their IVDS licenses, arguing that, among other things, "their respective financial backers unexpectedly withdrew financial support shortly after the auction,"⁶ and "the purported lack of readily available equipment to provide IVDS service justified a delay in the payment deadline."⁷ In denying the waiver requests, the Commission referred to its previous pronouncements⁸ regarding the importance of high bidders to make their down-payments to ensure they could attract capital and discourage default.⁹

GWJ and other similarly situated C block licensees timely paid the full amount of their down payments, demonstrating to the Commission that they were financially capable of paying for the particular licenses upon which they bid. It was not

⁵ See Comments of Cook Inlet Region, Inc. at 9-12; Comments of Sprint Spectrum L.P. at 5-6.

⁶ Requests for Waivers in the First Auction of 594 Interactive Video and Data Service Licenses, Order, 9 FCC Rcd 6384, 6384 (1994) ("IVDS Order").

⁷ *Id.*

⁸ See *infra* note 15.

⁹ See *IVDS Order*, 9 FCC Rcd at 6385.

until months after the down-payment became due that C block licensees like GWI sought the Commission's assistance with their debt obligations as a result of the substantial delay in receiving their licenses and the unforeseen "melt-down" of the public capital markets. Existing C block licensees could not have avoided this material adverse change in the capital markets by bidding less or withdrawing from the auction (since the auction was long since over) or, at least in GWI's case, even by speeding up the Commission's grant of the subject licenses.¹⁰

In contrast, the IVDS high bidders failed to secure direct investment sources necessary to pay for their licenses immediately following the auction or to prudently investigate the status of IVDS equipment availability prior to placing their bids. It was such poor planning that caused the bidders financial difficulty at the close of the auction. The Commission denied the IVDS waiver requests because these high bidders failed to demonstrate that they were serious, qualified auction participants, without which the entire auction process would have been undermined.¹¹

¹⁰ To support its claims against restructuring, Cook Inlet quotes from the Commission's IVDS decisions pertaining to the Commission's emphasis on bidders exercising due diligence prior to participating in an auction. See Comments of Cook Inlet Region, Inc. at 10-11. Such quotes, however, refer to the Commission's analysis in determining whether to grant a waiver of the timely down payment requirement and not to the issue of restructuring a debt obligation.

¹¹ *Id.* Similarly, the Commission's denial of down-payment waivers to other C block licensees do not undermine the Commission's ability to restructure existing C block debt. (continued...)

Finally, some commenters argue that any restructuring would constitute unlawful retroactive rulemaking because it would change the outcome of the auction after the auction closed.¹² It is well settled, however, that the promulgation of a new rule or modification of an existing rule may have a "retroactive" effect without violating the restriction against retroactive rules.¹³ In this case, since the proposed restructuring rules in no way outlaw previous conduct, the rules would not be retroactive.¹⁴

The Commission's intent in restructuring the C block licensees' debt obligations is not to give retroactive effect to any existing rules, but rather to react to and resolve the financial hurdles small businesses still face. Throughout the auction GWI played by the rules as they existed and placed bids

¹¹(...continued)

Like the IVDS bidders, high C block bidders like BDPCS, Inc. and C. H. PCS, Inc. bid dollar amounts for which the required down-payments were over and above what they had on hand to pay. See C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, 11 FCC Rcd 9343 (1996); Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS Block Auction filed by BDPCS, Inc., Order DA 96-811 (rel. May 20, 1996). There were no intervening events beyond the applicants' control -- such as the delay in licensing and unforeseeable melt-down in publicly traded PCS values -- like those present here.

¹² See e.g., Comments of BellSouth at 25-27.

¹³ See, e.g., Chemical Waste Management, Inc. v. EPA, 869 F.2d 1526, 1536 (D.C. Cir. 1989) (recognizing that just because a business undertakes a certain course of conduct based on the current law and finds its expectations frustrated when such law changes, does not constitute retroactive rulemaking).

¹⁴ *Id.*; see also Ralis v. RFE/RL, Inc., 770 F.2d 1121, 1127 (1985).

based on a thoroughly researched business plan with the support and advice of its financial managers. GWI and other successful bidders did not place bids in the C block auction with the expectation that the Commission would later "forgive" some of its debt, as reflected by their efforts to raise money in the public capital markets as soon as their licenses were issued.

In any event, the Commission had previously recognized the possibility that a licensee in danger of defaulting on its payments may seek from the Commission a "restructured payment plan."¹⁵ Thus, all parties to the C and F block auction had notice *prior to their auction* that a debt restructuring was a possible resolution for licensees undergoing financial distress in meeting their installment payment obligations.

III. GWI'S RESTRUCTURING PROPOSAL ENHANCES THE INTEGRITY OF FUTURE AUCTIONS

The impact of restructuring C block debt on future auctions has been raised as a major issue by those who oppose restructuring. GWI's pre-payment proposal specifically addresses this issue by proposing that the government remove itself from the financing role in the C block and future auctions. Placing future auctions on a cash basis eliminates the possibility that future auctions winners will be exposed to the risks of the financial markets in satisfying the government debt as C block

¹⁵ Implementation of Section 309(j) of the Communications Act -
- Competitive Bidding, Second Report and Order, 9 FCC Rcd
2348, 2391 (1994).

winners have been. Rather, auction winners would be able to focus on raising money to support their business plans rather than their license interest payments. Further, obtaining capital would be easier because the value of licenses obtained at auction would be available for collateral and commercial lenders would not have to worry about the government's role as a secured creditor in any future financial restructuring.

The pre-payment proposal will have the additional advantage of removing the Commission from its dual role of creditor and regulator. This will eliminate any re-plays of the C block situation and allow the Commission to focus more on traditional public policy and regulatory issues.

IV. WINNING C BLOCK LICENSEES MADE RESPONSIBLE BIDS

As was discussed by the financial panel at the June 30 Public Forum, the current average cash value of the C block licenses is roughly \$10/POP compared to the average value of the auction results of \$40/POP in early May 1996. This approximate reduction of 75% in spectrum values is a direct reflection of the melt-down in share values for publicly traded PCS wireless stocks that occurred during this same period. As can be seen from Attachment II, the 70.8% reduction in the PCS stock index affected all public PCS wireless companies, large and small, irrespective of their business plans or actual performance. GWI submits that this reduction is the result of investors' diminished perceptions of franchise value for PCS licenses in light of the prospect of multiple entrants resulting from additional

spectrum auctions and the more recent values established in the D/E/F block auction.¹⁶

The results of this material adverse change in the franchise value of the C block spectrum directly lead to licensees' inability to finance. When C block companies attempted to raise capital in the public markets, investors recognized that the value of their principal asset -- their Commission license(s) -- had eroded significantly approximately eight to nine months after the auction closed.

Several respondents have suggested that the erosion in wireless values in general and C block values in particular is the direct result of a few irresponsible C block bidders. Nothing could be further from the truth. As some financial panelists confirmed, the C block bidding was predicated on detailed financial plans that were fundable and supportable based on financial conditions that existed during the auctions and through the balance of 1996.

Indeed, following the auction's completion most of the winning C block bidders sought financial support from the major wireless infrastructure vendors and the financial community. In each case, industry knowledgeable experts reviewed the business plans, management team capabilities, and the state of the competitive wireless industry to determine if, in their independent judgment (with their own money and reputations at stake), the

¹⁶ See Attachment III.

winners had put together viable business cases to take to the public capital markets.

The participants in this independent review are a who's who of the wireless industry. Ericsson, Lucent, Qualcomm, Nortel, Seimens, Motorola, and other infrastructure vendors made commitments of approximately \$2 billion dollars to the C block auction winners. Major Wall Street firms including J.P. Morgan, Bear Stearns, Dillon Read, Lehman Brothers, Salomon Brothers, C.S. First Boston, Smith Barney, CBIC Wood Gundy, and others prepared prospectuses for initial public equity and high yield debt offerings totaling billions of dollars based on their belief that the C block businesses were viable. This assessment was based on comparability with other prior public offerings such as Omnipoint, who, in spite of the fact it had paid over \$50/POP for major licenses such as Philadelphia in its portfolio, was successful in raising additional public capital to fund its businesses prior to the melt-down in PCS financial markets.¹⁷ Thus, knowledgeable industry experts believed that the business plans and strategies of the winners were sound and viable after the auction.

The following events confirm that a material adverse change has occurred in the perceived value of the C block spectrum: (1) the Commission's actions in suspending interest pay-

¹⁷ Omnipoint raised \$156 million in a secondary public equity offering on June 27, 1996 and raised approximately \$450 million in high yield debt prior to the PCS stock index melt-down.

ments, (2) the Pocket bankruptcy proceedings, (3) the subsequent withdrawal of most planned public offerings, (4) the recent failure of Chase Telecommunications, Inc. to attract funding (even with an average portfolio price of \$29.50/POP), and (5) recent auction results. The assertion by major competitors such as Nextel and Comcast, who did not even participate in the auctions, and losing bidders, who themselves made bids well in excess of that which could be financed in today's financial markets, that the winning bidders acted irresponsibly and caused this melt-down should be viewed for what they are: pretexts to eliminate competition and/or obtain "cheap" spectrum in a re-auction.

An analysis of the bidding indicates that the great majority of bidders, including those commenters who now claim that certain licensees bid irresponsibly, bid higher than the A/B block average.

Table I

Commenters Against Restructuring
(\$/POP)

Designated Entity BTA (Final Bid)*	Winning C Block Price	Average A/B Block Price	F Block Price (3X10 MHz)
<u>Cook Inlet/Western Wireless</u>			
• Tulsa, OK (\$38.10)	\$38.10	\$15.67	\$4.65
• Muskogee, OK (\$39.83)	\$39.83	\$15.67	\$8.14
• Sherman, TX (\$39.47)	\$39.47	\$9.07	\$1.34
<u>Airadigm Co. (Wireless PCS, Inc.)</u>			
• Madison, WI (\$29.09)	\$29.09	\$18.83	\$16.43
• Green Bay, WI (\$26.13)	\$26.13	\$18.83	\$2.73
<u>Conestoga Wireless</u>			
• Reading, PA (\$39.19)	\$44.66	\$9.29	\$4.98
• Pottsville, PA (\$27.04)	\$29.89	\$9.29	\$3.00
<u>TeleCorp</u>			
• Houston, TX (\$35.59)	\$48.95	\$16.04	\$5.63
<u>North Coast Mobile</u>			
• New York, NY (\$52.45)	\$55.07	\$16.76	\$12.50
• Cleveland, OH (\$42.35)	\$44.47	\$17.48	\$5.44
<u>AirLink LLC (AirGate Affiliate)</u>			
• W.Palm Beach, FL (\$39.85)	\$56.67	\$25.00	\$8.40
<u>Omnipoint (OPCSE)</u>			
• Philadelphia, PA (\$54.28)	\$54.28	\$9.29	\$11.22
• Reading, PA (\$44.66)	\$44.66	\$9.29	\$4.98
• Atlantic City, NJ (\$45.79)	\$45.79	\$9.29	\$10.39

*Final Bids are in bold.

Some opponents to restructuring contend that any bids in excess of the average A/B block cash bids were, by definition,

irrational.¹⁸ This is not true in light of the net present value of government financing that C block bidders were to receive and the then-prevailing valuations of publicly traded PCS companies, such as Omnipoint. Indeed, the clear facts are that the above companies, themselves opponents of C block debt restructuring, made winning bids that were two to five times the average A/B block cash bid. In most cases, these entities paid anywhere from 1.8 to 30 times more than an equivalent 30 MHz license based on F block net cash bids. See Table 1.

V. RESTRUCTURING IS FAIR TO ALL

Several of the commenters have contended that any debt restructuring would be unfair. Some have suggested it would be unfair to the taxpayers who would lose billions of dollars in revenue by an alleged giveaway. Others have claimed it would be unfair to the existing wireless operators since it would de-value the spectrum already in use. Still others have claimed it would be unfair to the auction drop-outs since they would have bid differently had they known the Commission was going to restructure their debt.

In the case of the C block auctions the public good, as represented by the Congressional mandate, was clear. Paraphrasing the opening remarks of Acting Wireless Bureau Chief, Dan Phythyon, at the June 30 Public Forum, the Commission's charter was to ensure the C block spectrum was held by those who valued it most, ensure those who held the licenses used them to quickly

¹⁸ See, e.g., Comcast Comments at 8.

bring new services to the public, ensure the taxpayers received a fair market value for the spectrum, and ensure that any actions taken by the Commission be even-handed and broadly applicable.

GWI maintains that restructuring of the debt is fair to the public. The existing license holders have clearly demonstrated by their bidding and by their depositing over \$1 billion to the U.S. Treasury that they value the spectrum the most. Thus, debt restructuring will enable those who hold the licenses to resume their efforts to quickly bring new service to the public.¹⁹

The panel of financial experts that met on June 30 universally agreed that the \$40/pop fair market value of May 1996 cannot be achieved, now or in the foreseeable future. They also indicated that the present fair market value of the C block spectrum is less than \$10/pop. The panel further indicated a re-auction now, or in the near future, would bring the U.S. Treasury less than the value being proposed in the restructuring and that such value would only decrease over time. Simply put, the panel

¹⁹ In an earlier written ex parte presentation Cook Inlet Communications, Inc. ("CICI"), an affiliate of Cook Inlet Western Wireless PV/SS PCS, L.P., a winning C block bidder, suggested the Commission adopt a more flexible approach with "the real world of debt restructure." See Letter to William E. Kennard, General Counsel, from Steve L. Hillard, April 22, 1996, at 1. CICI cited delay brought on by bankruptcy as the key reason for avoiding re-auction as a preferred means for dealing with defaulting licensees. In the presentation, CICI stated "The simple truth is that the re-auction mechanism is unlikely to be quick or effective.... In our judgment, and that of our bankruptcy counsel, the debtor will thereafter have a strong chance to tie up and subsequently delay lifting of the stay and the Commission's remedies as a secured creditor." *Id.*

indicated that there is no solution, be it restructuring or re-auctioning, that will ensure the public will receive more than the value proposed by GWI.²⁰ Moreover, the pre-payment option proposed by GWI assures the public that it will receive the value in a timely manner by eliminating the uncertainties associated with the installment payment options. GWI's proposed restructuring therefore meets the requirement of being fair to the public in their role as taxpayers.

Nor is debt restructuring unfair to mobile wireless competitors of C block licensees. They did not participate in the C block auction, they did not rely on the C block bids or rules, and they would not be harmed by a restructuring of debt owed to the Commission by third parties. Similarly, restructuring is not unfair to those bidders that withdrew from the C block auction since, as demonstrated above and in GWI's initial Comments in this proceeding, most of those bidders also submitted bids that could not be financed in today's capital markets.

Finally, GWI's proposed scaling of the revised debt in accordance with each licensee's individual bidding would apply uniformly to all C block license holders.

²⁰ The cash in-flows from re-auction bids together with retention of defaulters' down payments would not reasonably approach the realizable revenues to the government available under GWI's proposed pre-payment plan. In its previously mentioned presentation, CICI surmised that "it is unlikely that the . . . bankruptcy court will allow any recovery of the auction price differential or penalties by the government." *Id.* In fact, CICI noted "the up-front cash payment paid to the Commission will be subject to the bankruptcy court's 'reach-back' as a preference and likely will not be retained by the Commission." *Id.* at 2.