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

In the Matter of	)	
	)	
Amendment of Part 1 of the	)	WT Docket No. 97-82
Commission's Rules --	)	
Competitive Bidding Proceeding	)	

REPLY COMMENTS OF OMNIPOINT CORPORATION

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INTRODUCTION AND SUMMARY

Omnipoint Corporation ("Omnipoint"), by its attorneys, hereby replies to the June 23 comments filed and the presentations made at the June 30 Public Forum in the above-captioned proceeding.[1] Omnipoint strongly recommends that the Commission (a) take temporary measures, such as going from quarterly to annual payments, to help all small business Entrepreneurs while the capital markets continue their recent rebound; (b) avoid at this time any permanent restructuring of the Entrepreneur's Band which lowers the net present value ("NPV") of the bids; and (c) reject any solution that requires no payments from bidders for a period of more than one year, since this will result in a gross distortion of market transactions, such as wholesale rates charged to resellers. As presented below, there are several compelling reasons for these recommendations.

Omnipoint also strongly recommends that the Commission reject the efforts of some parties to abandon the Entrepreneur's Band control group and unjust enrichment provisions which such rule changes are completely unwarranted because they would result in the demise of real Entrepreneurs. These provisions were crafted arduously over the years to best ensure small business participation in PCS, and they should not be cast aside at the first stage that they are implemented in order to undercut small business control and ownership.

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1 "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," Public Notice, WT Dkt. No. 97-82, DA 97-679 (rel. June 2, 1997) ("Public Notice").

The Commission and the industry should seek to maintain the overwhelming success of the Entrepreneur's Band. Today, there are over 130 different companies holding Block C of F licenses. Almost every city in the country has an Entrepreneur with a license who is not requesting auction debt restructuring. Thanks, in large part, to the success of the Commission's PCS auction allocation scheme, the country can look forward to full-service, wireless competition among six to eight competitors in every market, even without debt restructuring.

As an initial matter, Omnipoint notes that the comments filed belie the need for permanent restructuring. While one would expect that billion dollar discounts would normally garner much more significant special interest support, the comments were, in fact, evenly divided on the main issue of whether to restructure the Entrepreneurs Band debt in a way that reduces the NPV of the winning bids. Of the comments filed, Omnipoint counts 18 bidders (and their affiliates) that seek to reduce the NPV of their bids through some form of restructuring (these commenters include several F Block winners that already have low NPVs). See e.g., Comments of NextWave, GWI, Alpine PCS. An equal number of bidders oppose reducing the NPV of any bids (including several with C Block licenses that would benefit from restructuring). See e.g., Comments of Cook Inlet, et. al. Moreover, the NTCA, a trade organization of rural telephone companies that represents 19 bidders, generally agrees with Cook Inlet's petition for rulemaking, and suggests that the FCC's "primary concerns should be to ensure that licensees that have met or continue to meet their obligations are not harmed by changed rules or waivers."[2] Remarkably, 11 bidders claim they could make their license payments under the existing rules, but would prefer some restructuring. See e.g., Comments of Holland PCS, Wireless 2000, ComVentures, et al. Finally, several miscellaneous parties commented even though they were not involved in the bidding (e.g. SMR, NPCS, consulting and lobbying firms). In short, only a few of the 260 bidders that entered the C Block auctions are requesting permanent post-auction changes to the NPVs of the winning bids. On the other hand,

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2 Comments of National Telephone Cooperative Ass'n at 3.

170 of the 260 Bidders (or 65%) that vied for the C Block licenses, but were forced out of the auction, have no way to benefit from any rule changes.

As presented below, Omnipoint finds that neither the facts nor the policy support the various contentions for permanent restructuring. Markets are not experiencing a "500 year flood," and most bidders conducted their auction activity in a responsible manner. For those that did not, the market, and least of all the Commission, cannot offer guarantees. Nor should the FCC undermine the Entrepreneurs Band Program for all bidders in order to ensure the success of a few licensees.

I. Arguments for Lowering the NPVs of the Winning Bids are Based on Flawed Assumptions

The bidders that seek a permanent restructuring through an NPV bid price reduction argue based on a number of flawed premises. First, they imply that all the Entrepreneurs, including those that placed the highest bids, were financiable at the time they made their bids. Of course, even the financial analysts are divided on that issue. Thus, one can never know for sure. More significantly, however, there is simply no data, or process, presented for the Commission to make such an implication.

Second, those that bid the highest on a dollar per POP basis claim that their bids were not high at the time because their bids were justified by the then-public financial market conditions. However, the only publicly traded PCS companies during the auction were Omnipoint, which completed its IPO on January 27, 1996 and InterCel (now Powertel) which took its PCS company public in late February.[3]

Third, movements in Omnipoint's stock price have been cited and graphed by several parties as the primary measure by which they justify their claims for relief and/or subsidy from the Commission. We find it painfully ironic that no one has suggested for the government to subsidize

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3 Aerial did not go public until the last few days of the C-Block auction and Western Wireless did not go public until after the C-Block auction in May.

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Omnipoint's investors, who actually lost money on their investments in Omnipoint's public equity and debt. Instead, Omnipoint's investors are simply presumed to have taken "market risk." Amazingly, the C Block bidders seeking the most relief point to Omnipoint's misfortune not as a reason to help Omnipoint, but as a reason why their own voluntary bid prices should be lowered below Omnipoint's. One licensee referred to Omnipoint's stock decline as a "500 year flood," which hurt its ability to raise money. In effect, it argues that the government should not aid those hit directly by the flood, but rather that the government should help only those that speculated on the land nearby the flood victims. If the Commission restructures debt, it must treat all parties equally. Another obvious flaw of this approach is that a single company's stock price should never be the justification for the bidding of completely different companies. The fact is that most bidders did not bid to anywhere near the publicly traded stock based values.

1. **Most Entrepreneurs, Including Most C Block Licensees, Owe Less Than $10/POP NPV in Auction Debt**

One of the least understood facts of the Entrepreneurs Band is that the vast majority of bidders did not act in a manner consistent with the profile portrayed by a few pro-restructuring bidders.

Consider the following backdrop to the current debate. Several parties argue that, because they calculated that Omnipoint's stock price reflected an enterprise value of $49/pop during the C Block auction, this justified the "$40/pop" average bids for the C Block auction.[4] The current public market value for the "comparable PCS companies" (i.e., Omnipoint, InterCel/Powertel, Aerial, and Western Wireless) ranges from $28.33 to $35.97 per pop enterprise value. By this same logic, this would justify an average C Block price of $23.13 to $29.36/pop based on today's lower PCS stock prices.

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[4] For example, according to Bear Stearns this difference "provided enough of a cushion" so that the C-Block players could have been financed had the stock market for wireless companies not collapsed. See remarks of Norman Frost, Bear Stearns (June 30, 1997).

Omnipoint's analysis[5] of the high bids in the C Block auction, C Block reauction, and the D, E, F Block auction reveals the following results, which the Commission should carefully consider:

1) All but 2 of the 90 bidders emerging from C Block and the C Block reauction already have blended average costs of less than $29.36/pop on an NPV basis using a standard 15% discount rate to calculate the NPV. Only GWI and Windkeeper exceeded this. Thus 98% of the winning bidders still have the "cushion" used to justify the bids of the highest bidders during the auction. Moreover 90% (81 of the 90 winning bidders) had NPVs at or below the low end of the range (i.e., below $23.13/pop) calculated above.

2) Even using the unadjusted price per pop, i.e. before discounting, to derive the NPV, 73 of the 90 bidders (or 81%) had unadjusted prices below $29.36/pop and 70% of the bidders had unadjusted prices per pop below the low end of today's "cushion" range calculated above.

3) On a forward-looking basis, given that the first 10% of the principal amount has been paid (and assuming that the FCC puts all bidders on an equal footing by giving back the first interest payments already paid and annualizing the interest and principal of the debt going forward) 90% of the 90 bidders would face an NPV of their debt below the low end of the "cushion" range. In fact, 74% would be below $15/pop in remaining debt.

4) Some parties argue that the C Block debt should just be reset to $10/pop. Yet 53 of the 90 bidders at the end of the C Block auction and reauction (or nearly 60%), already have the debt portion of their C Block bids at or below $10/pop on an NPV basis.

5) Several C Block entities argue that their prices should be reset to match the D, E, and F Block auction prices. However, the highest prices paid per pop on a MHz adjusted basis for any individual markets occurred in the D, E, and F Block auction, not the C Block. For example 265 licenses in the D, E, and F Block auction sold, on a 30 MHz equivalent basis, for $30/pop or higher

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5 Omnipoint bases its analysis on the publicly-available results of the broadband PCS auctions, and assuming a cost of capital of 15%.

on an NPV basis. The highest $/pop paid was for the Columbus, GA E-Block at $47.86/pop or the 30 MHz equivalent of $143.58/pop. The major market of Tampa, Florida brought the following high bids for a 30 MHz equivalent license:

Tampa	A/B Auction	C Block NPV	C Block Nominal	DEF Auction NPV
30MHz equivalent	$14.81/pop	$25.14/pop	$40.41/pop	$57.69/pop[6]

There are well over 100 licenses where the prices in the D, E, and F auction were higher on a 30 MHz basis than the NPV prices of the C Block auction.

Parties bid for each license in each auction under the facts and risks facing them at that instant in time. Each city was valued differently. There is simply no possible way to go back in time and pretend the city-by-city and bidder-by-bidder market based valuations never happened. There is also no way for the government to "reset" bid prices below their NPVs without totally abandoning the underlying premise of an auction -- that the market will set relative values.

2. Every Bid Winner and Loser Undertook Calculated Risks In the Auction

Several bidders claim that "unanticipated factors" justify the government, post auction, repricing down their bids. But, this is simply not the case. First, the delays to the start of C Block auction were known before the auction began and cannot be claimed as unanticipated with respect to bidding decisions.

Second, several of the C Block licensees that are now asking for massive reductions in the NPV's of their bids entered the C Block reauction held from July 3 - 14, 1996. Yet the so called financial "meltdown" had already begun by the time of the C Block reauction.

For example, at the close of trading on July 10, 1996, Aerial's stock was down 37% from its prior high and Powertel (then named InterCel) was down 27% from its prior high. Further, the

6 Tampa D-Block sold for $19.23/pop for 10 MHz, thus 30 MHz equals $57.69/pop.

major wireless indexes were down an average of 25-30% at that time from their recent prior highs.[7] Yet, despite this clear evidence of a temporary market "collapse," on July 11, 1996, NextWave, to cite one example, used a waiver on the Stage change, on Stage II to Stage III of the reauction and then bid $84/pop nominal ($63/pop after the 25% discount or $40/pop on an NPV basis using a 15% discount rate) for Seattle, displacing Cook Inlet. By contrast, Cook Inlet chose to reduce its eligibility at the Stage change, and so had no reserve eligibility to counter attack against NextWave. Cook's only choice was to contract or bid back on Seattle. At the time, this act by NextWave was devastating to Cook Inlet because it was still high on smaller BTAs surrounding Seattle. Simply put, Cook Inlet was left with parts of the "doughnut" around Seattle and faced the hard decision of whether to bid back or take its chances in the future D, E, and F auctions not knowing if it would ever fill the hole in its footprint. Cook Inlet took a calculated market risk and contracted.

If the stock market had later doubled the stock prices of the publicly traded PCS companies, instead of halving them, and Cook had never won a license in Seattle in the D, E, and F auction, would the FCC now do anything to reverse the outcome of those individual decisions made by Cook and NextWave on July 11, 1996 when the financial markets for wireless stock had apparently "collapsed"?

3. Permanent Restructuring Based on the Drop in Four Companies' Public Stock Prices Implies that Their Stock Price Drop is Permanent

For bidders to justify permanent restructuring that lowers the NPV of their bids implies that Omnipoint's stock will not rise. Yet Omnipoint's stock has already risen by more than 125% since its low in April, 1997. Moreover, as PCS stocks continue to rise, the value of the other licenses will go up for many parties who wish to fill in the holes in their footprint. It is plausible that, in one year the licenses will be as valuable as they ever were.

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7 Comments of NextWave, BT/Wolfensohn Analysis at 30.

4. Bidders Seeking to Lower the NPVs of Their Bids Attempt to Achieve a Relative Advantage, Which is Circular

Several comments insist the Commission must lower the NPV's relative to the auction prices paid by the publicly-traded PCS companies. Besides being patently unfair, this creates a vicious circle which does the winning bidders, as a group, no good at all. As one analyst pointed out, lowering the C Block NPVs hurts the publicly traded stocks of specific bidders, which will require the Commission to lower the C Block prices yet again, and so on.

5. Lowering NPVs Only Adds Litigation Delay, It Does Not Eliminate Incidence of Bankruptcy and May Increase the Number of Bankruptcies

Some parties favoring massive restructuring imply (and some do more than imply) that they will hold up a reauction by using the delay of a bankruptcy proceeding. By this way of thinking, the Commission has only two choices: (1) it can restructure by rulemaking now in order to reduce the C Block license debt, or, (2) if not they are not satisfied, the C Block licensees will file for Chapter 11 bankruptcy and hold up the deployment of C Block PCS for years while the licensees rewrite their own auction debt terms. Omnipoint believes that, at least for the largest licensees, this is a hollow threat. First, the DCR bankruptcy demonstrates that the Commission is not likely to face any longer delays through this process than through the litigation the Commission will face if it lowers the NPVs of the bids.[8]

Second, the existing equity and debt investors of Entrepreneur Band licensees will never view Chapter 11 as a realistic option for lowering their operating costs, since they will have nothing to operate. It is more likely that these investors would strongly encourage the licensee to avoid bankruptcy, even if it means that they must finance installment payments themselves to avoid total loss of their existing investments.

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8 See "Interim Order Authorizing Debtors to Obtain Secured Financing," Case No. 97-5-4105-ESD, 97-5-4106-ESD at 12-13 (Bankr. D. Md. June 12, 1997).

In contrast, significant restructuring designed to lower NPVs relative to what was actually bid will undoubtedly lead to a court challenge of the Commission's decision on several grounds, with a not insignificant probability that the Court would remand such post-auction changes in prices. These challenges are not speculative and the parties are real; indeed, the June 30 Public Forum caused several bidders in the audience to announce that they would definitely raise legal challenges to a significant restructuring decision.

It is not likely that the financial markets would invest in the Entrepreneur's Band while such a significant court challenge is pending. As every financial analyst stated, the markets want certainty. Moreover, should the Commission lose the appeal (and that is not out of the realm of possibility), then the court's remand would only place the Commission in an even worse position. It would have wasted at least one year, perhaps more, in litigation, and it would have tied up the ability of the financial markets to work through the C Block financing issues. Any Entrepreneur Band bankruptcies are likely to become far more widespread at that time than they are today.

Additionally, there is no guarantee that significant restructuring will result in all of the bidders receiving financing. The markets invest in management and business plans, not just bid prices.

6. Financial Market Conditions Are Improving Rapidly

InterCel/Powertel raised $300 million in debt on June 13, 1997 at interest rate of only 11 1/8%, and was over subscribed. It paid $28/pop NPV for the Atlanta MTA, the equivalent of $29/pop NPV on a 30 MHz basis for Cookeville, TN, and the equivalent of $42/pop NPV on a 30 MHz basis for Knoxville, TN -- the latter two in the D, E, and F auction. Clearly, the management teams and business plans of some PCS companies can get financing in today's market.

Moreover, according to NextWave's own analysis, the high yield debt index for all wireless companies has already returned to a level above where it was during the C Block auction and reauction.[9]

The publicly traded PCS stocks have climbed from between 25% to over 125% in the past 90 days. If those stock prices continue to increase (and recall that historically 45% of all wireless subscriber sales occur in the 4th quarter) then the PCS stocks could return by the 1st quarter of 1998 to the prices that were used to justify all of the Entrepreneur Band bids.

This evidence suggests that the FCC should implement temporary measures at this time, giving relief for one year through annualizing the interest payment and allowing the market forces a chance to go through their cycle.

7. Permanent Restructuring of Auction Debt So Early After the Auction Unhinges the Auction Process

Omnipoint concurs with the range of commenters that expressed concern for the implications of Entrepreneur Band restructuring. The concern goes right to the core of the auction process, which allocates licenses based on how much individual parties assert that they will pay for them. If high bidders are permitted to significantly avert the payment of their bid, the allocation process itself becomes arbitrary and the Commission has not fairly, or even rationally, decided as between competing applicants. Therefore, restructuring that lowers NPVs is inexorably at odds with the auction process that allows the markets and bidder discipline to ultimately dictate the license allocations.

The contradictions that arise from NPV restructuring in the context of the Commission's auction license allocation methods are most obvious in the D, E and F Block auction. Omnipoint, and many other Entrepreneurs, bid on all three licenses in the auction -- the D Block, the E Block, and the F Block. Since each license in a market was fungible, the decision to choose one or another

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9 Comments of NextWave, BT Wolfensohn Analysis at 31.

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in a given market depended entirely on the cost of those licenses. To compare the cost of the D or E licenses, which required full payment within 10 days after license grant, with the F license, Omnipoint and undoubtedly other Entrepreneur bidders calculated the cost of the F Block based on the net present value of the two-year interest only and three-to-ten year principal and interest payment obligation. The Commission's Suspension Order and possible restructuring, however, completely undermines the valuation of the F Block licenses to the detriment of Entrepreneurs who are the high bidders of D and E Block licenses in markets where they could have bid on the F Block.

To address this obvious inequity, especially for Entrepreneurs that must make final payments by July 14, Omnipoint requested on July 7 that the Commission suspend all Entrepreneurs' payments of D and E Block auction payments. But for the Commission's efforts at restructuring, Omnipoint and other small businesses holding D and E Block licenses would rightfully be required to pay in full for those licenses. However, because the Commission itself has distorted the value of F Block licenses which Omnipoint could have bid for, the Commission must now more comprehensively assess the full impact of its restructuring decisions. We note that SMR small business auction winners also echo a similar concern. It is questionable that the Commission can possibly balance all of the significant effects that a post-auction reconfiguration of the costs of C and F Block licenses will have on small businesses participating in auctions of related wireless services, including SMR, IVDS, and re-auctions of C Block licenses.

Compromising the validity of the C Block auction will also have deleterious effects on future auctions. The billions of dollars at stake, both in terms of auction revenues and consumer savings from rapid licensing, far outweighs whatever nominal amounts could be saved by restructuring the C Block. Restructuring will surely undermine the auction process going forward. If, as many suggest, some sophisticated C Block high bidders merely bought an option (betting for either (i) better market conditions, (ii) Commission restructuring, or (iii) bankruptcy restructuring), then there is every reason to believe that bidders in future auction will attempt to repeat such behavior. Should the Commission capitulate here, future auction abuse and auction debt restructuring is a practical certainty. With such uncertainty, the auction method itself loses all utility.

II. Control Group and Unjust Enrichment Provisions Ensure Small Business Participation

Some parties argue that, in conjunction with significant debt restructuring, the Commission should abandon the very rules that ensure the Entrepreneur Band is for small businesses. For example, these parties argue for relaxation or, in some cases, total elimination of the unjust enrichment provisions (so that they can sell the licenses to large companies) or the control group rules (so that the day-to-day control or the economic benefits of the business flow to large ineligible entities, and away from small companies). Omnipoint strenuously objects to these efforts to revisit the balance of small business participation and large company passive investment that the Commission has forged over the past three years through at least six different rulemakings.[10]

As an initial matter, every party in the C and F Block auctions relied on the existing rules to form their business plans. Especially for bidders that failed to win licenses, or that were outbid in some markets, offering new post-auction financing to the winning auction bidders is just as unfair as a significant post-auction discount off the winning bids. In either case, the terms of the auction should not be rewritten merely to protect a particular set of winning bidders from the actual consequences of their bids. Equally important, the Commission has painstakingly crafted the rules to balance the public goal of true small business participation in PCS with the reality that small businesses must also attract necessary capital from large, passive investors. The Commission's rules probably go as far as possible to ensure large investment without completely compromising small

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10 The Commissions orders involve intricate tradeoffs to devise the correct balance of small business control rules for the PCS Entrepreneur's Band. See, e.g., Second Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 2348 (1994); Second Memorandum Opinion and Order, 9 FCC Rc. 7245 (1994); Fifth Report and Order, 9 FCC Rcd. 5532 (1994); Fifth Memorandum Opinion and Order, 10 FCC Rcd. 403 (1995); (Sixth Report and Order, 10 FCC Rcd. 136 (1995); Memorandum Opinion and Order, 11 FCC Rcd. 7824 (1996).

company participation. See Omnipoint Corp. v. FCC, 78 F.3d 620 (1995) (dissenting opinion of J. Wald questioning the Commission's relaxation of the 49% equity exception).

Finally, the Commission has not even proposed to now suddenly abandon the rules crafted over the past three years,[11] despite the commenters plea for abandonment of almost all small business participation rules. Nor does the June 2 Public Notice suggest such rule changes or offer even a single proposed rule.

CONCLUSION

Over the next several months, four new Commissioners will be passed the responsibility of executing the decisions stemming from this proceeding. Omnipoint believes that continuity at this time is paramount and that the best way to ensure fair treatment of all parties is to maintain the essential economic obligations that were set by the Entrepreneur's Band auctions.

Respectfully submitted,

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11 Further, we note that the Commission made very clear that its proposed changes to the Part 1 auction rules would apply only to future auctions, and not to services which had already been through the auction allocation process. Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, WT 97-82, FCC 97-60 at ¶ 18 (rel. Feb. 28, 1997).