

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Broadband PCS C and F Block) WT Docket No. 97-82
Installment Payment Issues) DA 97-679
)

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BLACK-OWNED BROADCASTERS, INC.

Respectfully submitted,

THE NATIONAL ASSOCIATION OF
BLACK-OWNED BROADCASTERS, INC.

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July 9, 1997

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REPLY COMMENTS OF THE

NATIONAL ASSOCIATION OF BLACK-OWNED BROADCASTERS, INC.

The National Association of Black-Owned Broadcasters, Inc., (“NABOB”), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.

In its initial Comments in this proceeding, NABOB pointed out that the Commission believed that installment payments would minimize the effects of lack of access to capital by women- and minority-owned small businesses.¹ The Commission also recognized that an installment payment plan would be the same as an extension of credit to successful bidders. While the Commission apparently believed that this would reduce the amount of private financing needed, in fact, the most crucial factors in obtaining any amount of additional financing are the structure and terms of existing debt. Unfortunately, the financial markets have revealed serious flaws in the current terms by which the installment payments are to be made. Therefore, NABOB proposed that the Commission alter the current payment terms by allowing C and F Block licensees to elect the following new terms:

¹ In re *Implementation of Section 309(j) of the Communications Act-- Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, 2350, ¶ 232 (1994) (hereinafter, “*Second R & O*”).

- Defer all payments without any accrual of interest for the first five years of the license term,
- Require interest-only payments in year six,
- Require payments of ten percent of the principal plus interest in each of years seven through nine, and
- Require full payment of outstanding principal and interest at maturity.

NABOB stated that in view of the financing problems facing C Block licensees, restructuring the current installment payments is essential in order to fulfill the Congressional objectives of ensuring participation of designated entities in the provision of spectrum-based services and corresponding Commission policies. We added that this proposal represents not only the best solution to the financing problems faced by designated entities who obtained licenses in the C Block auction, but also one that meets the Commission's public interest policies and preserves the funds promised to the U.S. Treasury.

We pointed out that the Commission is directed by both §§ 257(a) and 309(j)(4)(D) to remove regulatory obstacles as well as to advance procedures designed to ensure participation in spectrum-based services for small businesses. Section 257(a) has been interpreted to apply to minority and women-owned small businesses because of Congressional concerns about the under representation of minorities and women as owners in the telecommunications marketplace. Including minorities and women within the class of small businesses is squarely supported by § 257(a)'s legislative history.² Section 309(j) refers explicitly to small businesses, women, minorities

² *Id.* at ¶ 210 & fn #501.

and rural telephone companies in several of its provisions. We concluded that to the extent that C and F Block debt obligations under the current installment payment plan negatively affect the ability of designated entities to procure necessary capital and roll-out their PCS services, those debt obligations are a market entry barrier.

I. THE COMMISSION SHOULD CONSIDER THE STATEMENTS MADE BY THE PANEL OF INDUSTRY FINANCIAL EXPERTS WHO ALL RECOMMENDED THAT THE COMMISSION SUBSTANTIALLY RESTRUCTURE THE C AND F BLOCK INSTALLMENT DEBT

At the recent public forum regarding Broadband PCS C and F Block installment payment issues held on June 30, 1997, the second panel, consisting of industry investment analysts, provided valuable insights into financial markets, which can be relied upon by the Commission as an accurate portrayal of financing opportunities for the majority of C and F Block licensees. In this respect, the views of the investment analysts are aligned with the interests of the Commission as the Commission strives to meet to its statutory obligations regarding facilitating the participation of designated entities, as a group, in the provision of spectrum-based services.³

All five investment analysts on the second panel maintained that restructuring C and F Block license debt is imperative. Beyond this salient point, they varied only in proposing the form restructuring should take. Apart from the specifics of the proposals by individual panelists, all shared the common thread that restructuring must be substantial. They all acknowledged that changed circumstances, including: the year long lead obtained by the A and B licensees, the drastic change in market conditions subsequent to the C Block auction, and the unforeseeability of these

³ *Second R & O* at ¶¶ 227, 229.

factors during the development of both the present installment payment plan and individual companies' business plans, cause substantial restructuring to be the only reasonable choice.

The analysts made clear that, if the Commission chooses to do nothing, the likely outcome is the default of many C and F Block licensees at varying times. Not only will reauction not yield the amount of license debt obligations that the Treasury currently anticipates receiving, but licensees will default at varying times when their financing options have dried up. Since the Commission can only reauction the spectrum as it comes back, reauction will not be a one time event; it will be a series of auctions over several years; it will not be administratively easy; and, it will not result in any presently predictable benefit to the Treasury. If the Commission engages only in minor debt restructuring, it will not facilitate financing for C and F Block licensees. The only clear choice is to engage in meaningful payment plan modifications like the one proposed by NABOB, or the even more substantial plans proposed by the financial experts who were panelists at the recent forum.

II. THE COMMISSION SHOULD ALLOW FLEXIBILITY IN RESTRUCTURING C AND F BLOCK DEBT PAYMENTS

The Commission should offer C and F Block licensees a range of repayment options. Although the Commission must establish a rule or a procedure of general applicability, that rule or procedure need not be rigid. As evidenced by the variety of proposals from the industry experts and from the licensees themselves, there are a variety of ways to restructure the payment plan. Giving licensees a modicum of flexibility with regard to their payment obligations will enable them to choose a plan that best suits the particular circumstances of their financial and consumer markets.

Specifically, the Commission should allow licensees to choose between: (1) at least five years of no interest accrual and no payments due on their debt, as outlined previously in NABOB's Comments, or (2) to pay off their entire license debt at one time during the first five years at a 75-80% mark down from the face amount of the license debt. The industry financial analysts at the public forum held June 30, 1997, offered several variations on these two general concepts. The Commission should consider all of the proposals and choose at least one option from each category to be made available to C and F Block licensees.

III. RESTRUCTURING IS WITHIN THE COMMISSION'S AUTHORITY

Generally speaking, 47 U.S.C. § 303 (r) empowers the Commission to make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of the Act, among other things. Additionally, 47 U.S.C. § 4(i) vests the Commission with authority to make rules and regulations not inconsistent with the Act which are necessary to the execution of its functions. As is apparent from the text of these provisions, courts have found that the Commission has broad authority to effectuate its statutory responsibility.⁴

With regard to the Commission's specific authority to conduct auctions and to promulgate rules governing the same, § 309 (j) establishes the use of competitive bidding in the license process and further enables the Commission to select appropriate rules and procedures that would best serve

⁴ *FCC v. Midwest Video Corp.*, 440 U.S. 668, 706 (1979).

its policy goals and achieve congressional objectives.⁵ Section 309(j)(3)(B) provides for the *promotion of opportunity and competition* by avoiding excessive concentration of licenses and by disseminating licenses *among a wide variety of applicants*, including small businesses, women and minorities. Section 309 (j)(4)(A) directs the Commission to *consider alternative payment schedules and methods of calculation*, including guaranteed installment payments. Section 309(j)(4)(D) provides that to ensure the participation of designated entities in spectrum-based services, the Commission is to *consider* the use of tax certificates, bidding preferences, and *other procedures*.

The Commission's auction rules specifically contemplate that, in the event of changed circumstances, individual licensees could request "grace periods" to defer making installment payments. 47 C.F.R. § 1.2110(e)(4)(ii). This rule was in place prior to the C Block auction and all bidders and prospective bidders were on notice of its existence. Implementation of 47 C.F.R. § 1.2110(e)(4)(ii) could result in some licensees receiving ad hoc restructuring consideration on a case-by-case basis. By developing a consistent set of debt restructuring rules for all licensees, the Commission can assure equitable treatment for all licensees while speeding the delivery of service to the public. Establishment of such a rule of general applicability is clearly within the Commission's authority and discretion.

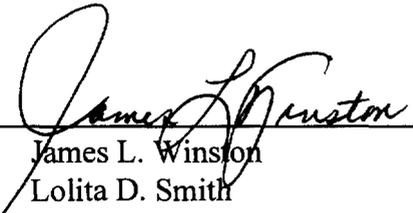
⁵ See also *Second R & O* at ¶¶ 8-9.

IV. CONCLUSION

Restructuring debt for C and F Block licensees will eliminate a market entry barrier for African American and other minority entrepreneurs, will speed service to the public and will help fulfill the Commission's statutory obligation to promote business opportunities for designated entities. NABOB, therefore, requests that the Commission restructure the debt obligations of the C and F Block licensees and provide such licensees options with respect to payment of their license debt obligations. The Commission has full authority to do all of the above.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF
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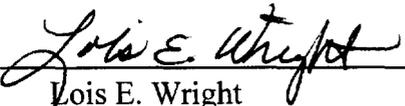
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CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P. hereby certify that on July 9, 1997, true copies of the foregoing Reply Comments In the Matter of Broadband PCS C and F Block Installment Payment Issues were hand delivered to the following:

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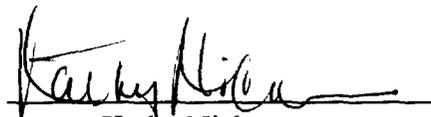
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