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AirGate Wireless

EX PARTE OR LATE FILED

July 18, 1997

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED

JUL 22 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation WT Docket 97-82

Dear Mr. Caton:

This letter provides notice that on July 17, 1997 Shelley Spencer and Dave Roberts of AirGate Wireless, L.L.C. ("AirGate") and Richard Wyron of Swidler & Berlin met with Sande Taxali and Mark Rossetti of the Wireless Telecommunications Bureau to discuss AirGate's opposition to proposals to restructure the debt of C block PCS licenses. At the meeting, AirGate Wireless discussed the process it used for evaluating different bid prices during the C block auction and its business decision to withdraw from the auction. AirGate also presented the attached materials and discussed the bankruptcy process and the FCC's ability to retrieve PCS licenses from C block licensees that file for bankruptcy.

If you have any questions regarding this notice, please call the undersigned at (301) 540-6222. Please date stamp and return the extra copy of this filing in the enclosed, self-addressed, stamped envelope.

Sincerely,

Shelley Spencer

Shelley Spencer

Attachments

cc: Sande Taxali

No. of Copies rec'd 0+1
List ABCDE

AirGate Wireless, L.L.C. • 6511 Griffith Road • Laytonsville, Md. 20882 • (301) 540-6222 • Fax (301) 540-7930

FAQ AND ANSWERS ON WHY RESTRUCTURING THE C BLOCK DEBT IS NOT IN THE PUBLIC INTEREST

Q. If the C Block Licensees default and file for bankruptcy will the FCC be able to retrieve the license for reauctioning in a timely manner?

A: Yes. Bankruptcy is a possible outcome regardless of whether the Commission restructures the debt or enforces it rules. Restructuring the debt to eliminate or reduce the debt will result in a "discharge of indebtedness" that is taxable as current income creating a tax liability for the licensees. One way to avoid this event is to file for Chapter 11 bankruptcy. If the debt forgiveness is in the magnitude recommended by the financial panel at the FCC's June 30th forum, it will produce a sizable taxable event for most licensees that is likely to push the licensees to file for bankruptcy. If the Commission enforces its rules, certain C block licensees may also file for bankruptcy.

The FCC has several options to protect its interest in the bankruptcy and should not view this course as one to be avoided at all costs. The FCC will be in a strong position in bankruptcy. As the largest creditor, it will have to agree to any reorganization plan and can aggressively pursue liquidation and retrieval of the license in this position. In addition, the FCC could:

- seek relief from the automatic stay
- seek to enforce its regulatory powers that are not subject to the stay
- exclude the license from "property" of the debtor's estate
- seek dismissal or conversion of the bankruptcy case

The impact of bankruptcy filings is also mitigated by the fact that not all C block licensees are seeking relief from the financing terms. Accordingly, not all licensees will default. In addition, if a restructuring is permitted, the litigation that is likely to ensue from other bidders in the C block auction, licensees in other services and other plaintiffs will cast a cloud over the C block licensees that will continue to inhibit their ability to attract financing.

Q. Will a decision not to restructure the debt of C Block licensees delay wireless competition?

A. No. Wireless competition with the cellular carriers is emerging throughout the U.S. The competition is coming from the A&B block PCS licensees, Nextel, cellular resellers and soon the D,E and F block PCS licensees. At the FCC's June 30th Public Forum, the Yankee Group reported that:

- 41 of the top 50 markets have 1 PCS provider
- 20 of the top 50 markets have 2 PCS providers
- In markets with PCS, PCS is priced **15%** below cellular

The level of competition will increase dramatically over the next year as systems continue to be launched throughout the U.S. by the 5 PCS carriers outside the C block.

Even with a restructuring of debt, many of the C block licensees are years away from a system launch. Since the licensing of the A and B block, licensees have realized the magnitude of resources needed to successfully launch a PCS system. Companies with financial and management strength (including A and B block licensees) have realized that a successful launch is a one to two year process in itself. Even without the imminent pressure of their financial obligations to the FCC, it is unlikely that those licensees who now seek government relief will bring competition to their markets in the near future. Competition will be most assured by reauctioning the licenses to companies with sound business and financial plans capable of providing service. These companies will bid based on a winning business plan that will provide additional wireless competition.

Q. How many businesses are likely to fail if the Commission enforces its current rules and does not permit restructuring?

A: <u>Far less than the number of businesses who originally participated in the auction but withdrew based on the bidding</u>. 255 bidders initially participated in the C block – 89 of those bidders won licenses. Significantly, as measured by upfront payment only ten of the initial top twenty bidders in the C block auction remained in the auction and acquired licenses. (10 of the top bidders left the auction with a refund of $226Million.) Over 150 bidders that participated in the C block auction have already lost the opportunity to provide broadband PCS on C block frequencies. These bidders included companies with significant financial backing and investment in the opportunity. Companies like U.S. AirWaves that deposited an upfront payment of $81 Million in the auction; Companies like Go! Communications that deposited an upfront payment of $ 45 Million and companies like AirLink that deposited an upfront payment of $20 Million. If the bid prices had not reached the final levels in the C block, many of these companies today would be creating new jobs and contributing to the economic growth in the wireless industry. Their businesses failed during the auction based on the actions of other bidders. Many of these companies would have matched or paid more than the adjusted license prices proposed by certain C block licensees.

In addition, the majority of the debt from the C block auction is carried by only 3 bidders. 66% of the license debt is due from NextWave, Pocket, and GWI. The top ten licensees are responsible for 85% of the total C block debt. Thus a restructuring would benefit a few companies not the industry. Indeed the bidding of these companies forced many financially-secure companies out of business during the auction. A restructuring across the board for C and F block licensees could result in undesirable tax consequences for all C and F block licensees.

Q: If the C block licensees default has the Commission fulfilled its mandate under Section 309(j) to promote a wide dissemination of licenses?

A: <u>Yes</u>. In the D,E and F block auction small businesses won over 40% of the licenses; 3.4% were won by women-owned businesses and 4.8% were won by minority businesses. Other services such as narrowband PCS, and IVDS also contributed to a wide dissemination of licenses. A reauctioning of defaulted C block licenses as an entrepreneurs block will continue to further the goal of promoting a wide dissemination of licenses and promote the rapid and efficient deployment of new services.

Restructuring also could undermine the goals of 309(j). The result of the C block was determined by a few bidders – it should *<u>not</u>* be used to invalidate the need for auction rules and

spectrum allocations that foster participation by small businesses and businesses owned by women and minorities. The precedent for regulatory uncertainty created by a retroactive post-auction rule change will make investors weary of investing in entrepreneurs. In addition, firm enforcement of the rules is essential if the valid concept of an entrepreneurs block is to survive. A wide dissemination of licenses is best assured if small businesses and businesses owned by women and minorities bid in auctions with the surety that the rules will be enforced and speculation will not be rewarded. This, more than any other action by the Commission, will produce strong and robust communications companies run by small businesses and women and minorities.

Q. If the Commission changes the license prices will it serve the public interest?

A. No. The integrity of the auction process depends on enforcement of the current rules as they existed and were known to bidders during the auction. Changing the license price would rewrite the history of the auction in favor of certain bidders that voluntarily outbid every other bidder. Such a change would provide a government-determined outcome rather than a free market auction outcome.

Q. What would be the impact of permitting the licensees to pay the net present value of their license costs at a discount?

A. The FCC will be rewriting the outcome of the auction. As shown on the attached chart, at differing discount levels, other bidders would have outbid the current C block licensees. For example, if the high bid price for the New York BTA is discounted back at 10%, the per Pop bid price would be $ 45.45. In the auction two bidders exceeded that bid price – North Coast Communications at $ 47.53 Per Pop and Go Communications at $ 49.95 Per Pop. Both North Coast and Go ultimately withdrew from the C block auction without winning any licenses. Go Communications ultimately disbanded, NorthCoast survived to bid in the D,E and F block auction. To alter the bid price is to void the entire basis for the auction and let the licenses remain in the hands of bidders who value the licenses less than other bidders.

Q. If the Commission changes the terms of payment but not the license price doesn't it protect the public interest?

A. No. A change in the license terms alters dramatically the financial valuation of the license used by bidders in the auction. Extending the license term and imposing a moratorium on payments increases the value on the government financing and increases the price that bidders could pay for the licenses. If these terms were available during the auction, bidders would have behaved differently and changed the results in the auction.

New York Payments

Market	***New York***
POPs	18,051,000
Net Price Bid	$ 994,134,750
Per POP	$ 55.07
Interest Rate	6.50%
Down Payment	$ 99,413,475

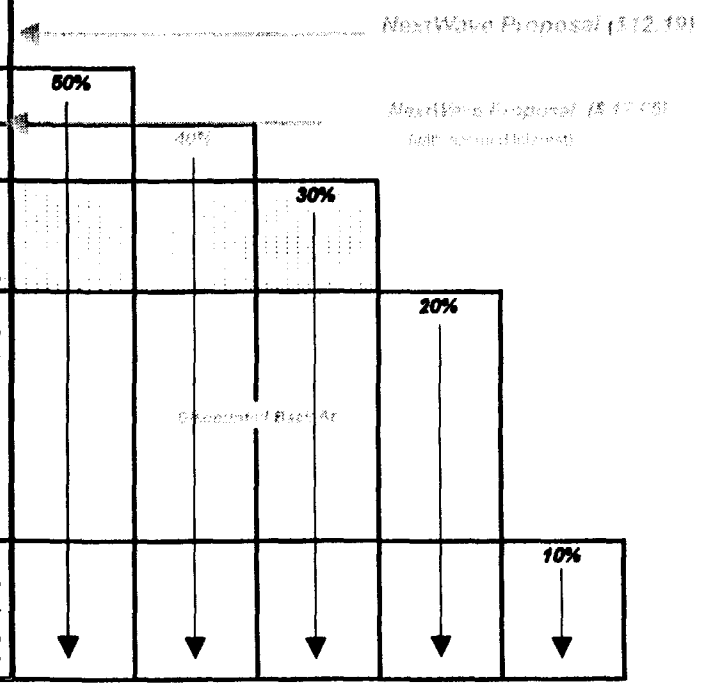
							1	2	3	4
	Year 1	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	*Year 7*	*Year 8*	*Year 9*	*Year 10*
Payments	$ 58,156,882.88	$ 58,156,882.88	$ 58,156,882.88	$ 58,156,882.88	$ 58,156,882.88	$ 58,156,882.88	$261,171,592.10	$261,171,592.10	$261,171,592.10	$261,171,592.10

Discount Rate	*NPV*	*Per POP*
6.50%	$994,134,750	$ 55.07
10.00%	$820,017,864	$ 45.43
20.00%	$519,240,615	$ 28.77
30.00%	$370,319,465	$ 20.52
40.00%	$289,638,990	$ 16.05
50.00%	$242,314,941	$ 13.42
60.00%	$212,550,410	$ 11.77
70.00%	$192,659,361	$ 10.67
80.00%	$178,656,325	$ 9.90
90.00%	$168,353,643	$ 9.33
100.00%	$160,487,412	$ 8.89

All figures are estimates of the payment schedules.

New York Bids

Round	Market	Bidder	Bid Amount	Net Bid Amount	Bid Per POP
1	New York, NY	KEC	$ 1,000	$ 750	$ 0.00
1	New York, NY	NextWave	$ 1,823,112	$ 1,367,334	$ 0.08
1	New York, NY	TeleCorp	$ 9,025,308	$ 6,768,981	$ 0.37
1	New York, NY	GWI	$ 18,000,000	$ 13,500,000	$ 0.75
1	New York, NY	PConnect	$ 18,050,616	$ 13,537,962	$ 0.75
1	New York, NY	DCR	$ 33,393,638	$ 25,045,229	$ 1.39
1	New York, NY	PCS2000	$ 180,506,144	$ 135,379,608	$ 7.50
3	New York, NY	NextWave	$ 191,553,120	$ 143,664,840	$ 7.96
3	New York, NY	DCR	$ 193,142,064	$ 144,856,548	$ 8.02
4	New York, NY	NextWave	$ 220,217,984	$ 165,163,488	$ 9.15
4	New York, NY	PCSOne	$ 239,999,888	$ 179,999,916	$ 9.97
4	New York, NY	PCS2000	$ 270,759,232	$ 203,069,424	$ 11.25
5	New York, NY	DCR	$ 288,809,664	$ 216,607,248	$ 12.00
5	New York, NY	PCSOne	$ 288,888,896	$ 216,666,672	$ 12.00
5	New York, NY	NorthCst	$ 300,000,000	$ 225,000,000	$ 12.46
6	New York, NY	PConnect	$ 343,503,200	$ 257,627,400	$ 14.27
7	New York, NY	USAirWa	$ 377,854,016	$ 283,390,512	$ 15.70
8	New York, NY	PConnect	$ 415,886,176	$ 311,914,632	$ 17.28
9	New York, NY	DCR	$ 469,568,896	$ 352,176,672	$ 19.51
10	New York, NY	NorthCst	$ 533,094,816	$ 399,821,112	$ 22.15
11	New York, NY	USAirWa	$ 588,403,968	$ 439,802,976	$ 24.36
11	New York, NY	PConnect	$ 588,000,000	$ 441,000,000	$ 24.43
12	New York, NY	NorthCst	$ 653,432,256	$ 490,074,192	$ 27.15
14	New York, NY	PConnect	$ 720,001,216	$ 540,000,912	$ 29.92
19	New York, NY	NorthCst	$ 758,125,824	$ 568,594,368	$ 31.50
21	New York, NY	USAirWa	$ 798,156,992	$ 598,617,744	$ 33.16
22	New York, NY	NorthCst	$ 842,602,688	$ 631,952,016	$ 35.01
31	New York, NY	NextWave	$ 884,732,992	$ 663,549,744	$ 36.76
32	New York, NY	NorthCst	$ 933,333,312	$ 699,999,984	$ 38.78
33	New York, NY	NextWave	$ 984,760,000	$ 738,570,000	$ 40.92
34	New York, NY	NorthCst	$ 1,033,996,016	$ 775,498,512	$ 42.96
34	New York, NY	NextWave	$ 1,039,906,560	$ 779,929,920	$ 43.21
35	New York, NY	NextWave	$ 1,102,300,928	$ 826,725,696	$ 45.80
35	New York, NY	NorthCst	$ 1,143,938,048	$ 857,953,536	$ 47.53
49	New York, NY	GO	$ 1,202,278,784	$ 901,709,088	$ 49.95
50	New York, NY	NorthCst	$ 1,262,392,960	$ 946,794,720	$ 52.45
59	New York, NY	NextWave	$ 1,325,512,960	$ 994,134,720	$ 55.07



Market		***New York***
POPs		18,051,000
Net Price Bid	$	994,134,750
Per POP	$	55.07
Interest Rate		6.50%
Down Payment	$	99,413,475

	Year 1	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	*Year 7*	*Year 8*	*Year 9* 1	*Year 10* 2
Payments	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$189,475,092.35	$189,475,092.35
	$ 64,618,758.75	$ 64,618,758.75	$ 64,618,758.75	$ 64,618,758.75	$ 64,618,758.75	$ 64,618,758.75	$ 64,618,758.75	$ 64,618,758.75		
		$ 68,818,978.07	$142,111,189.71	$220,167,395.11	$303,297,253.86	$391,830,553.43	$ 486,118,517.47	$ 586,535,199.18		
	$ 64,618,758.75	$133,437,736.82	$206,729,948.46	$284,786,153.86	$367,916,012.61	$456,449,312.18	$ 550,737,276.22	$ 651,153,957.93		

Discount Rate	*NPV*	*Per POP*
6.50%	$307,851,095	$ 17.05
10.00%	$252,820,261	$ 14.01
20.00%	$166,736,303	$ 9.24
30.00%	$131,025,072	$ 7.26
40.00%	$115,134,578	$ 6.38
50.00%	$107,627,945	$ 5.96
60.00%	$103,893,966	$ 5.76
70.00%	$101,951,096	$ 5.65
80.00%	$100,899,360	$ 5.59
90.00%	$100,309,694	$ 5.56
100.00%	$99,968,578	$ 5.54

3	4	5	6	7	8	9	10	11	12
Year 11	*Year 12*	*Year 13*	*Year 14*	*Year 15*	*Year 16*	*Year 17*	*Year 18*	*Year 19*	*Year 20*
$189,475,092.35	$189,475,092.35	$189,475,092.35	$189,475,092.35	$189,475,092.35	$189,475,092.35	$189,475,092.35	$189,475,092.35	$189,475,092.35	$189,475,092.35

Athens, GA Payments

Market		***Athens***
POPs		166,000
Net Price Bid	$	5,953,500
Per POP	$	35.86
Interest Rate		6.50%
Down Payment	$	595,350

	Year 1	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	1 *Year 7*	2 *Year 8*	3 *Year 9*	4 *Year 10*
Payments	$ 348,279.75	$ 348,279.75	$ 348,279.75	$ 348,279.75	$ 348,279.75	$ 348,279.75	$1,564,058.67	$1,564,058.67	$1,564,058.67	$1,564,058.67

Discount Rate	*NPV*	*Per POP*
6.50%	$5,953,500	$ 35.86
10.00%	$4,910,779	$ 29.58
20.00%	$3,109,537	$ 18.73
30.00%	$2,217,704	$ 13.36
40.00%	$1,734,539	$ 10.45
50.00%	$1,451,133	$ 8.74
60.00%	$1,272,885	$ 7.67
70.00%	$1,153,765	$ 6.95
80.00%	$1,069,906	$ 6.45
90.00%	$1,006,207	$ 6.07
100.00%	$961,099	$ 5.79

Athens, GA Bids

Round	Market	Bidder	Bid Amount	Net Bid Amount	Bid Per POP
1	Athens, GA	AirLink	$ 26,565	$ 19,924	$ 0.12
1	Athens, GA	Omnipoint	$ 2,207	$ 1,655	$ 0.01
1	Athens, GA	SWireless	$ 1,660	$ 1,245	$ 0.01
1	Athens, GA	Georgia	$ 1,000	$ 750	$ 0.00
1	Athens, GA	USAirWa	$ 17	$ 13	$ 0.00
2	Athens, GA	Georgia	$ 126,000	$ 94,500	$ 0.57
3	Athens, GA	MercuryP	$ 226,002	$ 169,502	$ 1.02
4	Athens, GA	SWireless	$ 330,000	$ 247,500	$ 1.49
5	Athens, GA	MercuryP	$ 430,075	$ 322,556	$ 1.94
6	Athens, GA	SWireless	$ 490,000	$ 367,500	$ 2.21
7	Athens, GA	MercuryP	$ 541,250	$ 405,938	$ 2.45
8	Athens, GA	SWireless	$ 595,000	$ 446,250	$ 2.69
9	Athens, GA	MercuryP	$ 655,000	$ 491,250	$ 2.96
10	Athens, GA	SWireless	$ 721,000	$ 540,750	$ 3.26
13	Athens, GA	Meretel	$ 801,925	$ 601,444	$ 3.62
14	Athens, GA	SWireless	$ 882,000	$ 661,500	$ 3.98
15	Athens, GA	Meretel	$ 977,917	$ 733,438	$ 4.42
16	Athens, GA	SWireless	$ 1,076,000	$ 807,000	$ 4.86
17	Athens, GA	Meretel	$ 1,184,000	$ 888,000	$ 5.35
19	Athens, GA	Eldorado	$ 1,243,000	$ 932,250	$ 5.62
20	Athens, GA	Meretel	$ 1,305,100	$ 978,825	$ 5.90
21	Athens, GA	Georgia	$ 1,370,000	$ 1,027,500	$ 6.19
21	Athens, GA	Eldorado	$ 1,370,000	$ 1,027,500	$ 6.19
22	Athens, GA	Eldorado	$ 1,439,000	$ 1,079,250	$ 6.50
23	Athens, GA	Georgia	$ 1,511,000	$ 1,133,250	$ 6.83
25	Athens, GA	Eldorado	$ 1,587,000	$ 1,190,250	$ 7.17
26	Athens, GA	Georgia	$ 1,666,110	$ 1,249,583	$ 7.53
42	Athens, GA	SEWire	$ 1,749,000	$ 1,311,750	$ 7.90
43	Athens, GA	Georgia	$ 1,836,000	$ 1,377,000	$ 8.30
44	Athens, GA	SEWire	$ 1,928,000	$ 1,446,000	$ 8.71
45	Athens, GA	Georgia	$ 2,024,000	$ 1,518,000	$ 9.14
46	Athens, GA	SEWire	$ 2,125,000	$ 1,593,750	$ 9.60
47	Athens, GA	Americall	$ 2,231,000	$ 1,673,250	$ 10.08
48	Athens, GA	SEWire	$ 2,343,000	$ 1,757,250	$ 10.59
62	Athens, GA	NextWave	$ 2,460,285	$ 1,845,214	$ 11.12
63	Athens, GA	SEWire	$ 2,583,000	$ 1,937,250	$ 11.67
66	Athens, GA	Georgia	$ 2,712,000	$ 2,034,000	$ 12.25
67	Athens, GA	SEWire	$ 2,848,000	$ 2,136,000	$ 12.87
68	Athens, GA	Georgia	$ 2,990,000	$ 2,242,500	$ 13.51
69	Athens, GA	SEWire	$ 3,140,000	$ 2,355,000	$ 14.19
70	Athens, GA	Georgia	$ 3,297,000	$ 2,472,750	$ 14.90
71	Athens, GA	SEWire	$ 3,462,000	$ 2,596,500	$ 15.64
72	Athens, GA	Georgia	$ 3,635,000	$ 2,726,250	$ 16.42
72	Athens, GA	Omnipoint	$ 3,635,000	$ 2,726,250	$ 16.42
73	Athens, GA	SEWire	$ 3,817,000	$ 2,862,750	$ 17.25
73	Athens, GA	GWI	$ 3,817,000	$ 2,862,750	$ 17.25
74	Athens, GA	Georgia	$ 4,008,101	$ 3,006,076	$ 18.11
75	Athens, GA	GWI	$ 4,209,000	$ 3,156,750	$ 19.02
76	Athens, GA	Georgia	$ 4,419,101	$ 3,314,326	$ 19.97
77	Athens, GA	GWI	$ 4,640,000	$ 3,480,000	$ 20.96
77	Athens, GA	SEWire	$ 4,640,000	$ 3,480,000	$ 20.96
78	Athens, GA	Georgia	$ 4,872,101	$ 3,654,076	$ 22.01
78	Athens, GA	SEWire	$ 4,872,000	$ 3,654,000	$ 22.01
79	Athens, GA	GWI	$ 5,116,000	$ 3,837,000	$ 23.11
79	Athens, GA	SEWire	$ 5,116,000	$ 3,837,000	$ 23.11
80	Athens, GA	Georgia	$ 5,372,101	$ 4,029,076	$ 24.27
80	Athens, GA	SEWire	$ 5,372,000	$ 4,029,000	$ 24.27
81	Athens, GA	SEWire	$ 5,641,000	$ 4,230,750	$ 25.49
81	Athens, GA	GWI	$ 5,641,000	$ 4,230,750	$ 25.49
82	Athens, GA	GWI	$ 5,923,000	$ 4,442,250	$ 26.76
83	Athens, GA	SEWire	$ 6,219,000	$ 4,664,250	$ 28.10
84	Athens, GA	GWI	$ 6,530,000	$ 4,897,500	$ 29.50
85	Athens, GA	SEWire	$ 6,857,000	$ 5,142,750	$ 30.98
86	Athens, GA	GWI	$ 7,200,000	$ 5,400,000	$ 32.53
88	Athens, GA	Georgia	$ 7,560,000	$ 5,670,000	$ 34.16
89	Athens, GA	GWI	$ 7,938,000	$ 5,953,500	$ 35.86

Market		***Athens***
POPs		166,000
Net Price Bid	$	5,953,500
Per POP	$	35.86
Interest Rate		6.50%
Down Payment	$	595,350

	Year 1	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	*Year 7*	*Year 8*	*Year 9* 1	*Year 10* 2
Payments	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$1,134,695.23	$1,134,695.23
	$ 386,977.50	$ 386,977.50	$ 386,977.50	$ 386,977.50	$ 386,977.50	$ 386,977.50	$ 386,977.50	$ 386,977.50		
		$ 412,131.04	$ 851,050.59	$ 1,318,499.92	$ 1,816,333.45	$ 2,346,526.16	$ 2,911,181.40	$ 3,512,539.23		
	$ 386,977.50	$ 799,108.54	$ 1,238,028.09	$ 1,705,477.42	$ 2,203,310.95	$ 2,733,503.66	$ 3,298,158.90	$ 3,899,516.73		

Discount Rate	*NPV*	*Per POP*
6.50%	$1,843,605	$ 11.11
10.00%	$1,514,046	$ 9.12
20.00%	$998,521	$ 6.02
30.00%	$784,660	$ 4.73
40.00%	$689,498	$ 4.15
50.00%	$644,543	$ 3.88
60.00%	$622,182	$ 3.75
70.00%	$610,547	$ 3.68
80.00%	$604,248	$ 3.64
90.00%	$600,717	$ 3.62
100.00%	$598,674	$ 3.61