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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Communication  
Broadband PCS C and F Block Installment  
Payment Restructuring; WT Docket No. 97-82

Dear Mr. Caton:

Yesterday representatives of NextWave Telecom Inc. ("NextWave" or "company") met with Jon Garcia, Michael Riordan, Peter Tenhula, and David Shiffrin of the Commission to discuss issues in the above-referenced proceeding. The views expressed by NextWave's representatives were previously presented to the Commission in the company's written filings or are included in the attached material which was distributed by NextWave at the meeting.

NextWave Telecom Inc.

In accordance with Section 1.1206 of the Commission's rules, an original and two copies of this filing are being submitted to you today. Please direct any questions concerning this matter to me or Michael Wack at 202-347-2771.

Sincerely,

Janice Obuchowski  
NextWave Telecom Inc.

Attachment

1101 Pennsylvania Avenue, N.W.  
Suite 805  
Washington, D.C. 20004  
Tel. 202.347.2771  
Fax. 202.347.2822  
www: nextwavetel.com

cc: Jon Garcia  
Michael Riordan  
Peter Tenhula  
David Shiffrin

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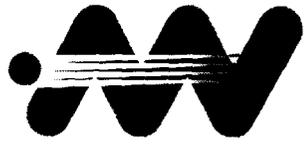
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# *NextWave* Overview

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- **Control Group personal investment of \$14M - a very substantial part of control Group assets and the largest investment by any Control Group among all DEs**
  - **Approximately \$600 million private placement with over 90 small and large investors (many individual investors and pension funds)**
  - **Experienced management team**
  - **Carriers' carrier strategy with 36+ billion minutes pre-sold**
  - **\$1.5 billion in firmly committed vendor financing**
  - **Can bring meaningful competition to the market through the nationwide footprint to serve up to 163 million Americans**
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## **Network Build-out Activities**

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- **Over \$80 million invested in the build-out of seven regional PCS networks**
  - **Four markets 70%-75% complete**
    - **Boston, Orlando, San Diego, San Antonio**
  - **Four markets 35%-40% complete**
    - **New York, Los Angeles, Washington, Baltimore**
  - **Four markets 15%-20% complete**
    - **Houston, Cleveland, Tampa, others**
  - **Phase One: 55 Million POPs in 1998**
  - **Phase Two: 95 Million POPs in 1999**
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# **NextWave's Public Market Financing Efforts**

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- **NextWave has made every effort to access the public capital markets**
    - **registration statements (S-1) filed with the SEC in 6/96 for a concurrent \$500 million equity and high yield offering with Merrill Lynch, Lehman Brothers, Bear Stearns, Prudential Securities, CIBC and ING Barings as the underwriting team**
    - **registration statements (S-1) filed with the SEC in 2/97 for a concurrent \$500 million equity and high yield offering with Smith Barney, Lehman Brothers, Bear Stearns, Prudential Securities, CIBC and ING Barings as the underwriting team**
    - **Reg S equity offering in 5/97 in conjunction with ING Barings and Prudential Securities**
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July 29, 1997

Mr. Jon Garcia  
PCS Financing Issues Task Force  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC

Re: WT Docket 97-82

Dear Mr.  Garcia:

NextWave Telecom Inc.

This letter summarizes features of NextWave's revised government debt restructuring proposal. It addresses the need to finance rapid network buildout supporting a host of resellers that are ready, willing and able to compete with incumbent carriers in 63 C block markets. At the same time, this modified proposal ensures that the full \$4.2 billion debt and interest that we owe to the government is paid in full (in addition to the \$500 million already paid). Since its formation, NextWave has been focused on aggressive, facilities-based competition, and has already spent approximately \$80 million for rapid facilities deployment from coast to coast. We look forward to discussing with you this practical way to regain forward momentum on this competitive path.

As promised, attached is a copy of the presentation materials we would like to discuss with you this afternoon. In response to what we understand are the FCC's concerns regarding the baseline approach we proposed in our comments, NextWave is prepared to discuss with you another potential approach to restructuring the C block debt.

The critical components of this approach are that it:

- Keeps the government whole.
- Keeps the payment term within the license term.
- Provides an early repayment to the government in a positive financial environment.

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Mr. Jon Garcia  
July 29, 1997  
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- Gives licensees time to seek public financing in the event they continue to face difficult financial markets.
- Relies on existing Section 1.2110(e)(4)(ii).

The specific features of NextWave's approach include:

- Accrete interest in years 1-6, (deferring cash payment), with accelerated payments to the government based on operating performance.
- Cash interest payment in years 7-10.
- Principal and remaining interest balloon payment due in year 10.
- Commercially reasonable government debt subordination terms.
- Control group to be diluted with all shareholders; control maintained only through voting control.

We are very interested in discussing the details of this plan with you this afternoon.

NextWave Telecom Inc.

Sincerely,

Janice Obuchowski  
Executive Vice President



**NextWave Telecom Inc.**

# NextWave's Revised Debt Repayment and Competition Promotion Proposal

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July 29, 1997

## Features:

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- ◆ Defer cash interest in years 1-6.
  - Early cash repayment of interest based on operating and equity performance
  
- ◆ Principal and remaining interest balloon payment due in year 10.
  
- ◆ Government debt subordination

## NextWave's Revised Plan Provides Additional Benefits to Government

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- ◆ Early cash payment of interest based on operating performance.
- ◆ Accelerated buildout.

## Benefits of NextWave's Revised Competition Plan

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- ◆ Benefits taxpayers; keeps the Government whole;
- ◆ Keeps the payment term within the license term;
- ◆ Provides an early repayment to the government in a positive financial environment.
- ◆ Relies on existing Section 1.2110(e)(4)(ii):
  - “If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.”
- ◆ Gives C Block licensees time to seek public financing in the event they continue to face difficult markets.

## Amnesty Only Works If:

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- ◆ Licensees seeking amnesty are able to choose which licenses to return to the FCC;
- ◆ Licensees are allowed to fully participate in any reauction;
- ◆ The down payment funds from the first auction are applied to the payment for licenses won in any reauction.
- ◆ Any amnesty proposal should consider the time value of money for funds deposited with the FCC and any funds spent on network buildout thus far.
  - If down payments invested at prime rate, NextWave would have earned \$40,904,444 in interest.
  - If down payments invested in S&P Index, NextWave would have earned \$222,001,342.

# Debunking the 10 Greatest Myths About Restructuring

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July 29, 1997

## Myth #1: Restructuring Harms Taxpayers

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- ◆ The NextWave proposal provides for payment in full of all principal and all interest -- Government remains whole.
- ◆ Best way to guarantee facilities-based competition and ultimate payback in a capital-intensive industry is to adopt a payment schedule which defers payment.

<u>Company</u>	<u>Non-Cash Period</u>	<u>Issue Date</u>	<u>Instrument</u>
McCaw	4.5 Years	June 1988	Senior discount debentures
Nextel	5.5 Years	8/93; 2/94	Senior discount notes
Cleartnet	6 Years	12/95	Senior discount notes
Aerial	10 Years	11/96	Zero coupon due 2006
Sprint	5 Years	8/96	Senior discount notes

(More)

## Myth #1: Restructuring Harms Taxpayers (cont'd)

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- ◆ The result most harmful to taxpayers will be a reauction, which will yield “fire sale” prices.
  - Impact of 2.3 GHz auction on spectrum market
  - Impact of extended 2+ year headstart; there are now more than 100 A and B markets built and operating.

## Myth #2: The Commission has the option of “waiting it out”

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- ◆ “Temporary” steps only exacerbate financial market’s lack of certainty concerning ability of new entrants to compete in an era of market consolidation and changing spectrum and budgetary policy.
- ◆ Unbuilt spectrum is a “wasting asset” given buildout and customer acquisition progress by incumbent competitors.
- ◆ Every day of delay adds to incumbents’ already substantial time-to-market advantage, undercutting the public policy goal of fostering wireless competition.

(More)

## Myth #2: The Commission has the option of “waiting it out” (cont’d)

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- ◆ Further market improvement is inherently speculative.
- ◆ Additional spectrum to be auctioned in near future:
  - LMDS
  - 800 MHz SMR
  - 220 MHz
  - General Wireless Communications Service
  - 37/39 GHz
  - Narrowband Personal Communications Service
- ◆ Congress has directed the Commission to auction 190 MHz of new spectrum over the next 10 years.

## Myth #3: Entrepreneurs' auction is already successful in promoting broad based competition

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- ◆ No stand-alone C Block licensee has completed a public debt or equity offering in 1997.
- ◆ Licensees seeking restructuring comprise over 90% of the top 50 C Block POPs and 95% of the top 50 markets.
- ◆ Without those C Block licensees, remaining Entrepreneurs cannot succeed in providing nationwide, robust competition to incumbents.
- ◆ Many small entrepreneurs have not been able to actively participate in this proceeding; lacking funds to do so they have relied on industry advocates such as NAPE.

## Myth #4: Financing is available as evidenced by financing of other wireless carriers

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- ◆ All reported financings involve either established carriers or entities funded by established carriers.
- ◆ At time of financing, Intercel had over \$200 million in cash on hand and an existing cellular business that generated nearly \$40 million in 1996 and over \$19 million for the three-month period ending March 31, 1997 (See Appendix 4).
- ◆ All participants on Finance Panel at WTB Public Hearing agreed that C Block cannot be financed under existing payment structure.

## Myth #5: C Block success not prerequisite to wireless competition

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- ◆ 75% of cellular/PCS spectrum is controlled by “Legacy” telecommunications players with a tendency towards oligopolistic behavior.
- ◆ Absent new C Block entrants, markets will see license consolidation and could ultimately end up with only 4 competitors.
- ◆ Legacy players are not providing competitive opportunities to small businesses and resellers today. C Block entry is needed to change this equation.

(More)

## Myth #5: C Block success not prerequisite to wireless competition (cont'd)

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- ◆ According to NWRA, 70% of resellers are denied volume discounts that Legacy carriers offer their own retail customers;
- ◆ Even AT&T Wireless, the largest wireless carrier, has informed the Commission that it cannot obtain reasonable roaming/resale agreements with incumbent carriers.
- ◆ Rapid buildout of C Block infrastructure needed to create new market entry opportunities for resellers.

## Myth #6: The C Block bidders were reckless and deserve no Commission consideration

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- ◆ CBO report found that C Block prices were reasonable.
- ◆ CBO report also states that A and B Block prices were lower than C Block prices because of a relative lack of competition in that auction. A and B Block auction bidders received bargain prices (See Appendix 3).
- ◆ The eligibility ratio in the A and B Block auction was 1.9; the eligibility ratio for the C Block was 6.7.

## Myth #7: A change in the rules at this date would be unfair to other bidders

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- ◆ Pre-auction FCC rule permits restructuring of payment obligations (Section 1.2110(e)(4)(ii)).
- ◆ Parties whose models valued spectrum the highest would have won regardless of what rules were in effect at the time of the auction.
- ◆ Many bidders left the auction with standing high bids that would not be financeable in today's market, e.g., GO Communications \$58.24 net per POP bid for Miami, North Coast Mobile \$52.45 net per POP bid for New York, and U.S. AirWaves \$38.46 net per POP bid for Dallas.
- ◆ C Block auction winners made down payment of \$1.02 billion.

## Myth #8: C-block licensees reap disproportionate benefits in a restructuring

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- ◆ Statutory limitation on ability to dilute control group interests (Sec. 24.709).
- ◆ NextWave on record in support of rule changes that would permit dilution of control group interests so long as control group has *de facto* control.
  - Reply Comments of NextWave Telecom Inc., In re Broadband PCS C and F Block Installment Payment Restructuring, WT Docket No. 97-82 (July 7, 1997).
  - Comments of NextWave Telecom Inc., In re Broadband PCS C and F Block Installment Payment Restructuring, WT Docket No. 97-82 (July 23, 1997).
  - Reply Comments of NextWave Telecom, In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82 (April 16, 1997).

**Myth #9: Revision of bankruptcy laws is necessary to protect the integrity of the auctions.**

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- ◆ Change in bankruptcy laws would further complicate financing opportunities at a time when financing for new entities already is scarce.
- ◆ It is ironic that many parties who argue that rules should not be changed also argue for changes in the bankruptcy laws themselves.

## Myth #10: Restructure would compromise the integrity of the auction process

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- ◆ The Commission has performed incredibly well in conducting auctions, but the enormity of the process assures that all the consequences of the work done to date were not foreseen and adjustments should be made as circumstances warrant.
- ◆ Specifically, the full consequences of the FCC's three roles as regulator, auction house and banker (in the installment payment context) were not fully understood.