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September 17, 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Re: Urban Communicators PCS Limited Partnership -- Broadband PCS C and F  
Block Installment Payment Restructuring: WT Docket No. 97-82

Dear Mr. Chairman:

Urban Communicators PCS Limited Partnership ("Urban Comm") has read recent press reports describing a number of proposals being considered by several Commissioners regarding C-Block installment payments. If accurate, these reports raise serious concerns that the Commission may adopt proposals which fail to provide a reasonable opportunity for C-Block licensees to obtain financing and begin build out of their networks.

A. SUMMARY

It is Urban Comm's view that the proposals being considered are likely to result in additional C-Block bankruptcies without enabling a majority of C-Block licensees to obtain financing and begin constructing their systems. The specter of more C-Block bankruptcies is a critical consideration for all C-Block companies, because the one pending bankruptcy has already tainted all C-Block licensees. Several companies have already announced that they will do no financing for C-Block licensees unless the Commission takes action which will allow a majority of all licensed BTAs to be constructed quickly. These companies have also made clear that, if they lose their current investments in C-Block licensees, they will not make new investments in new bidders. The proposals being considered by the Commission are unlikely to either allow a majority of BTAs to be constructed quickly by their current licensees or to be quickly re-auctioned and constructed by new licensees. Therefore, Urban Comm continues to request that the Commission consider adopting the three proposals listed at the end of this letter, rather than the three proposals being discussed by the Commission.

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**B. DISCUSSION**

The Commission is reported to be considering three proposals: (1) resuming installment payments on March 31, 1998, (2) allowing licensees to turn in their licenses with no credit in a re-auction, and (3) allowing licensees to turn in 15 MHz of their frequencies in exchange for a 50% reduction in their license debt. Urban Comm submits that, for most C-Block licensees, the three proposals being discussed really only give one new option, the option of turning in 15 MHz of spectrum, and that option is not one which would aid Urban Comm.

Virtually all financing activity has come to a standstill because of the uncertainty concerning what action, if any, the Commission will take to improve financing opportunities for C-Block licensees. As a result, most C-Block licensees have been unable to make any progress on financing since the Commission suspended auction payments. Most C-Block licensees are no closer now to being able to resume making quarterly interest payments than they were when the Commission suspended payments. Therefore, the Commission's first proposal, to resume installment payments on March 31, 1998, is not a viable option for most C-Block licensees.

The second proposal, that licensees turn in their licenses and walk away, amounts to nothing less than cruel and unusual punishment. For most licensees, their PCS licenses are their only business asset, and turning in their licenses is the same as electing to go out of business. Such a decision would be a harsh end to the many years of hard work and great financial investment these companies have made. Moreover, the managements of the licensee companies have fiduciary responsibilities to their shareholders which would require them to seek any other option, even if their only option is bankruptcy. Thus, the second proposal provides no meaningful benefit beyond the current bankruptcy option already available to licensees.

Given the lack of any meaningful benefit to licensees, the second proposal can only be viewed as an effort to punish speculators. However, there is nothing to indicate that there were any significant number of speculators in the C-Block. The Commission's rules on unjust enrichment precluded anyone from getting into the auction with the objective of obtaining licenses to turn around and sell them for a quick profit, as was done in the early days of cellular. Indeed, as noted by George Gilder in the September 16, 1997, *Wall Street Journal*, at p. A22, the C-Block reflects an opportunity for the Commission to bring real competition into an industry currently dominated by AT&T, GTE and the RBOC's.

Most licensees obtained licenses with the expectation that they would obtain financing through Wall Street financing sources which have failed to fulfill the many lofty promises they made to C-Block licensees. It has been reported that some Commissioners believe such reliance was foolhardy and that such reliance should be punished. Urban Comm submits that such an attitude

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completely ignores the whole purpose of the C- block. The C-Block was designed to provide an opportunity for entrepreneurs who had never previously had the opportunity to obtain licenses in the wireless telephone business to enter the business. It follows quite logically that many such licensees would be making their first forays into the Wall Street financial "jungle."

C-Block licensees have found, as Mr. Gilder notes, that the Wall Street financial community is concerned that C-Block licensees "overpaid" for their licenses, given the relatively low prices at which subsequent licenses have been auctioned. Suggesting that such licensees turn in their licenses and walk away is not a proper response by the Commission, especially given the Commission's role in the current perceived devaluation of licenses. Rather, the Commission should seek to address the concerns of Wall Street by creating repayment options which provide short term relief and re-auction options which acknowledge that licensees have already paid the government over \$1 billion dollars, which no reasonable group of business persons could be, or should be, expected to blithely throw away.

Instead, the Commission has proposed only one option which may be viable for some licensees, although not for Urban Comm, and that is the option of turning in 15 MHz of spectrum to receive a 50% reduction in license debt. However, even this proposal includes a punitive aspect, because it requires parties choosing this option to lose any excess down payment and installment payments already made on the higher license debt amount. It also requires parties to accept the entry of another competitor into their markets, in essence a "G" Block licensee. This additional potential competition can only further erode the financial viability of the business plans of C-Block licensees attempting to solicit financing from an already resistant financing community.

Therefore, Urban Comm submits that the Commission should reassess the options it is considering for revision of the C-Block debt installment payments. Urban Comm submits that the Commission should consider again the three options previously proposed by Urban Comm in this proceeding. Those options are:

C. Option 1

1. Deferral of installment payments. A licensee would be granted a one year deferral of interest payments on its debt. In exchange for the deferral, the licensee would agree that the applicable interest rate for the deferral period would be increased by 0.5% above the licensee's currently applicable interest rate ("the deferred interest surcharge"). At the end of that year, the licensee would be required to demonstrate that it has funds on hand sufficient to pay the accrued interest for that year, and must certify that, if given an opportunity to defer the interest payment due at that time, the licensee will use the funds to continue build out of its network. If the licensee meets these tests, the licensee would be granted a second year of deferral of interest payments. At the end

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of the second year, the licensee would be required to demonstrate that it has sufficient funds to pay its interest due for the second year and also demonstrate that it has made substantial progress toward build out of its network during the preceding year. If the licensee meets these tests, it would be granted a final year of deferral on its debt. At the end of the third year, the licensee would resume quarterly interest payments in accordance with the current payment schedule at its current interest rate. All accrued and unpaid interest, based upon the deferred interest surcharge for the first three years would be paid in a balloon payment at year ten.

Option 1 -- Public Interest Benefits:

- Allows immediate new service to the public.
- Provides immediate competition in the market.
- Preserves full payment of interest and debt to the U.S. Government.

Option 1 -- Penalty to Licensee

- Deferred interest surcharge of 0.5%.

Option 1 -- Benefit to Licensee

- Able to move forward immediately with construction of system.

D. Option 2

2. Disaggregate 10 MHz of C-block spectrum. The Commission should allow C-block licensees the option of turning in to the Commission for re-auction 10 MHz of their C-block spectrum. Re-auction would retain the current entrepreneur block eligibility standards for participants. In exchange for turning in the spectrum, the licensee would be given a prorata reduction in the amount bid for its spectrum, and its debt due to the Commission would be adjusted accordingly. For example, a licensee turning in 10 MHz would have its bid price reduced by one-half. The money previously paid to the Commission by the licensee for its downpayment and initial interest payments in excess of 10% of its new down payment obligation and initial interest payments would be credited to the licensee's next required interest payments.

Option 2 -- Public Interest Benefits:

- Provides 10 MHz of spectrum for immediate re-auction to qualified entrepreneur block bidders.
- Allows existing licensees to provide immediate service to consumers.

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- Allows existing licensees to provide immediate competition in the market.
- Preserves majority of existing debt to the U.S. Government.

Option 2 -- Penalty to Licensee

- Loss of 10 MHz of spectrum.
- Entry of new competitor in the market.

Option 2 -- Benefit to Licensee

- Able to move forward immediately with construction of system.
- Reduction of license debt by one-third.
- Opportunity to bid in re-auction.

E. Option 3

3. Return licenses and re-auction. The Licensee could turn in some or all of its C-block licenses for re-auction. The licensee would be relieved of all auction debt for the turned in licenses and would be allowed to utilize all or most of the funds previously paid to the Commission as a down payment in the re-auction. The licensee would be allowed to bid on any markets in the re-auction. Eligibility for the auction would be limited to those entities which qualify under the existing entrepreneur block rules.

Option 3 -- Public Interest Benefits:

- Provides 30 MHz licenses for immediate re-auction to entrepreneurs.
- Avoids lengthy bankruptcy proceedings.
- Permits service to the public without burden of license debt.

Option 3 -- Penalty to Licensee

- Loss of licenses.
- Loss of some portion of downpayment and interest payments.
- Delay and uncertainty with respect to timing and results of re-auction.

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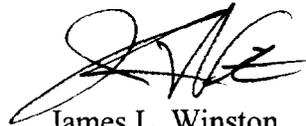
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Option 3 -- Benefit to Licensee

- Elimination of current license debt.
- Opportunity to bid in re-auction.

We look forward to an opportunity to discuss these proposals with you and the other Commissioners in the near future.

Sincerely,



James L. Winston  
Secretary and General Counsel  
Urban Communicators PCS Limited Partnership

JLW/kn

cc: The Honorable James Quello  
The Honorable Susan Ness  
The Honorable Rachelle Chong  
The Honorable John McCain  
The Honorable Ernest F. Hollings  
The Honorable Conrad Burns  
The Honorable Thomas J. Bliley, Jr.  
The Honorable John D. Dingell  
The Honorable W.J. "Billy" Tauzin  
The Honorable Edward J. Markey  
The Honorable Bobby Rush  
The Honorable Albert Wynn  
The Honorable Edolphus Towns  
The Honorable Maxine Waters  
William Kennard  
Daniel Phythyon  
Kathleen Ham  
Jon Garcia  
Peter Tenhula  
Catherine Sandoval  
Jerome Fowlkes  
William Caton

# Don't Crush Wireless Innovation

By GEORGE GILDER

In the next few weeks the Federal Communications Commission will decide whether the U.S. telephone industry unleashes a new birth of competition, entrepreneurship and innovation.

When Congress completed last year's comprehensive revision of telecommunications legislation—the first in 60 years—pundits foresaw a flowering of new services in the telecommunications marketplace. The Baby Bells were to take on the long distance companies, which in turn were to enter the local phone markets; and both were to barge into cable television services, already beset by direct digital satellite. In this garden of competition, a thousand flowers were to bloom.

## Briar Patch of Rules

A little more than a year later, as Frank Gregorski and I predicted on this page, the garden is still bare. The 780,000 words of "deregulation" turned into a briar patch of new rules to be manipulated by the established telephone companies and their allies in the communications bar. Meanwhile, the regional Bell operating companies' investment in their own networks collapsed under the perverse Telric standard (the acronym stands for "total element long-run incremental costs"), limiting what telcos can charge rivals to link to the network or colocate in the regional Bells' central offices. Congress's standard of "competition" effectively meant that no one could win, or even make any money.

Rather than invading one another's turf or upgrading their networks, therefore, long-distance and local-exchange companies have turned to consolidation, the strategy behind the aborted alliance between AT&T and SBC Communications, while MCI sold out to British Telecom. Meanwhile other "locals," such as SBC-Pacific Telesis and Bell Atlantic-Nynex, have expanded their monopoly territories by merging rather than by competing with one another. Instead of seeking new fields of competition, most of the old, wire-based systems have retreated to the familiar domains of the copper cage—some 48 million tons of metal



wire that they have implanted across the country over the past 100 years, and that gives them their local dominance.

The real hope for competition in the local loop is wireless entrepreneurs providing so-called personal communications systems. The ultimate PCS market is not among current cellular customers, but among the one billion wire-line customers in rich countries and the several billion potential phone and computer customers around the globe. In pursuing them, new wireless technologies will release torrents of new demand and new revenues; dramatically higher volumes will more than compensate for the decreases in unit prices. Digital wireless services can un-

panacea for the budget crunch. And so it mandated that the FCC dump huge new spans of spectrum on the market, through an array of at least eight previously unanticipated new auctions. Although the Congressional Budget Office projected that these transactions would yield the awesome sum of \$40.7 billion, in fact the mere announcement crashed the market. The so-called Wireless Communications Service auction in April saw licenses in St. Louis, Minneapolis, Milwaukee, Des Moines, Iowa, and Omaha, Neb., go for just \$1 per person—a fraction of 1% of the value of previous licenses. The result was to devalue the licenses the PCS entrepreneurs had won only a year earlier, in some

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*By luring entrepreneurs into huge investments then crashing their markets, the FCC has imposed an oppressive tax on the most creative forces in communications.*

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leash huge new growth in telephony, using the electromagnetic spectrum in all its various forms.

Now, however, the FCC is in grave danger of aborting this competition as well. Four years ago, Congress granted the commission authority to auction parts of the broadcast spectrum, giving specific instructions to encourage new entrants to participate in the wireless communications industry. In response, the FCC scheduled the so-called C-Block auction, limiting participation to new entrepreneurial companies and permitting successful bidders to pay over 10 years.

The auction finished on May 6, 1996, amid the euphoria of the Telecom Reform Act enacted a few months earlier. As hoped, a hardy band of entrepreneurs competed aggressively in the bidding, driving prices to more than 2.5 times those paid earlier by the big wire-based players.

Then the trouble began. The FCC took more than a year to complete its licensing of these upstart competitors, giving incumbent wireless-service providers a more than two-year head start. Then the FCC permitted broadcasters virtual carte blanche in their use of their huge grants of free spectrum and anointed special mobile radio companies (formerly dispatch services for taxis, ambulances and other services) as full-fledged cellular players.

At the same time, Congress determined that spectrum auctions should be a

cases to less than one-third of what they had been worth. This crippled the PCS licensees' ability to borrow against the value of their new property to build their innovative networks.

The FCC can straighten out this mess by acting quickly to restructure the debt held by the C-Block bidders. FCC rules permit this step, and it can be done in such a way that taxpayers are kept whole. The key is that, in recognition of the prolonged delay in licensing, the new entrepreneurs should be freed from the interest payments on their debt obligations to the government during the early years of their life cycle. This would allow them aggressively to build out the networks that can finance repayment of the government loans and accumulated interest.

If restructuring isn't possible, the FCC should offer C-Block bidders the opportunity to participate in a speedy reauction, crediting their initial down payments against new bids, as well as offering a credit for build-out commitments already made. But a reauction should only be a last resort, after all restructuring options have been exhausted. It would result in delays of up to two years just to get through the bureaucratic formalities associated with running an auction, which would solidify the dominant position of incumbent operators.

When the FCC licensed first-generation cellular service about 15 years ago, it gave away one of the franchises in each licensed territory to the incumbent telephone service provider. The predictable consequence was that wireless systems did not even attempt to compete with these companies' monopolies. Instead, wireless was positioned as an adjunct "high mobility" service—in other words, phones for use in cars and when walking around. Today AT&T, GTE and the Bell affiliates control 77% of the U.S. population's access to cellular service and 87% of the PCS licenses in the top 50 U.S. markets.

They have priced their wireless services so high that they can be used by only a fraction of the population. Wireless usage has remained unusually low in the U.S. compared with other developed nations, where the cost of service is much cheaper relative to exorbitant wireline costs. Although wireless often claims as high as 15% market share in the U.S. by the gauge of number of subscribers, the real market share in "user minutes" remains under 2%.

An efflorescence of innovation in communications can be this FCC's legacy. Open wireless platforms, like the platforms distributed by computer networks, can be an engine of economic growth in the next millennium. But current policy dooms the U.S. industry to a long siege of litigation and pettifoggery, financial maneuvers and overseas speculations, together with a tepid rivalry among leviathan telephone companies offering conventional cellular and wireline phone services.

### **Creative Forces**

The hope for the future comes from new competitive entrants with the incentive to bring new ideas and new services to U.S. consumers. Eli M. Noam of Columbia University's Institute for Tele-Information has said: "We all oppose a government industrial policy subsidizing telecommunications. Could we not also agree to oppose a government's effort to punish telecom by extracting these huge payments from the industry?"

By luring entrepreneurs into huge investments and then crashing their markets, the U.S. government has imposed an oppressive tax on some of the most creative forces in U.S. communications. The FCC should right this wrong as soon as possible.

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*Mr. Gilder is editor of the Gilder Technology Report.*