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September 23, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERY

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

Re: Ex Parte Presentation
WT Dkt. No. 97-82

Dear Mr Caton:

This letter is to notify you that Douglas Smith of Omnipoint Corporation had a telephone conversation today with Mr. David Siddall, Legal Advisor to Commissioner Susan Ness, concerning possible PCS Entrepreneur's Band auction debt restructuring. A summary of Mr. Smith's arguments, entitled "The Unfairness of the Deposit Based Buyout Proposal," is attached hereto.

An original and one copy of this letter is transmitted herewith for inclusion in the above-referenced docket. Should you have any questions concerning this matter, please feel free to contact the undersigned.

Sincerely,

Mark J. O'Connor

Mark J. O'Connor
Counsel for Omnipoint Corporation

cc: David Siddall, Esq. (via facsimile)

The Unfairness of the Deposit Based Buyout Proposal

Allowing bidders to take deposits associated with different licenses and then pool these different deposits and use the aggregate money for a "full cost" buyout of only some licenses is totally unfair. In addition to being a violation of auction rules, this proposal is economically no different than giving the deposits back to the bidder on the licenses they "turn in" so that they can use the money elsewhere.

1. First, it is terribly discriminatory to all of the other winning bidders except the very largest. For example, a bidder with only one license can not get their deposit back if they default (or take a simple amnesty). The vast majority of winning bidders do not have enough licenses to get enough deposit money back to buy even one license. Thus, this deposit buyout proposal, which effectively gives back the deposits on bidder selected licenses, only benefits the very largest bidders who were the high bidders on many licenses. The largest bidders, in effect, will have banked their money at the FCC and now be allowed to cherry pick which licenses they keep. They will not only escape all the consequences of defaulting on the other licenses, but they will have received a full refund on those licenses.
2. This is also totally unfair to bidders who made their first deposit, but missed their second deposit and lost everything since they had no idea that they could have had this opportunity to cherry pick had they made the second deposit.
3. It is unfair to bidders who already paid penalties or owe penalties for withdrawing during the auction.
4. It violates the FCC notes and security agreement signed by the bidders.

5. It will force the FCC to abandon the cross default agreement it just had these bidders sign for their F-Block licenses (As a condition of the F-licenses the bidders agreed to cross defaults with the C-Block licenses).
6. It randomizes the unfairness to the bidders that contracted during the auction since some markets will be kept by the defaulting bidder and some will come back up for reauction. Unlike in the original simultaneous auction, none of the other bidders can affect the decision as to which licenses the defaulting bidder gets to keep. Indeed, this proposal violates the entire principle of a simultaneous auction.

Conclusion: The only fair cash buyout is to allow bidders to apply the deposit for each license only to that specific license, But they have this right today, so a rule is unnecessary.

It must also be stressed that any "cash buyout" of Entrepreneur Band licenses should not change the ownership and control group rules. For example, a non-Entrepreneur (i.e. a large company) could still not own the licenses until after the fifth year. If the license were sold between the fifth and tenth year, the licensee would owe the FCC the 25% discount it had from the auction.

It is also unclear what price the FCC is contemplating for a "cash buyout" since Net Present Value (NAV) arguments raise a host of new issues that have never been contemplated in the prior reports and orders on PCS.