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Allen Salmasi  
Chairman & CEO

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NextWave Telecom Inc.  
3 Skyline Drive, 3<sup>rd</sup> Floor  
Hawthorne, NY 10532

August 22, 1997

The Honorable Reed E. Hundt  
The Honorable James H. Quello  
The Honorable Susan Ness  
The Honorable Rachelle B. Chong  
Federal Communications Commission  
8<sup>th</sup> Floor  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Chairman Hundt and Fellow Commissioners:

Thank you for the time you have devoted over the last five months to consideration of the competition and fairness issues raised in the C-block review proceeding. I humbly ask your patience for the length of this letter, but wish to provide you with an overview of our company, founded by a team dedicated to the vision of aggressive wireless competition. You hold our destiny in your hands, and I hope to persuade you that your faith in us would not be misplaced.

Looking back, we have come a long way driven by the power of one very strong idea – that if we could spread the high fixed cost of a wireless network over more minutes via a wholesale strategy, consumers would benefit from true mass market pricing, resellers would benefit from operating in a truly resale friendly environment, and our team could focus together on this American dream of entrepreneurship. Rapid wireless competition, both mobile and local loop, remains our ultimate objective. With your help, we can begin delivering service to the public in the very near future. We encourage you to persevere, as you have throughout the “challenging” history of the C-block.

**Our Vision**

NextWave intends to operate as a carriers’ carrier, building and operating digital networks through which the company will provide advanced wireless communications services to a broad range of customers, including wireless local loop services that will offer our resellers the opportunity to enter the local exchange markets through the provision of competitive wireless services. NextWave has targeted several categories of customers, including long distance companies, local exchange carriers, competitive local exchange carriers, other major PCS branded license holders, cellular service providers, utilities, cable television system operators and independent resellers, as well as retailers and manufacturers of mass-market consumer products and services. As of today, we have pre-sold over 35 billion minutes of use (MOUs) to resellers, who are building their mass market strategies around our network.

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By purchasing MOUs from *NextWave*, these companies will be able to offer competitively priced wireless services under their own brand names without substantial capital investment and without purchasing MOUs from direct competitors. Data industry players will utilize wireless networks to improve their products and meet the growing consumer need for mobile computing. *NextWave's* strategy as a carriers' carrier will be uniquely suited to meet these emerging players' needs, given the inherent flexibility for interconnection to our open network and the avoidance of retail conflict with our reseller partners.

To date, *NextWave* has raised an aggregate of over \$600 million in private capital from more than 80 major financial institutions, pension funds, individual investors, consumer electronics and network equipment manufacturers, and telecommunications service providers to finance PCS licenses and commence build-out of our PCS network. *NextWave* has made payments totaling approximately \$504 million to the FCC for our C, D, E and F-block licenses. Nearly \$474 million of these payments were made to meet our 10% down payment obligation on the C-block PCS licenses. *NextWave's* C-block payment is the fifth largest payment made to the FCC among all of the bidders in all PCS auctions. *NextWave* has also signed definitive agreements for approximately \$1.5 billion in vendor financing from network equipment suppliers such as Lucent Technologies and Hughes Network Systems.

In April of 1997, *NextWave* employed nearly 400 full-time employees and almost 300 contractors in support of the build-out of our network. *NextWave* also had assembled a management team with significant experience in designing, deploying and operating sophisticated wireless networks. Members of *NextWave's* management have substantial expertise in network engineering, planning and operations, as well as business development, regulatory matters and marketing, based on prior involvement with carriers such as AirTouch, AT&T Wireless/McCaw, Bell Atlantic, BellSouth, CellularOne, GTE, LA Cellular, MCI, NYNEX, PCS PrimeCo and Sprint; and with equipment providers, including Ericsson, Hughes, Lucent, Motorola, Nokia, NorTel and QUALCOMM.

To the extent permitted by pertinent FCC regulations, we initiated the network build-out immediately after the completion of the C-block auction so as to begin catching up on the A- and B-block head start. *NextWave's* engineering staff and contractors worked as regional deployment teams on the construction of our PCS network in 14 markets throughout the country, selecting and acquiring cell sites and designing the national network. Using this approach over the last 16 months and after having invested nearly \$80 million in the build-out, we have completed or brought near to completion the process of network design and site acquisition in many of the key markets that are high priority markets for our resellers.

At this time, 90% of the microwave links needed to clear our spectrum for the initial launch of our markets have been cleared. We have identified and pre-qualified thousands of cell sites. Seven switch sites have been acquired and are under construction. More than 1,300 cell sites have been designed, and over 300 site leases have been signed. Another 900 leases were negotiated, with over 30% ready to be fully executed. Three trial networks to validate equipment performance and test new innovative services have been launched in San Diego, California; Washington, D.C.; and San Antonio, Texas. Until a few months ago, *NextWave* was well on its way to launching commercial PCS service in four of our markets, including Boston, San Diego, Orlando and San Antonio by late 1997. We also anticipated turning on

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systems in our larger markets such as New York, Washington D.C./Baltimore, Los Angeles and Houston by early 1998. Most of our C-block markets were anticipated to be in service by the end of 1998.

At the time of the C-block auction, major investment banks advised us that, based on our detailed business forecast, NextWave could raise approximately \$1.5 billion in financing from public capital markets over the next four years, which combined with the cash flow generated from our business, would cover license payments, vendor financing and operating costs. This meant that we would require capital financing of approximately \$9.20 per POP on a going forward basis over four years to achieve positive operating cash flow in the fourth year of operations. It should be noted that NextWave paid approximately \$3.10 per POP for its upfront payments to the FCC. The \$12.30 per POP financing (\$9.20 plus \$3.10) required to get the company to a positive cash flow position is less than what most of the A- and B-block licensees paid on day one just to acquire their spectrum in the major markets. Major investment banks believed that, under favorable market conditions, based on the depth and strength of our management team, our business strategy, our customer commitments and the level of financing raised to date, we could raise the additional financing required through the public markets.

Over the last 14 months, we have made every effort to access the public capital markets by filing our registration statements (S-1) with the SEC once in June 1996 and again in February 1997. These filings entailed concurrent equity and high yield offerings with investment houses of the stature of Merrill Lynch, Smith Barney, Lehman Brothers, Bear Stearns, Prudential Securities, CIBC and ING Barings as the underwriters. We also secured sufficient customer commitments from large and small resellers to ensure that the combination of private and public financing along with our cash flow would give us the ability to service our debt obligations to the FCC and the equipment vendors.

#### **Market Downturn/Good Intentions with Unintended Consequences**

However, in the early months of 1997, culminating in March of this year, we all witnessed dramatic negative changes in the public capital market conditions for new wireless entrants. While market perspectives in 1996 focused on spectrum opportunity, the 1997 perception was of spectrum glut, as Wall Street saw Washington use spectrum as an all-purpose budgetary panacea.

The market perception of the C-block licensees was affected further after Pocket Communications Inc. filed for voluntary Chapter 11 bankruptcy protection. At the time, NextWave believed that Pocket's bankruptcy filing would not have a long-term impact on our company's ongoing financing activities because NextWave's carriers' carrier business strategy, equity base, vendor financing arrangements and management team represented comparative advantages. Our investment bankers, investors, vendors and customers believed that our business plan was sound, capable of sustaining the company through the then-current market conditions.

In late March 1997, we were asked by Commission staff to consider coordinating the efforts of a group of C-block licensees seeking the annualization of C-block interest payments. We had no interest payments due at that point in time. With the benefit of hindsight, our unnecessary participation in this process combined with Pocket's bankruptcy filing clearly sent the wrong message to the capital markets.

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More good intentions by all directly concerned seem to have backfired – partially as a result of overdrive efforts on the part of wireless incumbents and their financiers. Fanfare surrounding the restructuring of the C-block payment terms combined with the statements made by the investment bankers during the Open Hearing in June have now made it extremely difficult, if not impossible, for any of the C-block licensees to raise any meaningful level of financing prior to the successful resolution of the C-block restructuring process.

Prior to our involvement in the C-block restructuring, we were led to believe that the Commission was looking at the possibility of restructuring of the payment terms as the name implies. We now find ourselves involved in a process where C-block licensees and the FCC, hand-in-hand, inadvertently have created a perception in the worldwide financial markets that without FCC intervention, C-block licensees are not financable. At times it has appeared that debate has focused more on resolution of this financial situation in the context of Pocket's bankruptcy proceeding, rather than on ensuring the rapid development of a vibrant wireless market through the C-block. It is unfortunate that the events and proceedings arising out of the Pocket bankruptcy have so significantly stymied the efforts of NextWave and other C-block licensees to bring competitive wireless services to the mass markets. We are heartened by some signs that discussion now has returned to the basics of practical ways to quick-start competition. We are also heartened that the Commission may take action in this proceeding very soon. Commission staff have said as much in various meetings with investment bankers and C-block licensees. We also understand that there is active discussion of more than one option for C-block licensees, as there is no single solution that fits all.

### **Lessons Learned**

*1. In a post-auction context, incumbent operators have a new weapon: Nip competitive entrants in the bud by cutting off their financial resources.*

Incumbent wireless operators' anti-competitive behavior is the other primary cause of the C-block's delayed access to the capital markets. Incumbent carriers have made every effort to stigmatize the C-block on Wall Street in hopes of delaying the new competitors from coming to the wireless marketplace. In fact, the April 3<sup>rd</sup> 1997 edition of the New York Times itself recognized that much of the criticism surrounding the auction process and new PCS licensees has been triggered "primarily by firms that already hold licenses and would be threatened by additional competition."

This has put C-block licensees in a most difficult position. C-block licensees that have many employees and are actively engaged in the construction of their PCS networks have borne the brunt of incumbents' attacks on their build-out activities and on the FCC's "restructuring process."

*2. The power of positive public relations should not be underestimated. Time and again, throughout the C-block auction and the ongoing financial review process, incumbent carriers have muddied the waters with rhetoric that only serves to underscore their anti-competitive stance on new market entrants.*

In fact, many of those who argue that the restructuring process compromises the integrity of the auction process are the same people who have openly criticized the Commission's policy and mandate to create the competitive opportunity that the C-block offers. The same critics have tried to kill the prospects of

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the C-block from the outset through the press and their lobbying efforts, even before the auction was completed. We would like nothing better than for the FCC to be praised for its efforts by those that are directly impacted by the Commission's actions in this proceeding and by those that are unbiased observers.

Certain facts, definitely worth noting, have been overlooked too often by the media. Current FCC and industry data reveal that wireline companies own 79% of the cellular licenses in the top 50 U.S. markets. These same carriers control 87% of the PCS licenses in the exact same markets, as a result of their participation in the A- and B-block auction. This has translated into premium-based wireless services used only by a fraction of the population. Wireless minutes of use have remained unusually low in the U.S. compared with other developed nations where the cost of service is much cheaper. Only the C-block licensees have the unadulterated incentive to change this.

*3. Regulatory agencies are not well prepared to serve as commercial bankers, but this course was set, at least as to the current installment payers, several years ago.*

Once Congress urged the FCC to provide favorable payment terms to C-block licensees, the Commission became a commercial banker to this group of licensees until the licensees paid fully the principal and the interest obligations on their licenses. In fact, the Commission cannot avoid being a banker to the C-block, or even the F-block, for the next 10 years. Under any proposal, a number of C-block licensees may not participate in restructuring, but will continue to have installment payments due and may need the Commission's assistance with some form of relief in the future as a result of future market and business conditions.

*4. From the outset of the C-block auction, it was obvious that prices would be high. Future auctions can be designed with hard-earned awareness of entrepreneurs' position.*

With 6.7 times the number of POPs worth of eligibility, prices in the C-block auction had nowhere to go but beyond the level of prices paid in the A- and B-block auction, which had only 1.5 times the number of POPs worth of eligibility.

As the largest bidder in the C-block auction, NextWave believes that its bids were sustainable, given our strong business plan and what appeared to be favorable market conditions. That is why the company has consistently offered to repay the government in full, including its total principal and interest obligations. In fact, NextWave has offered to start repaying its loan on an accelerated basis, in the face of any ultimate positive financial environment.

Again with the wisdom of hindsight, we recognize the substantial impact that financial markets can have, particularly when they attach only short-term value to spectrum. In the future, it may be advisable for the Commission to consider cash-only auctions to avoid the complications associated with debt collection. Alterations in the auction design, such as raising the amount of the upfront payment requirements, could also effectively limit eligibility and auction participation.

During the C-block auction, the Commission had the option of accelerating the pace of the bidding, moving participants more swiftly through the process. NextWave recommends that such measures be

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considered in connection with future sales of radio licenses. This would guarantee that participants consistently bid for the licenses they value the most, eliminating the prospect of bidders as "pretenders" or insincere bidding that could inflate license prices beyond their true market value. The Commission's revenue maximization objective should be balanced against the agency's primary objective of unleashing true competition in the telecommunications marketplace.

### A Path to the Future

Tens of thousands of people have bet their lives and careers on ensuring that new competition can be brought to the market, thus helping the government achieve its mandate for the telecommunications industry. No single C-block licensee has ever defaulted on any payment to the government. We entered into this "C-block restructuring" process with the hope that after some level of give and take with the government and all involved parties, we would be faced with a much brighter prospect for financing our networks and for achieving the government's stated policy goals. Now a set of perceptions have been reinforced, and anything short of decisive action by the Commission within the next few weeks will be harmful to all and lethal to some.

We do not believe that a punitive solution helps anyone, except perhaps incumbent players. We have already suffered a great deal. Most importantly, we had to reduce our workforce, all very loyal people who risked their livelihoods in dedication to a grand competitive vision. This is my greatest regret. Each employee who had to leave our company is now a vested *NextWave* shareholder, and I consider it a priority for our management team to bring some measure of financial stability to them and their families.

Monetarily, *NextWave* stands to lose any potential return it might have realized on the approximately \$504 million the company has already paid to the federal government for its licenses. More than \$80 million of capital expenditures for the build-out of our network is totally at risk. In addition, tens of millions of dollars in operating overhead already spent to launch a nationwide network are at risk. Several years of relentless effort and more than \$14 million dollars in Control Group personal capital are completely at risk. And, the one-year delay to our market entry has put us at a considerable disadvantage. In the face of all these losses, I cannot conceive of any reason why C-block licensees should be punished, when the private and public markets believe that C-block licensees have suffered more than enough.

The C-block PCS licensees are a creation of the FCC's policies. We have proven to be the real pioneers by virtue of raising billions of dollars in financing in the form of upfront payments to the government and vendor financing arranged to complete the build-out of new wireless networks that will compete with the well-financed incumbent carriers. We have convinced the private capital markets and equipment vendors that, in fact, we can introduce wireless services capable of competing with major telecom service providers, who have enjoyed a substantial advantage and headstart as a result of (a) their access to cheap sources of capital, (b) free or inexpensive wireless licenses granted earlier than the C-block licenses were granted, (c) a much larger scale and scope of operations, including, in many cases, the benefits that are associated with fully established wireline networks and (d) an established corporate and operating infrastructure.

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DEs have tried to understand the Commission's mandate and have introduced innovative approaches to provide more efficient ways of offering lower cost, higher quality wireless services. As a group, we have tried to overcome every imaginable obstacle to fulfill the FCC's mandate to promote true competition in the marketplace. The Commission's fairness objectives should be focused first on dealing with the very substantial adversities endured by these entrepreneurs. A punitive treatment of these entrepreneurs and their investors, suppliers, employees and customers serves no one other than incumbents and will ultimately bring in to question the government's policies.

This is a critical moment in the history of this Commission. We hope that the FCC dispenses with the false emotions being stirred by the incumbents and focuses on the primary objectives that go to the heart of the C-block. Many small businesses became involved in its creation, both as licensees and contractors, fully devoting their lives and resources to the build-out of competitive new wireless networks. Furthermore, a new phenomenon developed as a result of the Commission's creation of the C-block. It was ultimately many little guys who joined large strategic investors in becoming investors, suppliers, contractors, subcontractors and builders of the C-block network. It is not an overstatement to say that this initially small group of "little guys" has now grown to include thousands of people whose livelihoods and families are inexorably linked to a rapid build-out of the C-block. Their futures deserve to be a principal consideration in any resolution of C-block issues.

The ultimate question is what is the real measure of fairness. Well-financed incumbent carriers, who received their licenses for no cost or at a substantially lower cost per POP in the A- and B-block auction, claim that it is fair to delay competition as long as possible with no regard for the enormous human dimension involved in the C-block. But we trust that the Commission recognizes that the small and entrepreneurial businesses making up the C-block do not have the same resources and staying power as the more established carriers.

We are convinced that we have proposed reasonable solutions to the Commission's Task Force and that the Commission should offer C-block licensees a range of options that include these and solutions proposed by others. With the Commission's positive intervention in providing us with a reasonable level of restructuring, we are more than confident that we have the ability to finance our company and execute on our business plan. For your reference, please find attached Exhibit A, which provides an overview of solutions proposed by NextWave throughout this proceeding.

We are grateful to the Commission and sincerely applaud your actions in giving us the opportunity to compete with the most organized and best-financed companies in the world. At this point in time, we humbly request that you bring this restructuring process to closure and allow the C-block licensees to become what the Commission originally intended—new wireless competitors, capable of offering more choices, better services and cheaper prices to American consumers. As a class of licensees, the C-block is fully capable of and ideally suited to deliver these options.

Sincerely,

  
Allen Salmasi

# Exhibit A

## Reauction Option

We understand that the Commission desires a reauction in order to **(a)** minimize its banker's role, and **(b)** provide for equal opportunity to the C-block early departers and other qualified DEs to participate in acquiring the C-block licenses. Even though a reauction of our C-block licenses puts more than 16 months of intense pre-construction activity and over \$80 million of network investment at total risk, we appreciate the Commission's desire to reauction the spectrum. In the spirit of bringing this restructuring process to a rapid resolution, we would be willing to support a balanced reauction. The reauction idea proposed by NextWave offers "new money" put up by the licensees that desire to participate in this form of restructuring. From a "fairness" or the Commission's "integrity" perspective, the NextWave proposal addresses the concerns of the critics and should pave the way for a complete resolution of the reauctioning process with very little risk of future litigation. The critical components of NextWave's proposal include:

- Licensees return their 30 MHz C-block licenses.
- Licensees receive a re-auction "store credit" for the pro-rata share of the down payments associated with their returned licenses subject to making the eligibility payment.
- Commission clarifies current policy of no cross-default liability.
- Auction to commence no later than early Q1 1998.
- Only qualified DEs can participate in the reauction.
- Licensees have 30 days following issuance of "final rules" to make their election after the order.
- Auction is all cash (A- and B-block auction payment terms).
- At the time of election, the licensee will have to demonstrate that the Commission is not at risk due to a licensee's involuntary bankruptcy. Licensee will enter into an agreement with the FCC that it will not file for a voluntary bankruptcy or it will risk losing its down payment.
- Minimum bid amount for the original licensee for each BTA is the original down payment for that BTA; however, the original licensee does not have to bid back on each of the returned licenses.
- Bidding rules will be C-block Stage III rules.
- Store credit will have to be spent in the reauction or the licensee loses it (i.e., store credit is non-refundable).
- Allows licensees to transfer licenses after meeting build-out requirements.
- Simplifies control group structure and gives licensees additional flexibility to allow greater than 25% non-control group capital investment.

## Restructuring Option

Under this proposal, the annual interest payments are deferred during the critical construction period while the C-block licensees as a whole invest over \$6 billion into the build-out of their PCS networks. The interest payments resume on the earlier of completion of the construction phase (a date certain for each of the licensees) or as soon as the licensee is generating free cash flow. In fact, under this proposal, NextWave has offered the majority of its free cash flow to the FCC. Routine reporting of the construction progress ensures that the spectrum is not warehoused during the deferment period. The salient features 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.
- 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).
- Commission clarifies current policy of no cross-default liability.
- Allows licensees to transfer licenses after meeting build-out requirements.
- Simplifies control group structure and gives licensees additional flexibility to allow greater than 25% non-control group capital investment.