

Cook Inlet states that, if an amnesty program is adopted, certain limitations should be imposed, including prohibitions against participation in the reauction of their licenses by those who participate in amnesty (principals and control group members), against participation by any entity in bankruptcy, and against cherry picking among those licenses to be surrendered. In order to expedite reauction, Cook Inlet suggests that the Commission refund 25% of their down payments to licensees who surrender their licenses -- as "walk away" money.¹¹³

51. Omnipoint opposes amnesty because "operational" C block companies would be left with no recourse under any of the amnesty proposals, and would face a significant relative disadvantage in accessing capital markets. Omnipoint points out that this might deprive the public of the service that such licensees are providing.¹¹⁴ Omnipoint states that it and other operational C block licensees have "operating businesses [that] are completely tied to specific C block licenses"¹¹⁵ and do not have the same flexibility to cancel licenses voluntarily. Omnipoint asserts that these licensees' access to public capital markets will be hampered by policies that would, in effect, reduce per pop prices paid for similar properties *i.e.*, the surrendered C block licenses, and will strand those licensees that have been significantly built-out with licenses that have "artificially higher prices" per pop.¹¹⁶

52. Like Omnipoint, Alpine argues that entities like itself, which bid in good faith and intend to construct their markets, will not be helped by an amnesty program.¹¹⁷ However, Alpine supports an amnesty plan structured to encourage overextended licensees to take prompt remedial action and free up the C block for reauction and subsequent development. Alpine explains that the ability to roam is essential to the viability of its system and to that of other operational C block systems, but cannot be offered to potential customers if significant portions of the C block have not been developed. Therefore, Alpine endorses an amnesty option that would encourage speedy surrender and reauction by permitting

¹¹³ Cook Inlet *ex parte* letter, August 5, 1997 at 2-3. Cook Inlet argues that the Commission would also have to provide compensatory compliance benefit and transition rules for control group parties who are meeting debt obligations and are not subject to bankruptcy (*e.g.*, an additional 10 percent bidding credit in any reauction and relaxed control group and transfer rules). *Id.*

¹¹⁴ Omnipoint *ex parte* letter, September 5, 1997.

¹¹⁵ *Id.* at 2.

¹¹⁶ *Id.* at 3.

¹¹⁷ Alpine Reply Comments at 9-11.

licensees to turn in one or more of their licenses and to receive credit for the down payments, to be applied against other obligations.¹¹⁸

53. Discussion. We conclude that it serves the public interest as articulated in our goals, Section II, *supra*, to adopt an amnesty option that permits any C block licensee to surrender all of its licenses in exchange for relief from its outstanding debt and waive any applicable default payments, subject to coordination with the Department of Justice pursuant to applicable federal claims collections standards.¹¹⁹ We adopt the amnesty option for purposes of speeding use of the C block spectrum to provide services to the American public. The surrender of licenses under this option will provide qualified parties with an opportunity to obtain C block licenses at the market value of the licenses prevailing at the time of the reauction. The amnesty option we adopt today is equitable to all parties because, while amnesty relieves a licensee from further debt obligations and any applicable default payments, a coordinated surrender of licenses facilitates expeditious reauctioning of the spectrum and will provide new market opportunities for all eligible entities. In addition, we note that rapid reauction of those licenses surrendered will also comply with the Congressional directive that we promote competition and participation in the telecommunications industry by small businesses.

54. A C block licensee must make the amnesty election in accordance with the procedures set forth in Section E, *infra*. The Commission will reauction those licenses surrendered on an expedited basis under the reauction rules discussed in the *Further Notice of Proposed Rule Making* adopted with this *Second Report and Order*. See Section V., *infra*. Licensees electing the amnesty option will be eligible to bid for any and all licenses at the reauction.

55. Licensees electing the amnesty option will not have their down payment returned. This will discourage speculation and ensure that all bidders, new entrants as well as existing licensees, participate in the reauction without undue advantage. Retention of the down payments -- 10% of the bid price for most licensees -- is consistent with our previous decisions and actions affecting C block bidders in that we have retained any payments made by those C block bidders who have failed to make their first or second down payments.¹²⁰ We believe that by not finding these licensees in default and assessing

¹¹⁸ Alpine *ex parte* letter, September 17, 1997 at 2.

¹¹⁹ See 4 C.F.R. Parts 101-105.

¹²⁰ See, Mountain Solutions LTD, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market Nos. B053, B168, B172, B187, B188, B224, B247, B275, B366, and B381, *Order*, 12 FCC Rcd 5904 (1997) (*application for review filed May 28, 1997 pending*); Carolina PCS I Limited Partnership, Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market Nos. B016, B072,

any applicable default payments, we are according them a substantial benefit. In forgiving the outstanding debt we afford significant relief to the licensees by allowing them to avoid anticipated defaults. In addition, these licensees will not be deemed in default or delinquent in meeting government debt obligations. Nor will they be subject to any applicable default payments or in violation of any FCC rules or license conditions. Thus, their creditworthiness, financial qualifications, and other qualifications are preserved should they wish to take part in other federal loan programs¹²¹ or apply for any future spectrum auctions or licenses.¹²²

56. Subject to one exception identified below, licensees choosing to take advantage of the amnesty option will be required to surrender *all* of their licenses to the Commission. The requirement that all licenses be surrendered precludes licensees from "cherry picking." The simultaneous multiple-round auction design enables bidders to place bids on many licenses at once and to aggregate desired licenses in a manner that facilitates workable business plans. If we were to permit licensees to "cherry pick" which licenses to surrender, the interdependency of the licenses would be harmed. Licenses surrendered pursuant to such a "cherry picking" scheme might lack the potential for beneficial aggregation within MTAs, and therefore would likely be less valuable to potential bidders and impair business plans of new investors.

57. As an exception to the "all-or-nothing" requirement, licensees that have met or exceeded the five year build-out requirements by September 25, 1997, the date of adoption of this *Second Report and Order*, will not be required to surrender licenses for built-out markets. In addition, these licensees will be permitted to retain those BTA licenses in which such build-out has occurred. However, licensees availing themselves of this exception may not pick and choose BTAs within an MTA but will be required, instead, to

B091, B147, B177, B178, B312, B335, and B436, *Order*, DA 97-890 (rel. April 28, 1997) (*application for review filed May 28, 1997 pending*); C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Order*, 11 FCC Rcd 9343 (1996); BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Memorandum Opinion and Order*, 12 FCC Rcd 3230 (1997), petition for reconsideration granted in part and denied in part, *Memorandum Opinion and Order*, FCC 97-300 (rel. Sept. 29, 1997).

¹²¹ Under the Debt Collection Improvement Act ("DCIA"), no person may obtain any federal financial assistance if the person has an outstanding debt with any federal agency which is in a delinquent status. Pub. L. No. 104-134, § 3100(j)(1), 110 Stat. 1321 (1996), codified at 31 U.S.C. § 3720B. In addition, in the *Part 1 Proceeding*, the Commission adopted a certification procedure as part of changes to the application procedures whereby applicants must certify that the applicant is not in default on any payment for Commission licenses (including down payments) and that it is not delinquent on any non-tax debt owed to any federal agency. Bidders who cannot make this certification may be ineligible for installment payment plans. *Part 1 Proceeding* at ¶ 8.

¹²² See 47 U.S.C. §§ 308(b), 309(j)(5).

keep all of the other BTAs in the MTA in which the build-out requirement has been met and to pay for those licenses under the terms of their Notes. The build-out exception facilitates the achievement of the statutory goal set forth in Section 309(j) that we encourage the rapid provision of service to the public, and responds to the needs of licensees that have already commenced operations or have otherwise invested significantly in certain of their C block licenses. The Commission has an interest in minimizing the competitive impact of the changes that it makes to the auction rules, consistent with its broader policy objectives. The exception we adopt today is one method by which we can ensure that the menu of options available to the C block is fair to those licensees that have rapidly built-out their markets and initiated provision of competitive service.

58. Although the Bureau suspended installment payments on C block licenses on March 31, 1997, some licensees made their installment payments (*i.e.*, installments due on that date, and amounts due on December 31, 1996, but not paid until March 31, 1997, based on our automatic 90-day non-default rule) after the suspension. In addition, prior to the suspension of payments, many C block licensees made their regularly scheduled installment payments. We believe that due to the actions we take in this *Second Report and Order*, it would be unjust and inequitable for C block licensees to be treated differently merely because some C block licensees made prior payments while others did not. Consequently, we direct the Wireless Telecommunications Bureau to refund any installment payments made (whether due on or before March 31, 1997) on any license that is surrendered pursuant to this *Second Report and Order*. In addition, we will forgive payment of any due, but unpaid, installment payments for any surrendered license.¹²³ For licensees exercising the build-out exception and retaining certain licenses, all previously made installment payments will be applied first to reduce the Suspension Interest applicable to those licenses, and any amounts remaining will be refunded.

D. Prepayment

59. Background. In the *Installment Public Notice*, the Bureau sought comment on whether PCS licensees should be permitted to prepay their installment debt at a discount, and on proposals for calculating the net present value of the debt.¹²⁴ In his presentation at the FCC Public Forum held on this issue, John Bensché of Lehman Brothers recommended prepayment by bidders as a way to avoid further restructuring in the future

¹²³ Forgiveness of this obligation will be subject to coordination with the Department of Justice pursuant to applicable federal claims collections standards. See 4 C.F.R. Parts 101-105.

¹²⁴ See *Installment Public Notice* at n.6.

and to remove the government from its role as creditor to the wireless industry.¹²⁵ Bear Stearns also indicates that a prepayment option will improve the financial flexibility of C block licenses by eliminating the uncertainty surrounding the threat that a license will be revoked for financial reasons because lenders could collateralize their obligations with the licenses, at least indirectly, using the shares of the license-holding entity.¹²⁶

60. Other commenters also support some form of prepayment option for C block licensees.¹²⁷ In a letter dated September 16, 1997, Representatives Edward J. Markey and W.J. "Billy" Tauzin urged the Commission to consider a "full price buy-out" proposal as part of a menu of options approach. Under this proposal, licensees could purchase at "full price" as many of their existing licenses as they desire with cash up front, for the net present value of the net bid prices for such licenses. They suggested that the licensees be allowed to use any monies on deposit with the Commission and any "new money" that the licensee may immediately muster. They agreed that this option had the benefit of allowing licensees to proceed with build-outs immediately, thereby bringing service to the public as quickly as possible, while also providing a meaningful opportunity for all interested parties to participate in an auction for the bulk of the licenses.¹²⁸

61. Many commenters argue that a prepayment option should include a discount to lower the net high bid price of the licenses below A and B block prices.¹²⁹ For example, NextWave believes that a discount to A and B block prices is necessary due to the headstart that A and B block licensees have experienced in time to market, coupled with the restraints of the C block control group rules and the deterioration of the financial market conditions for wireless companies.¹³⁰ Other commenters believe that a prepayment discount should reflect the average of D and E block winning bids, with a multiplier of

¹²⁵ Presentation by John Benschke of Lehman Brothers at June 30, 1997, FCC Public Forum on Installment Payment Issues at 3. *See also* NextWave Comments at 9; GWI Reply Comments at 13-14.

¹²⁶ *See* Bear Stearns Comments at 4.

¹²⁷ *See, e.g.*, ClearComm Comments at 3.

¹²⁸ *See* The Honorable W.J. "Billy" Tauzin and the Honorable Edward J. Markey, *ex parte* letter, September 16, 1997.

¹²⁹ *See, e.g.*, ClearComm Comments at 3; Horizon Comments at 10-12; RTFC Comments at 3; Holland Comments at 3-4; Duluth PCS Comments at 1-2; GWI Comments at 8-10; NextWave Comments at 9-10. *See also* Alpine *ex parte* letter, September 23, 1997.

¹³⁰ NextWave Comments at 9-10 and Reply Comments at 22.

2.25 applied to secondary and tertiary markets and 3.0 for top 100 markets.¹³¹ In its *ex parte* letter, Triumph Capital suggests that the Commission apply a discount ranging from 15 percent to 30 percent to determine the present value of C block debt to the FCC.¹³² GWI proposes to scale the C block bid using the ratio of the A/B block average cash bid to C block average bid. This scale factor would then be multiplied by the actual C block bid for that license to determine the scaled C block cash bid.¹³³ This scaled C block bid would then be discounted at a 14 percent discount rate for the government debt to determine the prepayment price.¹³⁴ NextWave suggests that a two-year period would be necessary for licensees to fund this prepayment as well as sustain operating expenses.¹³⁵

62. Cook Inlet Region argues that any discounting of the net high bid price for purposes of prepayment would be unfair to the losing bidders in the C block auction and investors and creditors of the bidders in the auction.¹³⁶ Omnipoint also believes that a prepayment option is discriminatory against all of the winning bidders except the very large.¹³⁷ AirGate Wireless believes that permitting licensees to pay the net present value of their license costs at a discount would have the effect of rewriting the outcome of the C block auction, denying licenses to bidders who expressed through their bids a willingness to pay more than a discounted bid, and thereby arbitrarily choosing winners and losers.¹³⁸ Additionally, the SBA does not support a discount in the net bid amounts.¹³⁹ The SBA indicates that absent a detailed analysis of the bidders, the bidding process, round activity, financial environment and marketplace circumstances during each of the auctions, including a regression analysis to isolate individual factors, it cannot be determined that

¹³¹ Duluth PCS Reply Comments at 1-2.

¹³² See Frederick W. McCarthy, Chairman, Triumph Capital to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission *ex parte* letter, September 23, 1997 ("McCarthy Letter").

¹³³ GWI Comments at 10-12.

¹³⁴ GWI Comments at 9. See also Bear Stearns Comments at 3.

¹³⁵ NextWave Comments at 10.

¹³⁶ Cook Inlet Region *ex parte* letter, September 23, 1997 at 2.

¹³⁷ Omnipoint *ex parte* letter, September 23, 1997 at 2.

¹³⁸ See AirGate Wireless *ex parte* letter, July 18, 1997 at 3.

¹³⁹ See Jere W. Glover, Chief Counsel, U.S. Small Business Administration and Jenell S. Trigg, Assistant Chief Counsel, Telecommunications, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, *ex parte* letter, September 8, 1997 ("Glover Letter").

the adjusted marketplace value of C block should be based on either A and B block or D-F block bid amounts.¹⁴⁰ The SBA also indicates that "a reduction in principal would seriously undermine the integrity of the auction as well as set a dangerous precedent for small business participation in future auctions."¹⁴¹

63. Other commenters argue that a prepayment option is not viable for small businesses, or that it is otherwise inappropriate. BIA Capital contends that a prepayment option is not feasible because it would require small businesses to trade in debt capital from the government, which costs 7%, for private equity, which has a capital cost ranging from 30% to 40%.¹⁴²

64. Discussion. Under the prepayment option we adopt, any C block licensee may prepay selective licenses subject to the restrictions described in this Subsection IV.D. All licenses that are not prepaid in accordance with this option must be surrendered to the Commission in exchange for a forgiveness of the corresponding debt and any penalties. A licensee selecting this option may apply 70% of the total of all down payments it made on the licenses that it elects to surrender to the Commission ("Available Down Payments"), to a prepayment of the Notes for as many of its licenses it wishes to keep.¹⁴³ The remaining down payments not applied to prepayment will be retained by the Commission. Additionally, an incumbent may use any "new money" to prepay as many of its own licenses as it desires. Any installment payments previously made by the licensee for all its licenses will be added to the Available Down Payments to increase the funds available to prepay its Notes. Interest accrued from the date of the conditional license grant through the Election Date will be forgiven. For purposes of this option, the down payment associated with licenses that are transferred as of the Election Date to subsidiaries or affiliates will be considered transferred with the licenses and the corresponding debt.¹⁴⁴

¹⁴⁰ *Id.* at 5.

¹⁴¹ *Id.*

¹⁴² BIA Capital Comments at 2-3.

¹⁴³ For example, if a licensee held two licenses with net high bids of \$100 and \$200, then the total down payments would equal \$30 (\$10 + \$20). If the licensee elected to keep the \$200 license, the licensee would have \$7 (\$10 x 70 percent) of its down payment from the \$100 license to apply towards the prepayment of the \$200 license's Note. If, on the other hand, the licensee elected to prepay the \$100 license, then the licensee would have \$14 (\$20 x 70 percent) of its down payment from the \$200 license to apply towards the prepayment of the \$100 license's Note.

¹⁴⁴ For example, if ABC Company paid \$100,000 each for two licenses and submitted \$10,000 in down payments for each license, the total down payments submitted by ABC Company would be \$20,000. However, if ABC had subsequently transferred one of its licenses to XYZ Company, a wholly-owned subsidiary, ABC

65. We believe that this prepayment option fairly balances competing interests, while maintaining the fairness and integrity of our rules and auctions. We note that 30% of the down payments is equal to 3% of the net high bids and is consistent with the approach adopted previously for down payments.¹⁴⁵ Under our existing rules, an applicant is subject to a 3% payment if it fails to make the required down payment.¹⁴⁶ Furthermore, previously we have indicated that these payments will discourage default and ensure that bidders have adequate financing and that they meet all eligibility and qualification requirements.¹⁴⁷ In this manner, we believe it to be most fair to apply this provision to those licensees who seek the relief provided by this option. If licensees were able to use all of their down payment, they would recoup in full what they paid, and there would be no deterrent effect against bidding excessively in the auction or otherwise gaming the process. Thus, in the next auction to which our default payments apply, these rules could be ignored with impunity. Such a result would severely harm our market-based auction program. It would make it impossible to impose the charges we already have imposed in past cases, including in C block cases.¹⁴⁸ Further, we emphasize that permitting C block licensees access to the down payments they previously made for licenses they no longer wish to retain is a substantial benefit and fair to these licensees. To allow them to use 100% of those funds would be unfair to other C block licensees who choose to continue to pay under their existing obligations, and to bidders who were unsuccessful in the auction.

66. While some have argued that C block licensee loan payoffs made under a prepayment plan should be determined using a net present value formula, we decline to discount the Notes. We believe it is fair to other bidders and to the credibility and integrity of our rules for the prepayment to be in the amount of the outstanding debt for

Company would not have any additional money available to purchase its license, and XYZ Company would not have any additional money available to purchase its license. This option, however, is not intended to prohibit additional license transfers consistent with existing Commission rules.

¹⁴⁵ See BDPCS, Inc., BTA Nos. B008, B036, B055, B089, B110, B133, B149, B261, B298, B331, B347, B358, B391, B395, B407, B413, and B447, *Order*, 11 FCC Rcd 14399 (1996) (assessing a \$67,695,653.23 default payment for failure to submit the required down payment for licenses won in the C block auction), *reconsideration denied*, *Order*, 12 FCC Rcd 6606 (1997); and C. H. PCS, Inc., BTA No. B347 Frequency Block C, *Order*, 11 FCC Rcd 22430 (1996) (assessing a \$5,031,232.50 default payment for failure to submit the required down payment for one license won in the C block reauction).

¹⁴⁶ See 47 C.F.R. §§ 1.2104(g)(2), 24.704(a)(2). The defaulted bidder in this instance is subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission, plus a payment equal to three percent of the defaulted bid price. See 47 C.F.R. § 24.704(a)(1), (2). See also, *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd 4495 at n.51.

¹⁴⁷ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2383.

¹⁴⁸ See n.145, *supra*.

the net high bid. In other words, licensees should pay what they bid. To offer deep discounts off the amount of the debt is outside normal commercial practices and otherwise appears to be a "bail-out" of C block licensees who have encountered financial difficulties long after the auction was completed and the financial commitments were made. Debt paid off in advance of the maturity date allows the debtor to reap the benefit of not incurring additional interest due on the principal amount owed. To discount the amount of the principal, as has been suggested, would unfairly permit a windfall to the licensee electing this option. While we are cognizant of the financial difficulties for some C block licensees, we are also mindful of our duty to the other C block licensees who are successfully meeting their obligations and continuing build-out efforts for wireless services. Therefore, we believe that we strike the proper balance by allowing a licensee the benefit of prepaying its debt obligations, thereby reducing the amount of interest that would be payable over the full term of the Note, while avoiding fundamental changes to our rules that unfairly harm other licensees who followed our rules and who continue to meet their payment obligations.

67. Under this prepayment option, an incumbent must prepay all of the BTA licenses in a particular MTA and cannot arbitrarily select individual BTA licenses in a given MTA to prepay while surrendering other licenses in that MTA, with one exception. We conclude that while a licensee must prepay the debt on all of the BTAs for which it holds licenses in an MTA, we recognize that a licensee may not have sufficient funds available to it to prepay all of its Notes for the BTA licenses in a given MTA. Therefore, any licensee that has enough funds on hand to prepay one or more BTAs within an MTA, but not enough for the entire MTA, must prepay all of those BTAs within that MTA that it can afford. We conclude that a requirement that all licenses in a given MTA be prepaid precludes licensees from "cherry picking." The simultaneous multiple-round auction design discussed in paragraphs 86-89, *infra*, enables bidders to place bids on many licenses at once. If we were to permit licensees to "cherry pick" which licenses in an MTA to prepay and which to surrender under this option, the interdependency of the licenses would be threatened. Licenses surrendered pursuant to such a "cherry picking" scheme would lack the potential for aggregation, and consequently would hold much less value to other bidders in the subsequent reaction.

68. We decline to provide an exception for markets in which the five-year build-out requirement has been met as provided under the amnesty option. Under the prepayment option, licensees have the flexibility to select which markets they will retain subject to the restrictions in paragraph 67, *supra*. For this reason, licensees have the option of selecting and prepaying for licenses where they have invested capital to meet the build-out requirements and not prepaying in an MTA where they have not. We believe that this flexibility, compared to the all or nothing approach of simple amnesty, mitigates the need for this exception.

69. Finally, for a period of two years from the start date of the reauction, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from reacquiring the licenses surrendered pursuant to this option either through a reauction or any other secondary market transaction. We do not believe that it would be fair to other licensees and bidders for these licensees to benefit from a reauction of those licenses after taking advantage of this option. Furthermore, we do not believe that this option should provide opportunities for licensees to "selectively" reduce their license obligations by surrendering a license in hopes of re-obtaining it in a reauction at a lower price.

E. Election Procedures

70. We conclude that a licensee electing to continue under its existing installment payment plan or electing one of the options set forth in this *Second Report and Order*, must file a written notice of such election with the Wireless Telecommunications Bureau on or before the Election Date ("Election Notice") as specified in this section. As used herein, "Election Date" means January 15, 1998.¹⁴⁹

71. We require that those licensees electing (i) to continue making payments under their original C block Notes, (ii) the disaggregation option, or (iii) the amnesty option who elect to take advantage of the build-out exception and retain certain of their licenses make the appropriate payment by March 31, 1998 (or by the end of the 60-day grace period allowed, *see* paragraph 25, *supra*), and execute any necessary financing documents pursuant to appropriate requirements and time frames established by the Bureau in order to continue to be eligible under the option chosen.

72. Continuation Under Existing Note(s). Any licensee that wishes to continue making installment payments in accordance with the terms of its original C block Note, must elect to do so by submitting the Election Notice of such election.

73. Disaggregation. For licensees electing the disaggregation option, the Election Notice must include (i) a list of all licenses being disaggregated, (ii) the original of all licenses being disaggregated, and (iii) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission. Upon acceptance of the Election Notice, the disaggregated spectrum will be deemed returned to the Commission.

¹⁴⁹ See paragraph 110, *infra*. The Wireless Telecommunications Bureau will provide more information concerning filing procedures in a subsequent public notice.

74. Amnesty. For licensees electing the amnesty option, the Election Notice must include (i) a list of all licenses being surrendered, (ii) if applicable, a statement indicating that it intends to avail itself of the build-out exception together with a list of those BTA licenses it intends to retain¹⁵⁰ and pertinent information concerning build-out pursuant to the Commission's rules,¹⁵¹ (iii) the original of all licenses being surrendered, and (iv) all originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission.

75. Prepayment. For licensees electing the prepayment option, the Election Notice must include (i) a list of all licenses being prepaid, (ii) a payment in the amount of any additional "new money" a licensee desires to apply to the prepayment of its licenses, (iii) the original of all licenses not being prepaid in accordance with this option, and (iv) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission. Notes which are prepaid will be marked "Paid-In-Full" and returned to the licensee.

76. We further conclude that any C block licensee that (i) fails to elect one of the options set forth, Section IV.A.-D., *supra* on or before the Election Date, or (ii) fails to elect on or before the Election Date to continue making payments under its original C block Note(s), or (iii) fails to fully and timely execute and deliver to the Commission (or its agent) any required financing documents within the period of time specified by the Bureau, will not be afforded the opportunity granted to licensees who do make a timely election to repay the Suspension Interest over a period of eight equal payments. In such event, the licensee will be required, on or before March 31, 1998, to make all payments that would have been due under its Note(s) but for the effect of the *Suspension Order*. For example, a licensee whose regular installment due date was March 31, 1997, who did not make payment on that date because of the *Suspension Order*, will owe on March 31, 1998, all payments that were due and payable earlier, but unpaid due to the *Suspension Order*, in addition to the regularly scheduled March 31, 1998, payment.

F. Cross Defaults

77. Background. In the *Notice of Proposed Rule Making* in this proceeding, we sought comment on whether the Commission should cross default its installment payment

¹⁵⁰ Those licensees electing to proceed under the build-out exception will be required to adhere to the specific obligations set forth in their Notes and Security Agreements, as modified for those licenses not being surrendered to the Commission. See discussion in Section IV.E., *supra*.

¹⁵¹ 47 C.F.R. § 24.203(c).

plan loans with other installment payment plan loans to the same licensee.¹⁵² We asked if we should cross default licensees across services or blocks (*e.g.*, from PCS licenses to SMR licenses, or from PCS C and F block licenses), whether we should pursue default remedies against single licenses only (*e.g.*, from C block to C block licenses only), and what factors should influence our decision to pursue cross defaults. In response, several commenters specifically requested that the Commission clarify its rules regarding cross default in the context of defaults on installment payments if licenses are held by licensees with the same or overlapping control groups.¹⁵³

78. Further, several commenters request the Commission to affirmatively decide that there will be no cross default.¹⁵⁴ BIA Capital states that one perceived disincentive to providing financing to C block licensees is cross default.¹⁵⁵ In this regard, BIA Capital suggests that the Commission quickly clarify its position on cross defaults, and recommends that a default on payments for some licenses not result in cross default on other licenses which the company is using successfully.¹⁵⁶ ClearComm agrees and urges the Commission to allow licensees to place their licenses in separate entities so that potential financiers may invest in specific markets that meet their investment criteria.¹⁵⁷ AmeriCall and Hughes Network Systems state the effectiveness of the disaggregation option can be assured if the Commission clarifies that it will not pursue cross defaults.¹⁵⁸ AmeriCall and Hughes Network Systems state most regional equity funds are unwilling to look at this sector until they are reassured that their investment in one state is sheltered from events in other states that would impact licenses in those different markets.¹⁵⁹

79. Discussion. We will not pursue cross default remedies against C block licensees who default on installment payments with regard to other licenses in the C or F blocks. For example, if a licensee defaults on a C block license and that licensee holds other C

¹⁵² See Part 1 Proceeding at ¶¶ 76-78.

¹⁵³ See, *e.g.*, ClearComm Reply Comments at 4; BIA Capital Comments at 4.

¹⁵⁴ See *e.g.*, AmeriCall *ex parte* letter, July 11, 1997; Magnacom *ex parte* letter, August 13, 1997.

¹⁵⁵ BIA Capital Comments at 4.

¹⁵⁶ *Id.*

¹⁵⁷ ClearComm Reply Comments at 4.

¹⁵⁸ AmeriCall and Hughes Network Systems, Inc., *ex parte* letter, September 16, 1997 at 2.

¹⁵⁹ *Id.*

block licenses on which it is making its payments, we will not declare it to be in default on its debt associated with the other C block licenses. Similarly, if a licensee defaults on a C block license, and also holds F block licenses on which it is making its payments, we will not declare it to be in default on its F block debt.

80. This decision is warranted in light of our efforts to provide current C block licensees who are experiencing financing difficulties with options for meeting their financial obligations to the Commission.¹⁶⁰ We emphasize that our decision only addresses the context of a licensee's default on an installment payment for a C block license upon other licenses held by that licensee in the C or F blocks. We defer to completion of the Part 1 Rule Making our decision on whether to amend more comprehensively our policy of cross defaults. We also emphasize that existing installment payment default rules and license conditions will continue to apply for those particular licenses in default after March 31, 1998. Accordingly, upon default, a license will automatically cancel and the Commission will initiate debt collection procedures against the licensee and accountable affiliates.¹⁶¹

V. FURTHER NOTICE OF PROPOSED RULE MAKING

A. Proposals Regarding the Reaaction of Surrendered Licenses

81. Background. Several commenters suggest that a reaaction of C block licenses is the best method by which the Commission can place C block licenses in the hands of licensees capable of constructing systems and offering service to the public rapidly. Triumph Capital, MCI, and Cook Inlet Communications all support a reaaction within four to six months.¹⁶²

82. Discussion. Under the options adopted above, licensees have three options for the surrender of licenses or spectrum to the Commission. A reaaction of licenses will assure rapid provision of service to the public. A reaaction also will ensure that these licenses

¹⁶⁰ This decision does not affect our policy with regard to defaults on first or second down payments. See Letter to Kenneth Hobbs from Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, DA 97-260 (rel. February 4, 1997). See also BDPCS, Inc. Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Memorandum Opinion and Order*, 12 FCC Rcd 3230 (1997).

¹⁶¹ 47 C.F.R. § 1.2110(e)(4)(iii). See also 31 U.S.C. Chapter 37; 4 C.F.R. Parts 101-105; 47 C.F.R. Part 1, Subpart O.

¹⁶² Triumph Capital *ex parte* letter, August 7, 1997 at 1; MCI *ex parte* letter, August 14, 1997 at 2-3; Cook Inlet Communications *ex parte* letter, August 5, 1997 at 3.

are available to all applicants in a rapid and fair fashion. A simultaneous reauction of all the licenses turned in to the Commission will benefit all bidders because they will be able to bid for a number of licenses in a single reauction, instead of a series of piecemeal auctions after defaults and revocations, in which opportunities for aggregation might be less favorable.

1. Licenses to be reauctoned

83. We propose that the reauction include the following licenses: (1) all licenses representing the disaggregated spectrum surrendered to the Commission under the disaggregation option; (2) all licenses surrendered to the Commission on or before January 15, 1998, by incumbent licensees who choose to take advantage of the Commission's prepayment or amnesty options; and (3) all PCS C block licenses currently held by the Commission as a result of previous defaults. By including all available licenses in the reauction, the Commission can efficiently and fairly speed service to the public. In addition, offering all available licenses will allow for the most efficient aggregation of licenses. We seek comment on this proposal.

2. Eligibility for Participation

84. As we stated in the *Second Report and Order*, all entrepreneurs, all entities that applied for the original C block auction, and all current C block licensees with exceptions, are eligible to bid in the reauction. We seek comment on whether we should restrict participation in the reauction to entities that have not defaulted on any FCC payments.¹⁶³ Should we presume that an entity's prior default on payments for an FCC license or authorization makes that entity not financially or otherwise fit to acquire a reauctoned C block license? Alternatively, we could review financial qualifications through several other means. For instance, we could allow such entity to participate in an auction, but if the applicant is a winning bidder, set for expedited hearing the financial qualifications of the bidder, and allow the applicant to rebut a presumption that it is not financially qualified.¹⁶⁴ Another alternative would be to request that the entity submit more detailed financial information at the application stage, or require that the entity submit a higher upfront payment amount (e.g., a 50% upfront payment requirement) to participate in the reauction. With regard to C block licensees who elect the disaggregation, amnesty, or prepayment options adopted in the *Second Report and Order*, we observe that by making such election and related payments they are not in default on their C block licenses and, thus, would not be restricted from participation in the reauction (except as otherwise set forth in the *Second Report and Order*).

¹⁶³ See 47 U.S.C. § 309(j)(5).

¹⁶⁴ See 47 C.F.R. §§ 24.832(e), 1.2108(d)(3).

3. Reauction Procedures

85. We propose below auction design and application procedures for the reauction of C block licenses.

a. Competitive Bidding Design

86. We propose that all licenses and spectrum surrendered to the Commission be awarded by means of a simultaneous multiple-round electronic auction. We base this proposal on our desire to quickly auction available licenses and thereby to promote the most efficient assignment of the spectrum. Consistent with our normal practice, the specific procedural requirements of the auction would be set out by Public Notice prior to the auction. In general, we have indicated that the auction procedures chosen for each service should be those that will best promote the policy objectives identified by Congress.¹⁶⁵ We further concluded in the *Competitive Bidding Second Report and Order* that in most cases the goals set forth in Section 309(j) will be best achieved by designing auctions that award authorizations to the parties that value them most highly. As we explained, such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.¹⁶⁶

87. Also, multiple-round bidding during the auction will provide more information to bidders about the value of licenses than single round bidding. With better information, bidders have less incentive to shade their bids downward in order to avoid the "winner's curse," that is, the tendency for the winner to be the bidder who most overestimates the value of the item being auctioned.¹⁶⁷ Finally, multiple-round bidding is likely to be fairer than single-round bidding. Every bidder has the opportunity to win if it is willing to pay the most for it. Thus, we tentatively conclude that multiple-round bidding would be the best method of auctioning all available licenses and we seek comment on this tentative conclusion.

88. We also tentatively conclude that all surrendered C block licenses should be awarded in a single simultaneous multiple-round auction. A single simultaneous auction will facilitate any aggregation strategies that bidders may have, and it would provide the most information to bidders about license values at a time that they can best put that information to use. We seek comment on this tentative conclusion.

¹⁶⁵ 47 U.S.C. § 309(j)(3).

¹⁶⁶ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360.

¹⁶⁷ *Id.* at 2362.

89. Finally, if we adopt simultaneous multiple-round bidding as our method of auctioning all available licenses, we tentatively conclude that bidding should be allowed only by electronic means, rather than by telephone. Given our desire to conduct the reauction quickly, as well as recent improvements in our electronic bidding software, we tentatively conclude that telephonic bidding should be permitted only in exceptional circumstances, to be determined by the Wireless Telecommunications Bureau in each instance.

b. Bidding Procedures

90. Subject to the exceptions discussed below, which are designed to speed the reauction process, we tentatively conclude that the reauction should be conducted in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q of the Commission's rules,¹⁶⁸ as revised,¹⁶⁹ and substantially consistent with the auctions that have been employed in other wireless services. We also propose to use our Part 24 rules applicable to the C block to the extent that such rules do not conflict with our Part 1 rules or rules specifically adopted or proposed in this *Second Report and Order and Notice of Proposed Rule Making* for the reauction of C block licenses. Specifically, except as set forth herein, we propose to apply the Part 1 rules regarding competitive bidding mechanisms,¹⁷⁰ bidding application and certification procedures and prohibition of collusion,¹⁷¹ submission of upfront payment, down payment and filing of long-form applications,¹⁷² procedures for filing long form applications,¹⁷³ and procedures regarding license grant, denial and default.¹⁷⁴ We seek comment on this proposal.

91. Activity Rules. We tentatively conclude that, as we have done in other simultaneous multiple-round auctions, we will conduct the reauction in three stages. Three stages, with bidders required to be more active in each stage, serves to provide bidders with the flexibility to pursue backup strategies as the auction progresses. However, because we believe that efficiently assigning these licenses for rapid service to the public and increased competition in the CMRS marketplace requires a swift reauction of the licenses, we propose to use high activity requirements in the reauction. In recent auctions,

¹⁶⁸ 47 C.F.R. Part 1, Subpart Q.

¹⁶⁹ We initiated a proceeding last February to revise our Part 1 rules. *See Part 1 Proceeding*.

¹⁷⁰ 47 C.F.R. § 1.2104.

¹⁷¹ 47 C.F.R. § 1.2105.

¹⁷² 47 C.F.R. §§ 1.2106, 1.2107.

¹⁷³ 47 C.F.R. § 1.2108.

¹⁷⁴ 47 C.F.R. § 1.2109.

for example, we have required bidders to be active on 80% of their eligible licenses in Stage I, 90% in Stage II, and 98% in Stage III. We propose to use similar activity levels in the C block reauction and, to further expedite the auction, require the Bureau to use its delegated authority to aggressively schedule bidding rounds, quickly transition into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses. We seek comment on these proposals and tentative conclusions.

92. Reserve Price, Minimum Opening Bid, and Minimum Bid Increments. Section 1.2104 of our rules provides that the Commission may establish reserve prices or suggested minimum opening bids.¹⁷⁵ The Balanced Budget Act directed the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid will be established, unless the Commission determines that a reserve price or a minimum opening bid is not in the public interest.¹⁷⁶ This legislative directive establishes a presumption in favor of reserve prices or minimum opening bids in the reauction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. Customarily, an auctioneer has the discretion to lower a minimum opening bid in the course of the auction. A minimum opening bid in the C block reauction, more than a reserve price, will help make certain that the public is fairly compensated for spectrum surrendered to the Commission, expedite the auction and give us the flexibility to make adjustments based on the competitiveness of the auction. We seek comment on this proposal. We also seek comment on the methodology we should use to establish minimum opening bids and what factors we should consider in doing so. We propose minimum opening bids for each market equal to 10% of the corresponding high bid for the market in the original C block auction. Such an approach will scale the minimum opening bids in a way that reflects the relative value of the licenses. We also ask that commenters address whether the amount of the minimum opening bid should be capped to ensure that bidding is not deterred on high valuation markets, in particular. Finally, if commenters believe that a minimum opening bid equal to 10% of the high bid in the original C block auction will result in substantial unsold licenses, or is not a reasonable amount, they should explain why this is so, and comment on the desirability of a higher or lower minimum opening bid.

c. Procedural and Payment Issues

93. Pre-Auction Application Procedures. Auction applicants are required to file a short-form application, FCC Form 175, prior to the start of each auction.¹⁷⁷ Although we

¹⁷⁵ 47 C.F.R. § 1.2104(d).

¹⁷⁶ Balanced Budget Act of 1997, P.L. 105-33, 111 Stat. 251 (1997) (to be codified at 47 U.S.C. § 309(j)(4)(F)) ("Balanced Budget Act").

¹⁷⁷ See 47 C.F.R. § 1.2105(a).

have previously allowed both electronic and manual filing of such applications, we tentatively conclude that we should require electronic filing of all short-form applications for the reauction. We believe that electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reauction. We also believe that an electronic filing requirement will help ensure that the reauction will be completed within the time frame contemplated by this *Further Notice of Proposed Rule Making*. We have developed user-friendly electronic filing software and Internet World Wide Web forms to give applicants the ability to easily and inexpensively file and review applications. This software helps applicants ensure the accuracy of their applications as they are filling them out, and assists them in avoiding errors and omissions. In addition, by shortening the time required for the Commission to process applications before the auction, electronic filing will increase the lead time available to applicants to pursue business plans and arrange necessary financing before the short-form deadline. Our experiences from recent auctions show that bidders are confident that the electronic filing system is reliable. For example, in the broadband PCS D, E, and F block auction, 94% of the qualified bidders filed their short-form applications electronically. In the recently completed WCS auction, all winning bidders filed their long-form applications electronically. In addition, we note that in the *Part 1 Proceeding*, we tentatively concluded that Sections 1.2105(a) and 1.2107(c) of our rules should be amended to require electronic filing of all short-form and long-form applications.¹⁷⁸ We seek comment on this tentative conclusion.

94. Upfront Payment. The Part 1 rules require the submission of an upfront payment as a prerequisite to participation in spectrum auctions.¹⁷⁹ We propose to set the amount of the upfront payment for the reauction at \$.06 per MHz per pop. We adopted the same upfront payment amount for our most recent broadband PCS auction, the D, E, and F block auction, in which all applicants for all blocks made a \$.06 per MHz per pop upfront payment.¹⁸⁰ In the *Competitive Bidding Second Report and Order*, we indicated that the upfront payment should be set using a formula based upon the amount of spectrum and population (or "pops") covered by the license or licenses for which parties intend to bid.¹⁸¹ We reasoned that this method of determining the required upfront payment would enable prospective bidders to tailor their upfront payment to their bidding strategies.¹⁸² At the same time, however, we noted that determining an appropriate upfront payment involved balancing the goal of encouraging bidders to submit serious, qualified bids with the desire

¹⁷⁸ *Part 1 Proceeding* at ¶ 46.

¹⁷⁹ See 47 C.F.R. § 1.2106.

¹⁸⁰ 47 C.F.R. § 24.716(a)(1).

¹⁸¹ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-78.

¹⁸² *Id.* at 2377.

to simplify the bidding process and minimize implementation costs imposed on bidders.¹⁸³ We concluded that the best approach would be to maintain the flexibility to determine the amount of the upfront payment on an auction-by-auction basis because this balancing may yield different results depending upon the particular licenses being auctioned.¹⁸⁴ In light of our desire that only serious, qualified applicants participate in the reauction, our proposal of a \$.06 per MHz per pop is appropriate. We seek comment on this proposal. We also seek comment on alternative methods of establishing an upfront payment, and in particular, on how the Commission may estimate the present market value of the spectrum to be auctioned.

95. Down Payment and Full Payment. Consistent with the procedures used in prior auctions, we tentatively conclude that every winning bidder in an auction should be required to tender a down payment sufficient to bring its total amount on deposit with the Commission up to 20% of its winning bid within 10 business days after the issuance of a public notice announcing the winning bidder for the license.¹⁸⁵ We seek comment on this tentative conclusion.

96. If a winning bidder makes its down payment in a timely manner, we propose that it file an FCC Form 600 long-form application and follow the long-form application procedures in Section 1.2107 of the Commission's rules.¹⁸⁶ After reviewing the winning bidder's long-form application, and after verifying receipt of the winning bidder's 20% down payment, the Commission would announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. We note that the Balanced Budget Act of 1997 authorizes the Commission to establish a shortened period for the filing of petitions to deny.¹⁸⁷ In light of this authority, as well as our desire to conclude the reauction process as quickly as possible, we propose that parties then have 15 days following public notice that an application was accepted for filing to file a petition to deny. If, pursuant to Section 309(d) of the Communications Act, the Commission dismisses or denies any and all petitions to deny, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have 10 business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, we would assess a default payment as discussed below. We seek comment on these proposals.

¹⁸³ *Id.* at 2378.

¹⁸⁴ *Id.*

¹⁸⁵ See 47 C.F.R. § 1.2107(b).

¹⁸⁶ See 47 C.F.R. § 1.2107. See also, 47 C.F.R. § 24.707.

¹⁸⁷ Balanced Budget Act.

97. Amendments and Modifications of Applications. To encourage maximum bidder participation, we propose to allow applicants to amend or modify their short-form applications as provided in Section 1.2105.¹⁸⁸ In the broadband PCS context, we modified our rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring.¹⁸⁹ We propose to adopt the same exception to our rule prohibiting major amendments in the reauction. We seek comment on these proposals.

98. Bid Withdrawal, Default and Disqualification. We tentatively conclude that the withdrawal, default, and disqualification rules for the reauction should be based upon the procedures established in our general competitive bidding rules. With regard to bids that are submitted in error, we propose to apply the guidelines that the Commission has fashioned to provide for relief from the bid withdrawal payment requirements under certain circumstances.¹⁹⁰ We seek comment on this approach.

d. Anti-Collusion Rules

99. In the *Competitive Bidding Second Report and Order*, we adopted rules to prevent collusion in connection with competitive bidding, explaining that these rules, which are codified at 47 C.F.R. § 1.2105, would enhance the competitiveness of both the auction process and the post-auction market structure.¹⁹¹ We propose to apply these same rules to the reauction of licenses surrendered to the Commission. We seek comment on this proposal.

¹⁸⁸ 47 C.F.R. § 1.2105.

¹⁸⁹ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, 9 FCC Rcd 6858, 6868 (1994).

¹⁹⁰ See Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Requests to Waive Bid Withdrawal Payment Provisions, *Order*, FCC 96-203 (May 3, 1996), and Georgia Independent PCS Corporation Request to Waive Bid Withdrawal Payment Provision, *Order*, DA 96-706 (May 6, 1996). See also Atlanta Trunking Associates, Inc. and MAP Wireless, L.L.C., Petition for Reconsideration of Bid Withdrawal Payment and Georgia Independent PCS Corp., Application for Review of Request to Waive Bid Withdrawal Payment Provision, *Memorandum Opinion and Order*, 12 FCC Rcd 6382 (1997) (waiving the full bid withdrawal payments assessed against these parties after a finding that the Commission's remote bidding system may have contributed to some confusion leading to the submission of the erroneous bids).

¹⁹¹ See 47 C.F.R. § 1.2105(c). See also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2386-88; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7254 (1994); *Erratum*, Mimeo No. 50278, 1994 WL 575828 (October 19, 1994).

e. Designated Entity Provisions

100. We propose to provide small business bidders in the C block reauction with a two tiered bidding credit, which will provide a greater discount to very small businesses. In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25% of its winning bid.¹⁹² For the reauction, however, we tentatively conclude that we should offer tiered bidding credits, as we did for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders.¹⁹³ We propose to define a second tier of small business, which we will refer to as "very small businesses," as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average gross revenues of not more that \$15 million for the preceding three years. Creation of this subcategory of small business enables us to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum surrendered by C block licensees. Thus, we propose a 35% bidding credit for very small businesses and a 25% bidding credit for small businesses. We seek comment on our proposals and tentative conclusions.

101. We also tentatively conclude that an installment payment program will not be offered in the reauction.¹⁹⁴ We have conducted several auctions without installment payments. The Commission must balance competing objectives in Section 309(j) that require, *inter alia*, that it promote the development and rapid deployment of new spectrum-based services and ensure that designated entities are given the opportunity to participate in the provision of such services.¹⁹⁵ In assessing the public interest, we must try to ensure that all the objectives of Section 309(j) are considered. We have found, for

¹⁹² 47 C.F.R. § 24.712(a).

¹⁹³ See 47 C.F.R. §§ 24.717, 101.1107.

¹⁹⁴ Section 309(j)(4) of the Communications Act states that the Commission shall, in prescribing regulations pursuant to these objectives and others, "*consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B)*" See 47 U.S.C. § 309(j)(4)(A) (*emphasis added*). See also Omnibus Budget Reconciliation Act of 1993, Report of the Committee on the Budget, House of Representatives, to Accompany H.R. 2264, A Bill to Provide for Reconciliation Pursuant to Section 7 of the Concurrent Resolution of the Budget for Fiscal Year 1994, May 25, 1993, at p. 255:

While it is clear that, in many instances, the objectives of section 309(j) will be best served by a traditional, "cash-on-the-barrelhead" auction, it is important that the Commission employ different methodologies as appropriate. Under this subsection, the Commission has the flexibility to utilize any combination of techniques that would serve the public interest.

H.R. Rep. No. 103-111 at 255 (1993).

¹⁹⁵ See 47 U.S.C. §§ 309(j)(3) and (4).

example, that obligating licensees to pay for their licenses as a condition of receipt ensures greater financial accountability from applicants.¹⁹⁶ Thus, we tentatively conclude that we should not extend installment payments to winners in the reauction, given the incentives to entrepreneurs established through the various proposals discussed above. We seek comment on these tentative conclusions.

VI. CONCLUSION

102. In this *Second Report and Order*, we order resumption of installment payments for the broadband PCS C and F blocks, with the payment deadline reinstated as of March 31, 1998. We also adopt options designed to assist C block licensees that are experiencing financial difficulties to build systems that will promote competition, or to surrender spectrum to the Commission for reauction. These options include disaggregation, amnesty, and prepayment. These provisions will create opportunities for C block licensees to provide service to the public while maintaining the fairness and integrity of our auctions program. We also adopt a *Further Notice of Proposed Rule Making* seeking comment on proposed changes to our C block rules to govern the reauction of surrendered spectrum in the C block.

VII. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Regulatory Flexibility Analysis

103. The Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is contained in Appendix C. The Initial Regulatory Flexibility Analysis is contained in Appendix D.

B. Paperwork Reduction Act Analysis

104. This *Second Report and Order* contains a modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Second Report and Order*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due December 1, 1997. OMB comments are due December 1, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to

¹⁹⁶ See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Reconsideration*, FCC 97-224, 62 Fed. Reg. 41225 (rel. July 10, 1997) ("800 MHz MO&O") at ¶ 130.

enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

105. This *Further Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Further Notice of Proposed Rule Making*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this *Further Notice of Proposed Rule Making*; OMB comments are due 60 days from date of publication of this *Further Notice of Proposed Rule Making* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Paperwork Reduction Act Comment Filing Procedures

106. Written comments by the public on the modified information collections in this *Second Report and Order* are due on or before December 1, 1997. Written comments must be submitted by OMB on the modified information collections on or before December 1, 1997. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

107. Written comments by the public on the modified information collections in this *Further Notice of Proposed Rule Making* are due November 13, 1997. Written comments must be submitted by OMB on the modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

D. Ordering Clauses

108. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j), this *Second Report and Order and Further Notice of Proposed Rule Making* is hereby ADOPTED, and Sections 1.2110 and 24.709 of the Commission's rules are amended as set forth in Appendix B, effective 60 days after publication in the *Federal Register*. The information collection contained in these rules becomes effective 60 days after publication in the *Federal Register*, following OMB approval, unless a notice is published in the *Federal Register* stating otherwise.

109. IT IS FURTHER ORDERED THAT the Wireless Telecommunications Bureau's *Suspension Order* dated March 31, 1997, suspending the installment payment obligations for Personal Communications Services (PCS) C block licensees, and the subsequent Public Notice dated April 28, 1997, suspending those obligations for PCS F block licensees are rescinded, effective March 31, 1998, and installment payments for C and F block PCS licensees are reinstated as of that date.

110. IT IS FURTHER ORDERED THAT on or before January 15, 1998, the Election Date, all C block broadband PCS licensees must elect either (1) to continue making payments under their original C block Notes, or (2) one of the options set forth in Section IV of this *Second Report and Order*. The Election Notice must be filed on or before January 15, 1998 with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554 (Attn: Wireless Telecommunications Bureau, Auctions and Industry Analysis Division -- Election Notice).

111. IT IS FURTHER ORDERED THAT the Secretary shall send a copy of this *Second Report and Order and Further Notice of Proposed Rule Making*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

112. IT IS FURTHER ORDERED THAT, pursuant to 47 U.S.C. § 155(c) and 47 C.F.R. § 0.331, the Chief of the Wireless Telecommunications Bureau IS GRANTED DELEGATED AUTHORITY to prescribe and set forth procedures for the implementation of the provisions adopted herein.

E. Ex Parte Presentations

113. The *Further Notice of Proposed Rule Making* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

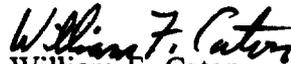
F. Comments

114. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **November 13, 1997**, and reply comments on or before **November 24, 1997**. In addition, a courtesy copy should be delivered to Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, Room 5202, Washington, DC 20554. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

G. Additional Information

115. For further information concerning the *Second Report and Order*, contact Jerome Fowlkes or Sandra Danner, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554, (202) 418-0660. For further information concerning the *Further Notice of Proposed Rule Making*, contact Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554, (202) 418-0660.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary