APPENDIX A
List of Commenters

Initial Comments

1. Airadigm Communications, Inc. (Airadigm)
2. ALLTEL Communications, Inc. (ALLTEL)
3. Alpine PCS, Inc. (Alpine)
4. AmeriCall International, L.L.C. (AmeriCall)
5. Bay Springs Telephone Company, Inc. (Bay Springs)
6. Bear Stearns
7. BellSouth Corporation
8. BIA Capital Corporation (BIA Capital)
9. Brookings Municipal Utilities (BMU)
10. Central Wireless Partnership (CWP)
11. Chase Telecommunications, Inc. (Chase)
12. ClearComm, L.P.
13. Comcast Corporation
14. Community Service Communications, Inc. (CSCI)
15. ComScape Telecommunications of Charleston License, Inc. (ComScape)
16. Conestoga Wireless Company (Conestoga)
17. CONXUS Communications, Inc. (CONXUS)
18. Cook Inlet Region, Inc., Cook Inlet Western Wireless, PV/SS PCS, L.P., Western Wireless Corporation, AirGate Wireless, L.L.C., Aerial Communications, Inc., TeleCorp, Inc., and Airadigm Communications, Inc. (collectively, CIRI)
19. Creative Airtime Services, L.L.C. (Creative)
20. Cyber Sites, L.L.C.
21. Dewey Ballantine
22. DiGiPH PCS, Inc. (DiGiPH)
23. Duluth PCS, Inc., St. Joseph PCS, Inc., and West Virginia PCS, Inc. (collectively, Duluth PCS)
24. Eldorado Communications, L.L.C. (Eldorado)
25. Fortunet Communications, L.P. (Fortunet)
26. General Wireless Inc. (GWI)
27. Holland Wireless, L.L.C., Wireless 2000, Inc., and Northern Michigan PCS Consortium, (collectively, Holland)
28. Horizon Personal Communications, Inc. (Horizon)
29. Indus, Inc.
30. Integrated Communications Group (Integrated)
31. Kansas Personal Communications Services, Ltd. (KPCS)
32. Ken W. Bray
33. Magnacom Wireless, L.L.C., PCSouth, Inc., and Communications Venture PCS Limited Partnership (collectively, Magnacom)
34. MCI Communications Corporation (MCI)
35. Meretel Communications Limited Partnership (Meretel)

36. MFRI, Inc.
37. Morris Communications, Inc. (Morris)
38. National Wireless Resellers Association (NWRA)
39. National Association of Black-Owned Broadcasters, Inc. (NABOB)
40. National Association of Black Telecommunications Professionals, Inc. (NABTP)
41. National Telephone Cooperative Association (NTCA)
42. Nextel Communications, Inc. (Nextel)
43. NextWave Telecom, Inc. (NextWave)
44. Northcoast Communications, L.L.C. (Northcoast)
45. Official Committee of Unsecured Creditors of Pocket Communications, Inc. (Pocket Creditors)
46. Omnipoint Corporation
47. OneStop Wireless
48. OnQue Communications, Inc. (OnQue)
49. PCS Plus L.L.C. and McKenzie Telecommunications Group, Inc. (collectively, PCS Plus)
50. Pioneer Telephone Association, Inc. (Pioneer)
51. Pocket Communications, Inc. (Pocket)
52. Point Enterprises, Inc. (Point)
53. R&S PCS, Inc. (R&S)
54. RFW, Inc.
55. Rural Telephone Finance Corporation (RTFC)
56. Small Business Coalition (SBC)
57. SouthEast Telephone Limited Partnership, Ltd. (SouthEast Telephone)
58. Southwestern Bell Mobile Systems (SBMS)
59. SpectrumWatch
60. Sprint Spectrum L.P.
61. Sprint Corporation
62. Tennessee L.P. 121 (Tennessee)
63. Toronto Dominion Bank and Toronto Dominion Securities (collectively, Toronto Dominion)
64. Urban Communicators PCS Limited Partnership (Urban Comm)

Reply Comments

1. Airtel Communications, Inc. (Airtel)
2. ALLTEL
3. Alpine
4. American Mobile Telecommunications Association, Inc. (AMTA)
5. Antigone Communications Limited Partnership and PCS Devco, Inc. (collectively, Antigone/Devco)
6. BellSouth Corporation
7. Carlson Technologies, Inc. (Carlson)
8. Cellexis International, Inc. (Cellexis)

9. ClearComm, L.P.
10. Comcast Corporation
11. Conestoga
12. CONXUS
13. CIRI
14. Duluth PCS
15. Fortunet
16. GWI
17. GTE Service Corporation (GTE)
18. Ken W. Bray
19. MCI
20. Millison Investment Management, Inc. (MIM)
21. Mountain Solutions LTD, Inc. (Mountain Solutions)
22. Nextel
23. NextWave
24. Northcoast
25. Omnipoint Corporation
26. OnQue
27. PCS Wisconsin, LLC
28. PrimeCo Personal Communications, L.P. (PrimeCo)
29. Radiofone PCS, L.L.C. (Radiofone)
30. R&S
31. RTFC
32. Sprint Spectrum L.P.
33. Stan P. Doyle
34. Telecommunications Resellers Association (TRA)
35. UniDial Communications (UniDial)
36. Urban Comm
37. U.S. Airwaves, Inc.
38. Wireless Nation, Inc.

Ex Parte Comments

1. AirGate Wireless, July 18, 1997
2. AirGate Wireless, July 22, 1997
3. AirGate Wireless, September 9, 1997
4. Alpine, September 17, 1997
5. Alpine, September 23, 1997
6. AmeriCall, July 11, 1997
7. AmeriCall, August 5, 1997
8. AmeriCall and Hughes Network Systems, Inc., September 16, 1997
9. AmeriCall, ClearComm, and Chase, September 17, 1997
10. BIA Capital, August 4, 1997
11. Chase, August 11, 1997

12. ClearComm, August 7, 1997
13. Congressman Rick Boucher, July 25, 1997
14. Congressman Richard Burr, August 11, 1997
15. Congressman Thomas Davis, July 30, 1997
16. Congressman John D. Dingell, September 16, 1997
17. Congressman Steny H. Hoyer, August 7, 1997
18. Congresswoman Sue W. Kelly, August 11, 1997
19. Congressman W.J. "Billy" Tauzin, August 13, 1997
20. Congressmen W.J. "Billy" Tauzin and Edward J. Markey, September 16, 1997
21. CONXUS, August 27, 1997
22. Cook Inlet Communications, August 5, 1997
23. Cook Inlet Communications, August 15, 1997
24. Cook Inlet Region, Inc., September 23, 1997
25. El Dorado, August 13, 1997
26. GWI, August 4, 1997
27. GWI, August 15, 1997
28. GWI, August 18, 1997
29. Magnacom Wireless, LLC, August 13, 1997
30. MCI, August 14, 1997
31. NextWave, June 23, 1997
32. NextWave, July 29, 1997
33. NextWave, August 5, 1997
34. Nokia, September 15, 1997
35. Nokia, September 16, 1997
36. Northern Michigan PCS Consortium, L.L.C., August 14, 1997
37. Omnipoint Corporation, August 18, 1997
38. Omnipoint Corporation, September 3, 1997
39. Omnipoint Corporation, September 5, 1997
40. Omnipoint Corporation, September 23, 1997
41. R&S, August 11, 1997
42. Senator Christoper S. Bond, July 14, 1997
43. Senator Paul D. Coverdell, September 24, 1997
44. Senator Pete V. Domenici, September 10, 1997
45. Senators James M. Inhofe, Don Nickles, and Conrad Burns, August 7, 1997
46. Senator John McCain, August 19, 1997
47. Senator John McCain, September 18, 1997
48. Senator Daniel Patrick Moynihan, August 4, 1997
49. Triumph Capital, August 7, 1997
50. Triumph Capital, September 23, 1997 ("McCarthy Letter")
51. Urban Comm, August 21, 1997
52. Urban Comm, September 17, 1997
53. U.S. Small Business Administration, September 8, 1997 ("Glover Letter")

APPENDIX B
FINAL RULES

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 - PRACTICE AND PROCEDURE

1. Section 1.2110 is amended by amending paragraph (e)(4)(i) to read as follows.

§ 1.2110 Designated Entities

(a) * * * *
(b) * * * *
(c) * * * *
(d) * * * *
(e) * * *
(4) * * *

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default, except that broadband PCS frequency block C licensees making the March 31, 1998, interest payment pursuant to their elections under the Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97-82 (rel. Oct. 16, 1997), shall be in default if they are more than sixty (60) days delinquent on such payment.

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24 - PERSONAL COMMUNICATIONS SERVICES

2. The authority citation for Part 24 continues to read as follows:

AUTHORITY: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

3. Section 24.709 is amended by adding paragraph (b)(9) to read as follows.

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) * * * *
(b)* * *

(9) *Special rule for licensees disaggregating or returning certain spectrum in frequency block C.*

(i) In addition to entities qualifying under this section, any entity that was eligible for and participated in the first auction for frequency block C, which began on December 18, 1995, will be eligible to bid in a reauction of licenses for frequency block C conducted after March 31, 1998.

(ii) The following restrictions will apply for any reauction of frequency block C licenses conducted after March 31, 1998:

(A) Applicants that elected to disaggregate 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in subsection IV.B., Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97-82 (rel. Oct. 16, 1997), will not be eligible to apply for such disaggregated licenses until 2 years from the start of the reauction of those licenses.

(B) Applicants that surrendered any of their frequency block C licenses as provided in subsection IV.D. (the "prepayment option") Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97-82 (rel. Oct. 16, 1997), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses.

(C) For purposes of this paragraph, *applicant* shall mean the applicant and its affiliates and any present or former qualifying member of a control group and their affiliates.

APPENDIX C

Final Regulatory Flexibility Analysis
(Second Report and Order)

As required by the Regulatory Flexibility Act (RFA),[197] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking in WT Docket No. 97-82.[198] The Commission sought written public comment on the proposals in the *Part 1 Proceeding*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.

A. Need for, and objectives of, the Second Report and Order (Order) in WT Docket No. 97-82

This Order is designed to assist C block broadband personal communications services (PCS) licensees to meet their financial obligations to the Commission while at the same time helping the Commission meet its goals of ensuring the rapid provision of PCS service to the public.

B. Summary of significant issues raised by public comments in response to the Initial Regulatory Flexibility Analysis (IRFA)

There were no comments filed in response to the IRFA; however, in this proceeding we have considered the economic impact on small businesses of the rules adopted herein. *See* section E, *infra*.

C. Description and estimate of the number of small entities to which rules will apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.[199] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[200] In addition, the term "small business" has the same meaning as the term "small business concern" under

[197] 5 U.S.C. § 604.

[198] Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, FCC 97-60 (rel. Feb. 28, 1997) (*Part 1 Proceeding*).

[199] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[200] 5 U.S.C. § 601(6).

Section 3 of the Small Business Act.[201] Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[202]

This Order applies to broadband PCS C and F block licensees. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years.[203] This definition has been approved by the SBA.[204] On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on Jan. 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this FRFA, we assume that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this order, are small entities.

D. Description of the projected reporting, recordkeeping, and other compliance requirements

A licensee electing one of the options set forth in the Order must file a written notice of such election (the "Election Notice") with the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division no later than the Election Date. The "Election Date" is January 15, 1998. Those licensees electing either (1) to continue making payments under their original C block Notes; (2) the disaggregation option; or (3) the amnesty option but elect to take advantage of the build-out exception and retain certain of their licenses, will be required to execute and submit a modification of their Notes, Security Agreements, Uniform Commercial Code ("UCC") Financing Statements and any other related documents securing their Notes within the time frame established by the Bureau.

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[201] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

[202] 15 U.S.C. § 632.

[203] *See* 47 C.F.R. § 24.720(b)(1).

[204] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* 10 FCC Rcd 175, 196 (1995); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5581-5584 (1995); 47 C.F.R. §§ 24.320(b) and 24.720(b).

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.

Disaggregation. For licensees electing the disaggregation option, the Election Notice must include the following: (1) a list of all licenses being disaggregated; (2) the original of all licenses being disaggregated; and (3) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission.

Amnesty. For licensees electing the amnesty option, the Election Notice must include the following: (1) a list of all licenses being surrendered; (2) if applicable, a statement indicating that the licensee intends to avail itself of the build-out exception together with a list of those BTA licenses it intends to retain and pertinent information concerning build-out; (3) the original of all licenses being surrendered; and (4) originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission.

Prepayment. For licensees electing the prepayment option, the Election Notice must include the following: (1) a list of all licenses being prepaid; (2) a payment in the amount of any additional "new money" as a licensee desires to apply to the prepayment of its licenses; (3) the original of all licenses not being prepaid in accordance with this option; and (4) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission.

E. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered

The Commission believes that it is in the public interest to adopt these provisions to facilitate use of C block licenses without further regulatory or marketplace delay. The menu approach adopted in this Order is intended to provide options to facilitate the rapid introduction of service to the public, while recognizing that ultimately the decisions concerning competition and services appropriately are marketplace decisions and should not be determined by government intervention. This decision is intended to be fair to current C block licensees (including small entities), to bidders who were not successful in their attempts to obtain licenses in this spectrum, and to the public desiring new and innovative competitive services. These options minimize the potential significant economic impact on small entities because they meet the unique circumstances facing the C block licensees and permit these small entities to choose one of three alternative solutions to reduce their debt to the Commission. All of the entities affected by this Order are small entities, and the intent of this Order is to alleviate, to some extent, the financial difficulties faced by these small entities. These options are relatively straightforward, achieve a degree of fairness to all parties, including losing bidders in the C block auction, continue to promote competition and participation by smaller businesses in providing broadband PCS service, and avoid solutions that merely prolong uncertainty.

The Commission received numerous comments and *ex parte* comments that addressed these issues at great length. The majority of commenters favor some type of relief, including debt restructuring, spectrum disaggregation, or a penalty-free license surrender (*i.e.*, amnesty) followed by a reauction. Other commenters express disapproval of any relief, and urge the Commission to strictly enforce its rules.[205] Several commenters contend that the Commission should enforce the applicable installment payment plan terms and not modify its current designated entity rules.[206] These commenters generally argue that the Commission should act immediately to enforce the current installment payment rules, as any continued delay causes unnecessary confusion for both licensees and others.[207] The Commission declines to adopt this alternative due to the financial difficulties reported to be facing many C block licensees. The Commission believes that there may be a need for some measure of relief for these small entities in addition to the suspension of payments previously granted.

Several commenters urge the Commission to restructure the C block debt because doing so is in the public interest. Some commenters recommend deferral of the C block debt.[208] Representatives Tauzin and Markey support specific prepayment options.[209] The Commission declines to adopt these proposals. The Commission does not wish to adopt temporary solutions that might only postpone the difficulties faced by the C block

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[205] *See, e.g.*, Airadigm Comments at 2-3; ALLTEL Comments at 2; CIRI Comments at 2-3.

[206] *See* Airadigm Comments at 2-3; ALLTEL Comments at 2; Bay Springs Comments at 1; BellSouth Comments at 1-2; Comcast Comments at 3, 5; CSCI Comments at 1; Conestoga Comments at 1; CIRI Comments at 2-3; Nextel Comments at 2; Northcoast Comments at 1-2; Omnipoint Comments at 3; Pioneer Comments at 1; Point Enterprises Comments at 1; SpectrumWatch Comments at 1; Sprint Corp Comments at 1; Sprint Spectrum L.P. Comments at 1-2; PCS Wisconsin Reply Comments at 1; Radiofone Reply Comments at 1; Antigone/Devco Reply Comments at 1-2; U.S. Airwaves Reply Comments at 1; PrimeCo Reply Comments at 1-2; GTE Reply Comments at 1-2.

[207] *See, e.g.*, Nextel Comments at 22; Airadigm Comments at 4; Bay Springs Comments at 4; AirGate Wireless *ex parte* letter, July 31, 1997.

[208] Suggestions in the record addressing "deferral/restructuring" propose that the Commission provide for some period (ranging from 2-20 years) during which installment payments would be deferred. Some of these plans explicitly reduce the "net present value" of the debt (*e.g.*, the total amount of debt discounted to reflect the time value of money), while others leave it unchanged, assuming the government interest rate as the discount rate. *See, e.g.*, BMU Comments at 2; ClearComm Comments at 3 & Reply Comments at 3; Chase Comments at 3; Alpine Comments at 9 & Reply Comments at 11; Horizon Comments at 13; SBC Comments at 9; R&S Comments at 21; Indus Comments at 3; MFRI Comments at 3; Magnacom Comments at 1-2; NABOB Comments at 3-4; RFW Comments at 2; KPCS Comments at 2; Urban Comm Comments at 9; PCS Plus Comments at 2; Holland Comments at 3; Eldorado Comments at 1-2; MCI Comments at 2; Bear Stearns Comments at 2-3; Fortunet Comments at 4 & Reply Comments at 8; RTFC Reply Comments at 2; NextWave Reply Comments at 20; TRA Reply Comments at 5; Urban Comm Reply Comments at 4; Congressman Tom Davis *ex parte* letter, July 30, 1997; Congressman Rick Boucher *ex parte* letter, July 25, 1997.

[209] *See* Congressmen Billy Tauzin and Edward Markey *ex parte* letter, September 16, 1997.

licensees, including small entities, and further prolong uncertainty. Under such an approach there is no certainty that the long term financial outlook facing many licensees would be improved. The Commission believes that the options adopted in this Order are relatively straightforward and achieve a degree of fairness to all parties, including small entities. Finally, the Commission rejects any proposal of a deferral of payments on the grounds that such proposal would be unfair to unsuccessful bidders who may have withdrawn from the C block when prices became too high.

Among other goals, Section 309(j) directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.[210] At the same time, Section 309(j) requires that the Commission ensure the development and rapid deployment of new technologies, products and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.[211] In assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. The Commission believes that those goals are best met by promoting efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

F. Report to Congress

The Commission shall send a copy of the Order, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 801(a)(1)(A). A copy of the Order and this FRFA (or summary thereof) will be published in the Federal Register. *See* 5 U.C.C. § 604(b). A copy of the Order and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

[210] 47 U.S.C. § 309(j)(3)(B).

[211] 47 U.S.C. §§ 309(j)(3)(A), (C).

APPENDIX D

Initial Regulatory Flexibility Analysis
(Further Notice of Proposed Rulemaking)

As required by the Regulatory Flexibility Act (RFA),[212] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in the Further Notice of Proposed Rulemaking (Notice) in WT Docket No. 97-82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and objectives of, the proposed rules

This Notice is being initiated to secure comment on proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block. Among other goals, Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.[213] Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.[214] The Commission is seeking comment on proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block.

B. Legal basis

This action is taken 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), 155(c)(1), 303(r), and 309(j).

C. Description and estimate of the number of small entities to which the proposed rules will apply

[212] 5 U.S.C. § 603.

[213] 47 U.S.C. § 309(j)(3)(B).

[214] 47 U.S.C. §§ 309(j)(3)(A), (C).

The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.[215] The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.[216] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[217] In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[218] Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[219]

The rule changes proposed in the Notice will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding C block and F block broadband PCS licenses who choose to participate and other small businesses who may acquire licenses through reauction. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years.[220] This definition has been approved by the SBA.[221] On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on Jan. 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this IRFA, we assume that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this order, are small entities. In addition to the 178 current small business licensees who may participate

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[215] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[216] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[217] 5 U.S.C. § 601(6).

[218] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

[219] 15 U.S.C. § 632.

[220] *See* 47 C.F.R. § 24.720(b)(1).

[221] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* 10 FCC Rcd 175, 196 (1995); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5581-5584 (1994); 47 C.F.R. §§ 24.320(b) and 24.720(b).

at the reauction of C block licenses, a number of additional small business entities may seek to acquire licenses through reauction, and thus be affected by these rules.

In addition, the Commission proposes to provide small business bidders in the C block reauction with bidding credits, and to that end proposes a two tiered bidding credit which will provide a greater discount to "very small businesses."[222] The Commission proposes to define the second tier of very small business 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 will enable the Commission to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum returned by C block licensees. Thus, the Commission proposes a 35 percent bidding credit for very small businesses and a 25 percent bidding credit for small businesses.

To assist the Commission analyzing the total number of affected small entities, commenters are requested to provide information regarding how many total broadband PCS small business entities would be affected by the rules proposed in this Notice. In particular, the Commission seeks estimates of how many broadband PCS entities, existing and potential, will be considered small businesses or very small businesses.

D. Description of reporting, recordkeeping, and other compliance requirements

There are no additional reporting, recordkeeping, or other compliance requirements as a result of the Notice.

E. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered

The Commission proposes to apply the same rules that were used in the C block auction to the reauction of C block licenses, with some modifications designed to encourage participation by small businesses while at the same time helping to ensure the best use of the spectrum through the competitive bidding process.

The Commission proposes to conduct the C block reauction in three stages. Having 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. The Commission proposes to use high activity requirements in the reauction. In addition, the Commission proposes to use similar activity levels in the C block reauction and, to further expedite the auction, require the Wireless Telecommunications Bureau to use its

[222] 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 percent of its winning bid. For the reauction, the Commission proposes tiered bidding credits, as were offered for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders.

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.

The Commission proposes to establish a minimum opening bid for the reauction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. A minimum opening bid in the C block reauction will help ensure that the public is fairly compensated for licenses returned to the Commission, expedite the auction and give the Commission the flexibility to make adjustments based on the competitiveness of the auction. The Commission proposes minimum opening bids for each market equal to ten percent 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.

The Commission proposes to require electronic filing of all short-form applications for the reauction. Electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reauction. The Commission believes that an electronic filing requirement will help ensure that the reauction will be completed within the time frame contemplated by this Notice.

The Commission proposes to set the amount of the upfront payment for the reauction at $.06 per megahertz per population ("MHz per pop").

The Commission proposes that parties have fifteen (15) days to file a petition to deny following public notice that an application was accepted for filing. If, pursuant to Section 309(d) of the Communications Act, the petitions to deny are dismissed or denied, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have ten (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, a default payment would be assessed.

Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.[223] Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.[224] The Commission believes these provisions in the Notice help meet those goals and promote efficient

[223] 47 U.S.C. § 309(j)(3)(B).

[224] 47 U.S.C. §§ 309(j)(3)(A), (C).

competition while maintaining fairness and efficiencies of process in the Commission's rules.

F. Federal rules which overlap, duplicate, or conflict with these rules

None.

Affirming and Dissenting Separate Statement
of
Chairman Reed E. Hundt

Re: C Block Financing Issues

The C block is the long-desired fifth wireless license: the third so-called PCS license to be added to the two outstanding cellular licenses. A half-dozen holders of the C block licenses for about two-thirds of the country by population are in financial distress and apparently unable to pay monies promised to the government by these licensees in a fair auction of the C block licenses. The question presented today is what should the FCC do as a creditor and a policymaker in this situation. For ten months I have been stating that the key policy goal in wireless is competition, not debt collection. However, it is also true that this Commission, as a creditor, ought to behave in a commercially reasonable manner. In America debtors who cannot pay are not thrown into prison, nor ought they be consigned to a Serbonian bog of Commission deliberation in which armies of lawyers and lobbyists and Commission staff are sunk. Yet for almost a year my colleagues on this Commission have been unwilling to make a commercially reasonable restructuring proposal of any kind to any of the financially troubled C block licensees. Nor have they been willing to promote competition by expediting some solution to the need to restructure and finance the C block.

Having this fifth license used in the marketplace is a longstanding goal of policy in this country; allowing it to be unfinanceable due to moralistic arguments against commercially reasonable structuring of debtridden licensees faced with unsolvable financial problems is inconsistent with all the wireless competition policies of this Commission and the repeated public statements by all commissioners for many years. Today the Commission, after ten months of inaction in response to my repeated urgings, finally decides to take some significant steps consistent with the reasonable commercial practices of any debt holder and consistent with our oft-stated commitment to competition.

The Commission has a history dating back to 1993 of seeking to promote small business entrepreneurial activity in wireless with these C block licenses. This history included the current Commissioners' decision in 1994 to reallocate the PCS spectrum so as to make sure the C block licenses were of equal viability to the two other 30 MHz PCS licenses auctioned in 1994. Subsequently, the Commission designated the C block as an entrepreneur's block expressly to promote participation by small businesses and businesses owned by minorities and women. After the Supreme Court's Adarand decision, that plan had to be revised to eliminate provisions for minorities and women but the Commission retained its primary objective of providing entrepreneurial opportunities for small businesses. All current Commissioners supported this objective.

After the FCC successfully persuaded the Supreme Court to lift an appellate court stay, the C block auction began in 1995. To the dismay of many, some of the winners bid at levels far beyond apparently prudent ranges. Most did not; dozens of financially prudent bidders won at reasonable prices. But a handful of bidders submitted bids that cannot be explained other than by assuming they made their decisions according to erroneous market predictions, bad financial advice or a triumph of hope over thought. Regrettably, these bidders -- irrationally exuberant in hindsight and, according to many, even at the time of bidding -- won nearly three quarters of the United States market measured by population.

Some of these bidders have subsequently criticized the FCC's auction process and other FCC actions. None of this criticism has the slightest basis in fact. All amount to unworthy attempts to shift blame from the bidders to the auction conductor. Nothing about this history discredits auctions as a means of distributing licenses. Moreover, the installment payment and bidding credit plan that facilitated entrepreneurial entry into the C block in fact worked very well with respect to the majority of the licensees. More small business participation in wireless resulted from prudent bids in the C block than in virtually all other FCC license distributions in this decade.

However, the current situation, and indeed the situation for almost a year, has been that a handful of large C block licensees have been unable to attract sufficient financing to create viable businesses. These are at least Nextwave, Pocket, GWI, ChaseTel and ClearComm.

Unfortunately, all other C block bidders have their business futures occluded by the financial troubles of these large, financially troubled bidders. That is because Wall Street financiers are interested in seeing the build out of the entire block with the attendant possibilities for roaming that would be realized by complete buildout. In other words, the financial difficulties of the largest troubled bidders are in fact visited on otherwise financeable C block bidders.

Furthermore, the country's wise policy of encouraging wireless competition is hampered by the financial troubles of the C block. The sooner this block of licenses can be financed, the quicker we will see long overdue robust price and quality competition in wireless.

In addition, our decision not to adopt a single standard, and to permit competition among CDMA, TDMA and GSM, is also undercut by a failure to put the C block on reasonable financial footing. It is simply necessary to have at least three PCS firms operating in major markets to permit each of these technologies a fair chance to gain adherents.

I was aware last December that the market was unlikely to finance many of the largest bidders. That is why, in my year end statement entitled,"The Hard Road Ahead, "I stated that "commercial lenders often reassess the terms of loans to address changes in the marketplace" and that C block licenses "perhaps ... should be able to request renegotiation of their financing where it is necessary and appropriate to do so."

I made this suggestion because it is necessary for creditors, such as the United States in this situation, to act in a commercially reasonable manner. And it is necessary for the Commission to focus persistently on major policy goals and not to make the blunder of thinking that Congress has tasked us to attempt to maximize revenue from the C block auction. Here the goals are, as a matter of statute, not to maximize revenue from the C block, nor to punish debtors for their unwise bids, but rather we are commanded by Congress to promote competition, deployment of service and small business entry.

For the greater part of the last ten months my colleagues and I have disagreed over these objectives. They have focussed instead on questioning whether the largest licensees were really financially troubled, or they have evinced disinterest in the significance to consumers of these licensees' business prospects, or they have dwelled on the disappointment of other C block bidders who dropped out of the bidding in markets where price levels reached the heights now universally seen as imprudent and unsustainable. Finally, they have expressed indifference to the risk of bankruptcy filings by the subject licensees, rather than negotiating restructuring of their debt according to market-based principles.

With perfect hindsight, had Congress written the law to state with inexorable clarity that the auctioning of wireless licenses does not suddenly make them property subject to bankruptcy jurisdiction, this latter point would be moot. Indeed, if tying up licenses in bankruptcy litigation were foreclosed as an option for a troubled C block licensee, then the Commission could simply retrieve licenses from defaulters, and reauction them to other small businesses. This is why I asked Congress this summer to amend the law to make clear that such action could be taken. No other commissioners joined me at that time. Powerful lobbying forces defeated my efforts. I am glad that, at least in recent days, all commissioners have joined this effort. However, responsible leaders in Congress have assured us that no such legislation is likely this year.

Pocket Communications, one of the largest C block licensees, is already in Chapter 11. An objective of the Commission therefore ought to be to compromise the Pocket litigation, as we have been advised by Sidley & Austin, Gordian Group,and many other experts. I had hoped that today's decision would offer a market-based compromise Pocket would accept. I have doubts that the decision today will accomplish that result.

Another objective ought to be to reach market-based compromises with the other troubled C block licensees that would at least roughly approximate results that could be obtained in bankruptcy settlements -- because that strategy would save the time and money expended trying to retrieve unused licenses in bankruptcy.

I might be the only FCC commissioner in history who has actually litigated as an attorney for creditors in bankruptcy court. Normally this would be of small relevance to my job. However, from personal experience, as well as from the advice of our experts, I am quite confident that bankruptcy litigation can cause substantial delay even when the creditor's legal position is impregnable. That is the case here. Some debtor's attorneys have suggested that such issues as perfection of UCC-1's are a legal problem for the Commission. This is a frivolous assertion, that underscores the desperate ingenuity of a

bankrupt firm's counsel but plays no role in our thinking or actions. Highly skilled outside counsel, Department of Justice lawyers, our own General Counsel's office, and my own personal experience all convince me beyond any doubt that we will prevail in bankruptcy court. But the process of bankruptcy litigation takes time and money. Meanwhile, the assets in question are, based on all advice, declining in value while lawyers talk and commissioners deliberate and lobbyists advocate. The reason is the lead time granted to the other licensees. If we truly want small business entrepreneurs to make use of the C block spectrum, we simply have to permit them to restructure their government debt or obtain the debtor's voluntary agreement to return the licenses quickly for prompt reauction. This is why it is so important for the Commission to make proposals that might obtain such agreement at least from some of the C block licensees. This action is overdue, and although the Commission may not have made a perfect decision today, some decision was better than none.

The test of any work-out plan for the financially-troubled C block licensees appears to be this: Does the plan avoid protracted bankruptcy, with the attendant costs of debtor and creditor litigation, while also generally treating fairly the competing interests of the taxpayers, consumers, non-government creditors, equity holders and other interested parties?

Today we adopt at least one plan that is highly likely to obtain a voluntary and fair restructuring settlement agreement from several of the troubled bidders. I refer to the disaggregation plan, which allows licensees to return 15 Mhz of spectrum in return for a proportionate reduction in the amount of their outstanding debt. This will help small or rural area licensees who may not need the full 30 Mhz of spectrum to serve their markets. If long delayed, at least we are at last adopting this change in our rules.

The so called "amnesty" option we adopt today is also a good idea and I would have been happy to extend it to any licensee at any time. The problem of course is that it does not provide any incentives to the licensees' non-government creditors to consent to a return of licenses and therefore is not a workable solution. Congressman Dingell has told us that in his view "Giving licensees a choice between walking away from investments already made and facilities already constructed, or taking a chance in bankruptcy court, is tantamount to giving them no choice whatsoever." Nonetheless, I don't object to our decision to offer this as an option.

Another plan we considered including in our Order today had real promise for practical use -- the so-called "full price buy out plan." This plan, proposed originally by the bipartisan leadership coalition of Congressmen Markey and Tauzin, would have permitted a licensee to retain as many of its licenses as it could pay for in cash today (at net present value) using the full amount of funds on deposit plus any additional sums it could immediately raise. Licenses that could not be paid for in this manner would be returned and reauctioned in exchange for discharge of the debt obligations associated with these licenses.

Unfortunately, the prepayment plan included in today's Order fails by a number of key measures to be consistent with the Markey/Tauzin suggestion and with good policy.

I register my strong dissent as to this part of the Order.

First, it is questionable why a majority of Commissioners departs from the bipartisan consensus in Congress on this issue. Just two weeks ago, Senator Domenici wrote the Commission urging that we adopt a "comprehensive solution ... [that would] put into productive use the spectrum." He also advised against pursuing "options that forestall the commercial application of Block C spectrum because of time-consuming and costly litigation resulting ... from extended bankruptcy proceedings." This sentiment is also reflected in letters from Senator McCain received over the past six weeks. Likewise, Senators Inhofe, Nickles and Burns expressed their view in early August that "debt restructuring of the PCS licensees may be necessary to address the concerns that have been raised by the interested parties." Congressmen Markey, Tauzin and Dingell have each supported the full price buy out plan described above.

This correspondence makes plain Congress' direction that we adopt a workable, comprehensive plan for the C block. That is consistent with the statute. The Congressional mandate has not been adequately met by the Order we adopt today.

The Order requires licensees to forfeit 30% of their deposits if they elect the "buy-out" option, even though this money has already been paid and would be used to purchase licenses at the price bid in the original C Block auction. That penalty is more than 50 times higher than any previous penalty in FCC history. The bipartisan view from Congress is that no such forfeiture should be imposed -- a difference which potentially represents hundreds of millions of dollars lost by incumbent licensees for reasons that bear no relation to the policy goals included in Section 309(j) of the Communications Act which granted the Commission's original auction authority. Today's Order also ignores the bipartisan conclusion of Congress that prepayment prices should be set based on "the net present value of the ... prices for such licenses". Instead, the prepayment alternative ignores the time value of money and extracts an additional penalty from licensees on the order of several hundred million more dollars.

Second, the prepayment option we adopt today stands fundamentally at odds with basic principles of commercial reasonableness. By requiring licensees that elect the option to prepay their licenses at the "nominal" bid price, the plan ignores the time value of money and <u>inflates</u> the effective price paid by the licensees that it purportedly seeks to assist. Put simply, the value of a bid paid out over ten years is significantly less --around 40% less -- than that same bid paid in cash. The consequence of this oversight is a massive penalty for any licensee that might otherwise elect this alternative. The prepayment option layers on an additional penalty by requiring licensees to forfeit 30% of their deposit. Note that this forfeiture of deposited monies is ordered even though the licensees would use their deposits to prepay licenses at effective prices <u>higher</u> than the amount that they bid. At base, the plan ignores fundamental principles of finance and, as a result, cannot reasonably be expected to appeal to licensees or their creditors.

Third, the prepayment plan adopted today has too much risk of not being helpful to the financing of the licenses held by the very large bidders that constitute the vast majority of the C block licensed POPs in the United States. The acid test of any work out

plan is whether the deal is accepted by the debtor; if not, the plan is not a work-out but rather only works us deeper into the toils of a drawn out bankruptcy litigation. In this case, the prepayment plan extracts the two extraordinary penalties described above and offers little in the way of incentives for licensees to accept it. According to the Congressional Budget Office Report, bankruptcies could cost consumers in excess of $5.5 in lost benefits. Taxpayers lose because the re-auction of licenses is conducted in a piecemeal fashion at the end of lengthy bankruptcy litigations, ensuring smaller proceeds as the value of the licenses deteriorates from delay. Such are the costs of the Commission majority's sanctimonious rigidity.

The majority's unwillingness to adopt a comprehensive plan for addressing the financial situation of the C block is inexcusable and inexplicable. The legacy of that decision is a substantial risk of bankruptcies that Congress and any commercially reasonable enterprise would have us eliminate. By focussing on punishment and ignoring the need to make the work-out "workable", the majority sacrifices consumer and taxpayer interests. This approach is fundamentally misdirected and contrary to our statutory directives. In short, today's decision will delay more competition for most Americans. Competition delayed is competition denied.

Finally, it is not clear to me that the parameters of our Order today and the accompanying Notice treat fairly those C block companies -- such as Omnipoint, Cook Inlet and Airadigm -- that have accepted our challenge to bring service to market and who, as result, have invested heavily in build out. These licensees have operating businesses that are tied to specific C block licenses. Consequently, they do not have the same flexibility as other licensees to disaggregate or participate in a "full price buy out", which would require a dramatic reduction in the size of their existing service footprints. This concern with fairness is more than a metaphysics. These licensees must compete for capital in the public markets with other C block licensees, including winners of the subsequent re-auction. To the extent that such a re-auction of spectrum returned under any of the options in our Order today "resets" the market price for spectrum, it could impair access to capital for those licenses that are significantly built out but which carry artificially higher prices per pop.

The concerns I have identified do not subtract from the following facts:

1. After many months of discussion the Commission has finally recognized the need to restructure certain debt in the C block.

2. Today's decision will permit us to obtain some licenses for reauction and will permit some licensees to get financing, based on all available information.

3. And we have, at the very least, not simply extended the payment dates on the existing notes by the many years sought by some licensees. This proposal was unfair to the taxpayer and an unnecessary windfall to most C block licensees.

Therefore, I affirm in part and dissent with respect to the so-called "full price buy-out" plan.

Separate Statement
of
Commissioner Susan Ness

Re: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82

A little over a year ago, we conducted an auction for the "C-block" PCS licenses. Like our other auctions, this auction was carefully conceived to operate on market-based principles, allowing licenses to be obtained by those who valued them most at prices to be set by free market mechanisms. It was also crafted to fulfill a Congressional mandate to bring "designated entities" -- especially small businesses, often owned by women and minorities -- into the marketplace. And it did.

I supported our commitment to market-driven auctions and to designated entities. I reaffirm that commitment today.

Our auction was conducted properly, our rules were clear, and numerous licensees stand ready to meet their payment obligations fully and on time. And while it is truly unfortunate that a handful of bidders overbid and/or overleveraged, it is clearly *not* our responsibility to prevent them from failing in the marketplace, or from going into bankruptcy. It *is* our responsibility to manage the spectrum, including the auction process, with *fairness* and *integrity*.

Although I sincerely regret that some licensees now find themselves unable to meet their commitments, I remain unpersuaded that the FCC should alter the outcome of the auction by providing bidders vastly more favorable terms than those to which they previously agreed. To grant overly generous accommodations to certain C-block licensees, after the auction, would be to forsake the marketplace and return to the government picking winners and losers. I do not think that this should be our spectrum policy for the future.

Such a result also would be unfair to those C-block licensees that counted on us to enforce our rules; unfair to disappointed C-block bidders who dropped out of the auction when the licenses they desired became too expensive; unfair to licensees in other spectrum blocks who are offering competing services; and unfair to the U.S. taxpayer.

I do support, however, modest options that would facilitate the return of spectrum and reauction in a timely and fair manner. The menu of options we offer to all C-block licensees today provides an appropriate balance.

Clear Rules; A Fair Auction

Everyone participating in the C-block auction was subject to the same rules. The auction was run fairly. Even now there are no serious complaints about our conduct of the auction or the clarity of our rules.

Our rules were designed, as Congress intended, to create opportunities for small businesses. Eligibility to bid was limited, and favorable payment terms were available. While we offered licensees the opportunity to pay for the licenses in installments, we were not a lender in the traditional sense: the payment terms were available to all small businesses without regard to their credit-worthiness or soundness of their business plans. First and foremost, we acted as a licensing agency and, as our rules clearly specified, the licenses were granted conditionally.

Each license was conditioned upon timely payments according to a predetermined payment schedule, with the caveat that the license would automatically cancel if the payments were not made. The conditional interest granted is clearly noted on the face of the license itself, and in the relevant Commission rules and orders. (Indeed, the conditional nature of the license and the attendant penalties and loss of downpayment are duly acknowledged in at least one large bidder's public filings with the Securities and Exchange Commission.)

The Problem

The C-block auction resulted in licenses being won by a handful of large players -- each with license bids in excess of a billion dollars -- and a multitude of smaller players. Several of the largest winners paid well in excess of prices comparable to those paid by the A and B block licensees. Compounding the problem, some of these same large players have highly leveraged capital structures with debt/equity ratios as high as 10 - 1, tying their future to conducting a successful public offering. In contrast to the larger players, the majority of the C-block winners have smaller holdings, paid considerably less per pop for their licenses and/or had more prudent capitalization. For the most part, the smaller licensees do not appear to be in financial trouble.

Last spring, a handful of the largest winners requested relief from their obligations -- essentially to keep their licenses on more favorable terms than those they voluntarily agreed to just sixteen months ago. They were outnumbered by many smaller licensees who have not sought relief and who are ready to build out their markets.

Nonetheless, as the campaign for significant modifications won some support at the Commission, other licensees echoed the call, reflecting a natural desire to pay less should the Commission be willing to rewrite the terms of the agreement. That chorus transcended the C-block and has now spilled over into other radio services. Interest payments were temporarily suspended as of March 31, 1997, pending Commission consideration of what , if any, measures should be taken to assist financially troubled licensees.

Other interested parties include many small companies -- some of which failed to win any licenses and dissolved -- who feel the prices were unreasonably driven up by certain bidders during the auction. Many of the investors in these companies and in those C-block licensees currently meeting their obligations believe fairness dictates that defaulting parties forego their licenses, that the licenses be reauctioned, and that everyone have a fair chance to acquire the licenses in a subsequent auction.

Marketplace Disruption

We must, however, consider certain countervailing factors. The financial markets became unsettled subsequent to our suspension of C-block installment payments. Licensees with sound business plans have been enveloped by the cloud of marketplace uncertainty, and the flow of capital needed for continued build-out has been impeded. C-block licensees, to varying degrees, have plans on hold, as the financial community awaits the outcome of this proceeding.

The Commission must take action now to get the C-block of licensees back to business. While there has been a wide range of proposals offered and considered, the one thing that almost all parties have agreed upon is that final resolution is needed immediately to enable rapid build-out and foster competition.

A Menu of Options

We adopt a menu of options that is likely to help many of the troubled licensees, without jeopardizing the principles of fairness and integrity that are essential to market-driven auctions. In developing these options, the majority of Commissioners have discarded proposals that would have fundamentally changed auction outcomes or created incentives for licensees to alter otherwise achievable business plans. In addition, we have avoided giving anyone a "thumb on the scales" in a subsequent auction.

Specifically, we are continuing the deferral of installment payments until March 31, 1998, making the total suspension period a full year. This resumption date ensures that all C-block licensees and prospective financial backers will have sufficient time to complete their deals. Some will also benefit from the access to foreign equity that is permitted, beginning January 1, 1998, under the recent WTO Agreement. (This is all the relief that was initially sought by one bidder that is now urging us to adopt a very substantial restructuring.)

All C-block licensees who do not choose one of the three following options will be expected to resume payments under their existing agreements. I hope and anticipate that the vast majority of successful bidders will proceed in this fashion.