

Before the  
Federal Communications Commission  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's	)	WT Docket No. 97-82
Rules Regarding Installment Payment	)	
Financing For Personal Communications	)	
Services (PCS) Licenses	)	
	)	

**REPLY COMMENTS OF OMNIPOINT CORPORATION**

Omnipoint Corporation ("Omnipoint"), by its attorneys, hereby replies to comments filed in the above-captioned proceeding. Some commenters ask for the Commission to disqualify or penalize bidders that participated in the initial Block C auction and that have subsequently experienced revenue growth.<sup>1</sup> Omnipoint strongly opposes those comments.

As an initial matter, arguments that some Block C bidders are not eligible to participate in the Block C re-auction are not appropriately addressed to issues raised in the FNPRM because the Commission has already decided in the Second Report and Order to "allow all entities that were eligible for and participated in the original C block auction to bid in the reauction."<sup>2</sup>

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<sup>1</sup> See, e.g., Comments of NextWave Telecom Inc. at 2, 11.

<sup>2</sup> Second Report and Order, at ¶ 22; *id.* at ¶ 7 and Appendix B (modification to Section 24.709(9)(i) of the Commission's rules provides that "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.").

More importantly, none of the commenters address the fundamental point that allowing all participants in the Block C auction into the re-auction is the only fair course of action at this time. The relief offered in the Second Report and Order is premised on the notion that all auction participants in the initial Block C auction should be treated fairly by giving them the same opportunities that would have been available to them in the initial auction, but for the irresponsible bidding behavior of certain participants. The Commission does not offer perfect fairness, because those unsuccessful bidders will never be afforded the same opportunities as compared to what winning Block C licensees are now provided in the Second Report and Order. However, substantial fairness mandates that bidders who were not successful in the initial auction be given an opportunity to bid on an equal footing with other participants. Placing certain bidders at a relative disadvantage through a 35% discount for some, and a 25% discount for others, materially undermines the objective of a fair re-auction that the Commission set forth in the Second Report and Order.<sup>3</sup>

Moreover, the fact that a "very small business" has had some market revenue success (counterbalanced, of course, against tremendous auction debt) is fully consistent with the Commission's small business policies. The Block C eligibility rules already permit post-licensing increases in gross revenues and total assets. See 47 C.F.R. § 24.709(a)(3) (increased gross revenues or total assets of licensee or attributable entity are not counted toward licensee's continuing eligibility); Fifth Memorandum Opinion and

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<sup>3</sup> Omnipoint fully supports the use of bid discounts, so long as all parties are fairly treated in the process.

Order, PP Dkt. No. 93-253, 10 FCC Rcd. 403, 420 (1995) ("We emphasize that we have a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace.").<sup>4</sup>

Finally, NextWave, which dramatically impacted the initial Block C auction and then strenuously argued for a post-auction restructuring, should not now be heard to argue that some bidders hurt by its zealous behavior in the initial auction should now be disadvantaged relative to NextWave in the re-auction.

Respectfully submitted,

OMNIPOINT CORPORATION

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<sup>4</sup> We also note that the Commission's transfer and assignment rule embodies the pro-small business concept of encouraging revenue growth. 47 C.F.R. § 24.839(d)(2) (transfer or assignment of Block C or F license is permitted if transferee/assignee "holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709").