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November 24, 1997

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

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Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Re: Carolina PCS I Limited Partnership
Petition for Reconsideration, WT Docket No. 97-82

Dear Ms. Salas:

On behalf of Carolina PCS I Limited Partnership ("CPCSI") and pursuant to Section 1.429 of the Commission's Rules, transmitted herewith are an original and eleven (11) copies of a Petition for Reconsideration in the following proceeding: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, released October 16, 1997.

If you have any questions with respect to this matter, please do not hesitate to call.

Very truly yours,



Jeanne W. Stockman



ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of the Commission's)
Rules Regarding Installment Payment)
Financing for Personal Communications)
Services (PCS) Licenses)
_____)

WT Docket No. 97-82

To: The Commission

PETITION FOR RECONSIDERATION

Carolina PCS I Limited Partnership ("CPCSI"), by its attorneys, and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429 (1997), hereby submits its Petition for Reconsideration ("Petition") of the Federal Communications Commission's ("FCC's" or "Commission's") Second Report and Order ("Second R&O") issued in the above-captioned proceeding.¹ CPCSI respectfully requests that the Commission reconsider its decision to reauction spectrum recovered from the relief options offered in the Second R&O at this time. Specifically, CPCSI urges the Commission to delay the reauction until (1) it has ruled on CPCSI's Application for Review pending before the Commission; and (2) the bankruptcy proceedings for Pocket Communications, Inc. ("Pocket"), and General Wireless, Inc. ("GWI"), have been concluded. In support of this Petition, the following is respectfully shown:

¹ In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 97-82, released October 16, 1997 (Second R&O).

STANDING

CPCSI was the high bidder for nine (9) BTAs in the Commission's C block broadband PCS auction, and submitted its first down payment for these licenses in a timely manner. On September 24, 1996, CPCSI filed its request for waiver of Section 24.711(a)(2) of the Commission's rules, and supplemented that request on October 4, 1996. The Wireless Telecommunications Bureau ("Bureau") subsequently denied CPCSI's waiver request on April 28, 1997. Order, DA 97-890. On May 28, 1997, CPCSI filed an Application for Review of the Bureau's Order denying CPCSI's waiver request. CPCSI's Application for Review remains pending before the Commission. The Commission's Second R&O directly impacts CPCSI because, under the rules as presently written, CPCSI, in sharp contrast to any other C block licensee seeking relief under the Second R&O, would remain liable for any shortfall on the reacquisition of its PCS licenses. Accordingly, CPCSI is keenly interested in the outcome of this proceeding.

BACKGROUND

Earlier this year, the FCC received several requests from C block licensees for relief associated with the installment payment program. Second R&O ¶ 11. These licensees indicated that they were experiencing "difficulties in accessing the capital markets, which . . . were exacerbated by the relatively high prices per MHz per population ('per pop') paid for some of the C block licenses." Id. In an effort to provide assistance to these licensees, the FCC issued the subject Second R&O in which the Commission adopted restructuring options intended to "provide limited relief for C block licensees having difficulty meeting their financial obligations to the Commission while maintaining the fairness and integrity" of the auction process.² Id. ¶ 6.

² In general, the relief options are as follows: Disaggregation – licensee may elect to disaggregate one-half of its spectrum; Amnesty – licensee may surrender all of its licenses in

Significantly, CPCSI has not sought restructuring or reduction of its C Block auction obligations. Instead, CPCSI, which was affected by the same market uncertainty that ultimately encompassed the greater C block as a whole and led to the adoption of the Second R&O, seeks only the opportunity to meet its full C Block commitment.

In the Second R&O, the FCC determined that spectrum recovered by the FCC from the relief options will be promptly reaucted, and that the reauction will be open to all entrepreneurs, all applicants to the original C block auction,³ and, with certain exceptions, all current C block licensees. Id. ¶ 7. CPCSI now files the instant Petition for Reconsideration of the FCC's Second R&O issued in this proceeding to urge that the Commission fully consider the consequences of proceeding with the large-scale reauction envisioned by the Second R&O at this crucial juncture in time.

I. THE COMMISSION MUST NOT ALLOW ITS PLANS FOR REAUCION TO PROVIDE THE MISSING PROOF OF MARKET DEVALUATION.

While there has been widespread speculation and negative press that the events subsequent to the close of the C Block auction have devalued the C Block spectrum as a whole, the record to date is absent of concrete proof on the subject either way. Indeed, Commissioner Ness in her concurring opinion to the Second R&O acknowledged the lack of support in the

return for having all of its outstanding C block debt forgiven; Prepayment – licensee may use an amount equal to 70% of its total down payments for the licenses that it wishes to surrender as a credit toward the prepayment of any of its licenses; and Resumption – licensees may continue payment of their obligations under the Commission's old rules. Second R&O ¶ 6.

³ The Commission seeks comment in the Further Notice of Proposed Rulemaking (“FNPRM”) issued in this proceeding on restricting participation in the reauction by any entity that has defaulted on any FCC auction payment. FNPRM ¶ 84.

record for the position that the C Block spectrum had been devalued.⁴ In its ongoing discussions with the investment community, CPCSI has been able to differentiate between the prices bid by CPCSI and other responsible C Block bidders in the C Block auction and the prices paid in the D, E & F Block and WCS auctions. The differentiation in the size of the spectral allocation and the favorable C Block financing structure have provided two absolute distinctions upon which the CPCSI investors have been able to understand that there is greater value in the C Block spectrum than either the D,E, or F PCS allocations or the WCS spectrum. A full-cash reauction of C Block spectrum, especially with some of that spectrum potentially being reaucted on a 15 MHz basis, would remove those grounds for distinction. If, as many believe, a reauction at this time would result in substantially lower bids, then, ironically, the reauction itself could provide the evidence of devaluation missing to date. In this instance, the only “evidence” missing from the record would be a concrete example demonstrating that the C Block spectrum as a whole had not been devalued by the events subsequent to the close of that original auction. This devaluation, at the time when the CPCSI Application for Review is pending and when the Pocket and GWI bankruptcies are pending could have dire adverse consequences on CPCSI and other C Block licensees seeking only to honor their original C Block commitments.

A. The Commission Must Act on the CPCSI’s Application for Review Prior to the Commencement of the Reauction

On May 28, 1997, CPCSI filed an Application for Review (“Application”) of the Bureau’s Order denying CPCSI’s petition for waiver of Section 24.711(a)(2) of the

⁴ See Second R&O, Separate Statement of Commissioner Susan Ness, at 6 (“I do not share the view that the C block spectrum is a declining value asset, or that if the licenses were tied up in protracted litigation, they would ultimately yield a small fraction of today’s worth.” Id.).

Commission's rules.⁵ The FCC has not yet ruled on CPCSIs Application, and may very well decide to reinstate CPCSIs licenses, which are the subject of the pending Application. If the Commission does not rule on CPCSIs Application prior to the reauction, a "cloud" on the title of any licenses covered under the Application would exist should these licenses be offered in the reauction. Specifically, any reauction bidder for the CPCSIs licenses would know that its taking of those licenses would, by necessity, be subject to the outcome of the CPCSIs appeal. The effect of this "cloud" would be to further depress the value of these licenses on reauction, as compared to licenses on which no "cloud" exists.

Moreover, commencement of the reauction prior to the resolution of CPCSIs Application will unfairly prejudice CPCSIs. The uncertainty created by the Commission's failure to rule on CPCSIs Application regarding the licenses it won in the original C block auction will have a chilling effect on the amounts bid for these licenses in the reauction. Pursuant to Section 24.704 of the Commission's rules, CPCSIs will be liable for any shortfall between the amounts bid in the original auction and the reauction. 47 C.F.R. § 24.704 (1997). While CPCSIs, seeking only to meet its full C Block auction obligation would be liable for any shortfall the reauction would raise, entities seeking relief under the Second R&O, those entities who seek to walk away from the remainder of their C Block obligation would not be so liable. The cloud over the CPCSIs licenses, coupled with the proposal to conduct the reauction on a cash-only basis, and the pendency of the GWI suit alleging fraudulent conveyance on the part of the FCC because of its alleged acts of devaluing the C Block spectrum, can only be expected to result in a

⁵ Section 24.711(a)(2) states that "[e]ach winning bidder shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted." 47 C.F.R. § 24.711(a)(2) (1997).

significantly depressed reauction prices. Under these circumstances, it would be grossly inequitable for the Commission to require CPCSI to be potentially liable for the difference in bid amounts resulting by the Commission's conducting the massive C Block reauction envisioned by the Second R&O at this time and under substantially different terms and conditions. In light of the above, if the Commission were to proceed with the reauction as scheduled, it must either (i) act on the CPCSI Application prior to that reauction, (ii) exclude the CPCSI licenses from those being reaucted, or (iii) hold that no party will be liable for any penalty resulting from a reauction conducted under fundamentally changed rules.⁶

Indeed, delay of the C Block reauction until final action on the CPCSI appeal could provide the necessary proof that the C Block spectrum as a whole has not been devalued by the intervening events since the close of the original auction. Indeed, the reinstatement of the CPCSI licenses and the revalidation of its bid amounts, could provide the very concrete example otherwise missing from the record. However absent that concrete example, it is imperative that the Commission delay the envisioned massive C Block auction until after the conclusion of both the Pocket and GWI bankruptcy proceedings.

B. Commencing the Reauction Prior to Reinstatement of the CPCSI Licenses Will Affect the Pocket and GWI Bankruptcy Proceedings, Which Will, in Turn, Adversely Impact All C Block Licensees.

As the Commission is aware, many licensees have claimed that the Commission's actions with regard to the C block have led to an overall devaluation of the licenses. While there may not be any "hard" evidence of devaluation, the Commission's decision to grant limited relief in

⁶ In a related matter, the FCC must delay the Election Date for choosing one of the restructuring option until after the Commission has ruled on CPCSI's Application. Failure to do so will have an additional chilling effect on the reauction, which will further prejudice CPCSI.

the Second R&O could well provide the factual support for the as-of-yet unsubstantiated claim of “devaluation.” Many factors have intervened since the commencement of the original C block auction to contribute to this current perception. In the first place, the A and B block broadband PCS licensees have had a significant head start over the C block in the grant of their licenses and the implementation of their wireless systems. As the Commission is aware, the importance of time is critical in a competitive market such as wireless telephony. The earlier a wireless provider can get into the market, the greater advantage it will have over its competitors because rapid deployment is essential for market penetration and access to capital. As a result of the A and B block licensees being first in the market place, later entering competitors, such as the C block licensees, have had a more difficult time in procuring financing for their operations, which contributes to further uncertainty in the marketplace regarding the viability of the C block licensees. In addition, the C block has endured several negative events, such as the bankruptcy of Pocket and GWI, the second and third largest bidders in the C block auction; the glut of spectrum in the market as a result of subsequent auctions by the Commission (e.g., D, E, and F block broadband PCS, as well as the WCS auction); and the strikingly low bids in the WCS auction (\$13.6 million actual total bid versus the \$2.9 billion projected total bid). These events, coupled with the inescapable conclusion that some C Block licensees simply did overbid for their licenses, have combined to create a climate that is inhospitable to the financing of the C block at the levels bid by certain licensees.

Furthermore, the Commission’s restructuring options will adversely affect the level of bidding in the reauction of C block spectrum. One of the distinguishing aspects of the C block, when compared to the D, E, and F block, was the large amount of spectrum available to entrepreneurs. The C block auction resulted in an average bid price of \$1.33 per-person per-MHz, which is more than twice the amount bid per-person per-MHz in the A and B block

broadband PCS auction, and more than four times the amount bid per-person per-MHz in the D, E, and F block broadband PCS auction.⁷ Although installment payments were available to designated entities in the F block, the Commission only set aside one-third the amount of spectrum for the F block as compared to the C block, and consequently, the bids in this auction were substantially lower than those placed in the C block auction. CPCS's bid, as with many other C Block winning bids, when viewed under a net present value analysis, is comparable to the average A and B block auction bids. The Commission's restructuring options now allow for the disaggregation of 15 MHz of spectrum by C block licensees. The licenses derived from this disaggregated spectrum that are reauctioned are now very similar to the D, E, and F blocks, and accordingly, the bids for these licenses will be correspondingly lower.

As the Commission is aware, Pocket and GWI have filed for Chapter 11 bankruptcy protection. In light of the bankruptcy court's decision to allow for review of the valuation of Pocket's licenses,⁸ as well as GWI's allegation of fraudulent conveyance,⁹ proceeding with the C block reauction before resolution of these cases (absent some counterbalancing event such as the reinstatement of the CPCS licenses and the revalidation of those original C Block bids by the investment community) could have profound impact on the entire C block, as well as the aforementioned bankruptcy proceedings. The Commission's restructuring options as discussed

⁷ FCC Report to Congress on Spectrum Auctions, Report, WT Docket No. 97-150, p.10, released October 9, 1997.

⁸ Pocket has requested and received grant for a hearing on its petition that the bankruptcy court assign a value of \$300 million, rather than the \$1.29 billion bid at auction, for its C block licenses. Pocket Faces Hostile Takeover Bid That Menaces Bankruptcy Court Win, Telecommunications Reports, October 6, 1997

⁹ GWI alleges that the Commission perpetrated fraud by conveying licenses which were not worth the amount bid at auction. See General Wireless, Now Bankrupt, Sues FCC over License Charges, Telecommunications Reports, November 10, 1997.

above, coupled with the uncertainty regarding the status of CPCSI's licenses, and the potential for protracted litigation should the Commission not rule on CPCSI's Application before the reauction, have combined to foster the growing perception that devaluation of the C block has, and continues to, occur. The results of conducting the proposed reauction at this time could well provide proof positive that devaluation of the C block licenses has occurred, which will be used in the aforementioned bankruptcy proceedings to substantiate Pocket and GWI's claims of devaluation. The prospects of success for either Pocket, in formally having its debt reduced based upon a re-evaluation by the bankruptcy court, or GWI, in its claim of fraudulent conveyance, can only be buttressed by a devalued C Block reauction occurring at this time. If Pocket and GWI were to succeed in having their debt reduced while keeping their full licenses, a rash of similar filings and a further devaluation of the spectrum are likely to occur. Accordingly, the FCC must take all possible steps to avoid providing factual evidence upon which Pocket and GWI can substantiate their claims of devaluation. The FCC must delay any wide-scale reauction until after those proceedings are completed or it can provide other concrete evidence that prudent C Block bids have been revalidated by the investment community. Grant of CPCSI's Application will provide this revalidation.

CONCLUSION

Accordingly, for the foregoing reasons, CPCSI respectfully requests that the Commission reconsider its decision in the Second R&O to proceed with the proposed large-scale reauction at this time. Specifically, the FCC must delay its reauction until after final action on CPCSI's Application for Review, or, in the event the Commission further delays actions on CPCSI's Application, the reauction must be delayed until after the conclusion of the Pocket and GWI bankruptcies to ensure that participants in the original C block auction, and CPCSI in particular, are not unfairly prejudiced. Grant of CPCSI's Application will provide concrete evidence of the

revalidation of original C block bid prices, and will undermine Pocket's and GWI's claim that their licenses have been devalued. Without such revalidation, if the Commission were to conduct the reauction while the Pocket and GWI proceedings remained pending, the reauction would likely affirm Pocket's and GWI's claims of devaluation, giving Pocket and GWI factual proof which has been previously nonexistent. Such a devaluation would cause irreparable harm to the entire C block. In the event that the Commission were to decide to proceed with the C Block reauction, equity demands that in light of the fundamental changes in the scope and structure of the proposed reauction and the drastically differing terms under which any license would be awarded thereunder, that entities such as CPCSI would not be liable for any difference between the winning bids on reauction and their original winning bids.

Respectfully submitted,

Carolina PCS I Limited Partnership

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