Federal Communications Commission
Washington, D.C. 20554

February 7, 1996

Via Federal Express and Facsimile Transmission

Mr. Javier O. Lamoso
President
PCS 2000
361 San Francisco Street
First Floor
San Juan, PR 00901

Re: Bid Submitted by PCS 2000, L.P. in Round 11 of the Broadband PCS C Block Auction

Dear Mr. Lamoso:

On January 26, 1996, PCS 2000, L.P. ("PCS 2000") filed with the Commission a "Request for Expedited Waiver or Reduction of Withdrawal Penalty." In its filing, PCS 2000 states that it submitted an erroneous bid for market B324 in round 11 of the Commission's Broadband PCS C block auction. PCS 2000 claims that it intended to bid $18,006,000 for this market, but instead submitted a bid for $180,060,000. Consequently, PCS 2000 withdrew its bid for market B324 in round 12. Under the Commission's rules, PCS 2000 is subject to a bid withdrawal payment. See 47 C.F.R. § 24.704(a)(1). PCS 2000 seeks a waiver of, or alternatively, a substantial reduction in, the bid withdrawal payment and seeks expedited action so that resolution is achieved while the auction is ongoing. As part of its request, PCS 2000 generally describes the events leading up to the submission of the erroneous bid.

The Commission requires additional information in order to evaluate the factual basis of PCS 2000's request. Accordingly, we request PCS 2000 to provide the Commission with a written response to the following.

1. Describe the manner in which PCS 2000 routinely prepares and submits its bids for the broadband PCS C block auction. This description should include the names and job descriptions of all individuals who may be involved in the bid preparation and submission. It should describe the roles undertaken by PCS 2000's authorized bidders, Javier O. Lamoso, Quentin L. Breen and Anthony T. Easton, as well as the roles of all other employees involved in the bid submission process. It should also include a list of all documents, papers, reports, spreadsheets and any other written material (including those existing in electronic form) (collectively described henceforth as "documents") which describes the manner in which PCS 2000 submits its bids.

2. Provide a detailed description of the entire process of bid preparation, submission and withdrawal of the bid for round 11 of the broadband PCS C block

auction on January 23, 1996. This description should begin with the posting of the final round results after round 10 on January 22, 1996, and should conclude with PCS 2000's bid withdrawal during round 12 on January 24, 1996. This description should include the names and job descriptions of all individuals who were involved in the bid preparation, submission and withdrawal. It should describe what actions, if any, were taken by Javier O. Lamoso, Quentin L. Breen and Anthony T. Easton, as well as the roles of all other employees involved in the process. It should also include all documents (including those in electronic form) related to PCS 2000's round 11 bid, which were prepared, drafted or created during the time period beginning with the posting of final round results after round 10 on January 22, 1996, and concluding with PCS 2000's bid withdrawal during round 12 on January 24, 1996. If certain documents were not prepared, drafted or created in association with the round 11 bid, and such documents would normally have been prepared, drafted or created (e.g., bid preview reports, bid confirmation reports), explain in detail why such documents were not prepared, drafted or created. If any document associated with the round 11 bid was prepared, drafted or created, but no longer exists, describe in detail the contents of any such document and why it no longer exists; if any document was destroyed, indicate when it was destroyed, by whom it was destroyed and why it was destroyed.

3. Describe all of the steps taken to inform the FCC about the erroneous bid. This description should include detailed information concerning any telephone conversations and any other communications (including facsimile transmissions) with the FCC staff.

PCS 2000's response should be in the form of a further statement of fact attested to in accordance with Section 1.17 of the Commission's rules (47 C.F.R. § 1.17).

Pursuant to the authority granted to the Commission by 47 U.S.C. § 308(b), PCS 2000 is directed to respond within five days of the date of this letter. PCS 2000 should direct its response to the undersigned at the Federal Communications Commission, Washington, D.C. 20554.

If you have any questions regarding this matter, please direct your inquiries to Kathleen O'Brien Ham, Chief, Auctions Division at (202) 418-0660.

Sincerely,

Michele Farquhar

Michele Farquhar,
Acting Chief,
Wireless Telecommunications Bureau

cc: Michael Deuel Sullivan, Esq.

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WILKINSON, BARKER, KNAUER & QUINN

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January 26, 1996

RECEIVED
JAN 26 1996
FEDERAL COMMUNICATIONS COMMISSIO
OFFICE OF SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: PCS 2000, L.P.
Block C PCS Auction
Request for Expedited Waiver or Reduction of Withdrawal Penalty

Attention: Kathleen Ham
Chief, Auction Division
Wireless Telecommunications Bureau

Dear Mr. Caton:

On January 23, 1995, PCS 2000, L P ("PCS 2000") erroneously submitted a bid in the Block C PCS auction for Market B324 for a price ten times as high as it intended. It informed the Commission immediately upon discovering the error and withdrew the bid the next day. PCS 2000 now asks the Commission to waive its withdrawal penalty rule. Imposing a penalty *potentially as large as $162 million* on PCS 2000, a small business owned and controlled by women and minorities, for an *innocent error* will both destroy the company's ability to continue its aggressive participation in the auction and chill the willingness of other small businesses and entrepreneurs to bid.

Accordingly, PCS 2000 requests, pursuant to Section 24.819(a)(1) of the Rules, a waiver of the bid withdrawal penalty imposed by Section 24 704(a)(1) of the Rules for PCS 2000's withdrawal of its erroneous high bid of $180,060,000 for the Block C license in Market B324 in Round 11. In the alternative, PCS 2000 requests that the penalty be very substantially reduced. PCS 2000 respectfully requests that action be expedited so that a resolution is achieved while the auction is ongoing. Delaying action until after the close of the auction would adversely affect the outcome of the auction.

Background

In Round 11 of the Block C PCS auction, PCS 2000 entered new bids for 38 markets, including Market B324. For each of these selected markets, PCS 2000 intended to, and believed at the time that it did, enter the minimum bid increment. For Market B324, the minimum bid increment would have resulted in a bid of $18,006,000.00. Due to an error, the bid for this market was recorded by the Commission as $180,060,000.00, exactly ten times as large as the intended bid. PCS 2000 discovered the error about two hours after the close of the bidding for Round 11, when it downloaded the round results from the FCC's internet FTP server. PCS 2000 immediately telephoned the FCC's auction contractor to indicate that it had intended to bid $18,006,000.00 and to report that the $180,060,000 bid was in error. Undersigned counsel also contacted officials of the Auction Division to inform them of the error. The Commission verified that the bid had been posted as received, and on January 24, 1996, in the very next round, PCS 2000 withdrew the erroneous high bid of $180,060,000.00

PCS 2000 has conducted a preliminary investigation of the error, but the precise cause of the erroneous bid remains unknown. The error appears to have occurred in PCS 2000's bid preparation and submission process and was likely caused by some combination of a departure from previously established internal procedures, human error, and the inability to conduct a complete cross-check of the submitted bids against other data prior to the conclusion of the bidding period because of a lack of time. In addition, discovery of the error was delayed because the FCC's confirmation of the bid was not received due to a print server malfunction. PCS 2000 is undertaking measures to ensure that there is no recurrence of these conditions

PCS 2000 notes that some press reports have erroneously claimed that PCS 2000 attributes the error to the Commission. Because the results reported by the FCC did not reflect the bid that PCS 2000 believed it had submitted, the company contacted the FCC to determine whether an error had occurred in reporting the results. The FCC confirmed that it reported the results that had been submitted, and PCS 2000 continued on with its investigation of its internal processes. PCS 2000 has now concluded, as discussed above, that the error occurred in its own bid preparation and submission process; PCS 2000 does not attribute this error to the Commission.

Discussion

PCS 2000 submits that the public interest would be served by grant of a waiver (or, in the alternative, a substantial reduction in the penalty) in the unique circumstances of the instant case, that strict application of the prescribed penalty for withdrawing a bid would disserve the public interest, and that the purpose of the rule would not be undermined by a waiver (Section 24.918(a)(1)). Prompt resolution of this is essential, because the lack of a decision will severely limit the ability of PCS 2000 to continue its active and aggressive participation in the auction and could aversely affect the willingness of other bidders to participate.

Waiver of the penalty rule under these circumstances would not establish a precedent that would create any opportunity for mischief in the future. The bid submitted in error by PCS 2000 was clearly in error and not an attempt to manipulate the bidding. The $180,060,000.00 bid represented a per-pop price of $110, which is vastly in excess of the likely value of this license. Indeed, the erroneous bid exceeded the previous high bid by 900%, at a time when PCS 2000 (and many other bidders) were making only the minimum bids necessary. All of PCS 2000's bids in Round 11, except the erroneous bid for Market B234, were the minimum permissible bid, and the erroneous bid was exactly ten times the minimum permissible bid of $18,006,000.00. It is obvious that an extra zero was somehow accidentally added to the end of the bid amount. No reasonable bidder would have knowingly bid such a price for this license.

PCS 2000 promptly took steps to notify the Commission that an error appeared to have occurred. As Mr. Easton indicates in his declaration, immediately upon discovering that the FCC had recorded the bid as being $180,060,000.00, he informed Mr. Louis Segalos, an FCC auction official, that an error had occurred. He supplied Mr. Segalos with copies of spreadsheet printouts indicating the bids that PCS 2000 believed it had submitted. Shortly thereafter, counsel informed senior Auctions Division staff officials of the error. The erroneous bid was then withdrawn on January 24, 1996, during the next bidding round after the error was discovered.

The Commission adopted its bid withdrawal penalty rules to deter "[i]nsincere bidding, whether purely frivolous or strategic." *Competitive Bidding*, PP Docket 93-253, *Second Report and Order*, 9 F.C.C.R. 2348, 2373 (1994). The bid in question was neither frivolous nor strategic; it was, instead, clearly inadvertent and erroneous. Allowing the prompt withdrawal of a clearly erroneous bid without penalty will have no effect on the Commission's ability to penalize those who submit frivolous bids or bids that are part of a manipulative strategy. There is no indication in the *Second Report and Order* that the Commission intended to impose the bid withdrawal penalty on those who withdraw bids that were clearly submitted in error.

Moreover, the nature of the bid withdrawal penalty that the Commission adopted was specifically selected in order to take advantage of marketplace incentives by bidders who would consider the penalty as a price component. The Commission never considered the possibility that a bid might be submitted in error for many times the market value of the license. The Commission stated:

> A point to note in considering the appropriate level of bid withdrawal penalty is that the market generally places an upper limit on the amount that bidders will pay to the government for bid withdrawal. If the bid withdrawal penalty is too high, winning bidders who realize they bid too much will generally pay for the license and resell it in the after-market. The cost of doing this would be the difference between the bid price and the price obtained in the after-market . . . .

9 F.C.C.R. at 2373. These economic calculations are relevant only to the intentional submission of an excessive bid and its subsequent withdrawal, not to the withdrawal of a bid erroneously submitted for an amount ten times as high as intended.

In establishing the bid withdrawal penalty, the Commission was particularly sensitive to the financial circumstances of designated entities, who it noted "are less likely to have the option of purchasing a license and reselling it as an alternative to bid withdrawal." *Id.* In the case of a grossly excessive bid submitted in error, a capital-constrained designated entity can neither buy the license at the bid price for resale nor pay a penalty amounting to many times the value of the license. It is noteworthy in this connection that the Commission recognized that "requiring the forfeiture of all funds on deposit with the Commission could, in some cases, be too severe a penalty." In the instant case, the funds PCS 2000 has on deposit would cover only a fraction of the penalty. A forfeiture of this magnitude would render this designated entity unable to pay for *any* licenses for which it may be the high bidder. Thus, application of the rules would have a result directly contrary to the purpose for which the rules were adopted.

None of the participants in the C Block auction would be able to pay a penalty of this magnitude. It would vastly exceed the $50 million upfront payment posted by PCS 2000 (and indeed would exceed any Block C bidder's upfront payment) and would, if not waived, render the company unable to acquire any licenses. Other bidders in the auction would be similarly affected by a penalty were they to make a similar mistake. Prompt action on this matter is needed to avoid chilling participation in the auction.

It is important to recognize that if PCS 2000 is subjected to this unduly burdensome penalty, its bidding capacity will be drastically reduced, if not eliminated. As a result, less money will be involved in the auction and licenses may well be undervalued. This would lead to spectrum being assigned on a less than optimal economic basis, instead of being assigned to those valuing most highly. A prompt waiver of the rule would ensure the integrity of the auction process as a whole and minimize any disruption to this process.

PCS 2000 regrets that the error occurred. Nevertheless, no party has suffered any harm as a result of the erroneous bid or its withdrawal. The error occurred relatively early in the auction and the bid was promptly withdrawn. Moreover, the amount bid was so obviously in error that no party could seriously have considered it as a strategic assessment by PCS 2000 of the value of the license. As a result, any party wishing to make a good faith bid for the market involved was, and remains able to do so virtually unfettered by the effect of the withdrawn bid.

In the event the Commission does not waive the withdrawal bid penalty rule entirely, PCS 2000 respectfully requests that the penalty be reduced very substantially, to a level more appropriately considering the true impact of PCS 2000's actions on the legitimacy of the auction for the Norfolk BTA license. The Commission never anticipated that a bidder might be subjected to a penalty vastly exceeding the value of the license for which it had bid. A bidder who engages in

strategic bidding to adversely impact or even close out another bidder and then withdraws its bid may be liable for a penalty that represents a small fraction of the license's value. No public interest would be served by imposing a far greater penalty on a bidder who bids an obviously erroneous amount and then must withdraw such an erroneous bid. The Communications Act does not contain specific provisions governing the penalties that may be imposed as part of the auction process; by way of analogy, however, the provisions of Section 503 concerning monetary forfeitures for serious violations of the Act place a limit of $100,000 on the penalty that may be assessed for any single violation by a common carrier. *See* 47 U.S.C. § 503(b)(2)(B). It would clearly be inappropriate to impose a forfeiture penalty for withdrawal of an erroneous bid that is of such substantial magnitude greater than the penalties that Congress has mandated for willful violation of the Communications Act.

Accordingly, PCS 2000 submits that waiver of the rule (or, in the alternative, a substantial reduction in the bid withdrawal penalty) is warranted in the public interest and should be granted without delay.

Sincerely,

Wilkinson, Barker, Knauer & Quinn

By: Michael Deuel Sullivan

Counsel for PCS 2000, L.P.

Enclosures

cc: Kathleen Ham
Gerald P. Vaughan

Declaration of Javier Lamoso

I, Javier Lamoso, am the President of Unicom Corporation, the general partner in PCS 2000, L.P. I have read the foregoing "Request for Expedited Waiver or Reduction of Withdrawal Penalty" and declare under penalty of perjury that the statements therein are true and correct, on information and belief.

Executed: January 26, 1996

Declaration of Anthony T. Easton

I, Anthony T. Easton, am the Chief Executive Officer of Unicom Corporation, the general partner in PCS 2000, L.P.

I have read the foregoing "Request for Expedited Waiver or Reduction of Withdrawal Penalty" and the statements therein are true and correct to the best of my knowledge.

I supervised the preparation and submission of PCS 2000's bids for Round 11 of the C Block PCS auction, in which a bid was erroneously submitted for Market B324 in the amount of $180,060,000 instead of the minimum bid of $18,006,000. While PCS 2000 has been unable to determine the precise manner in which the error occurred, there are a number of ways in which the error could have occurred, in light of a departure, during Round 11, from the internal bidding procedures normally followed. The source of the error is likely to have been either (1) human error in entering data into the spreadsheet program PCS 2000 uses to prepare its bids, (2) an error introduced in the course of manually changing bids on-line in real time, or (3) an error introduced in transferring the data file between our computers on our local network or in transmitting the file over the bidding network.

Normally, any such error would have been discovered and corrected during multiple cross-checking processes. Unfortunately, during Round 11 these cross-checking processes were not followed fully, because it became necessary to manually change certain bids on-line shortly before the close of the bidding round in order to comply with bidding eligibility and activity rules. As a result, there was not sufficient time to recheck the details of every bid. In addition, both the network print server and the fax server that normally print the FCC confirmation of bids received were functioning erratically due to an insufficient disk space problem caused by the overload of the buffer

ares by several twelve to fifteen page faxes, as a result of which PCS 2000 did not receive any confirmation that would have timely alerted the company to the error.

I declare under penalty of perjury that the foregoing is true and correct, based on personal knowledge and on information and belief.

Executed: January 26, 1996

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June 4, 1997

HAND DELIVERED

Howard C. Davenport, Chief
Enforcement Division
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D. C. 20554

Myron C. Peck, Deputy Chief
Enforcement Division
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D. C. 20554

Joseph Paul Weber, Esquire
Enforcement Division
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D. C. 20554

Re: Quentin L. Breen
Westel, L.P.
Westel Samoa, Inc.

Gentlemen:

As you are aware, this firm represents Quentin L. Breen with regard to the events surrounding the C Block Broadband PCS Round 11 Norfolk, Virginia BTA auction bid submitted by PCS 2000, L.P. ("PCS 2000") on January 23, 1996 ("Bidding Error"). This firm also represents Westel Samoa, Inc. and Westel, L.P. (collectively "Westel"), of which entities Mr. Breen is a principal, with regard to their respective pending C and F Block Broadband PCS applications. The Commission, in the "Notice of Apparent Liability for Forfeiture" issued in the PCS 2000 proceeding, indicated that any impact of the Bidding Error on Mr. Breen's qualifications to be a Commission licensee would be examined in the context of the Westel applications.[1] We are aware, and you have acknowledged, that, at least since the issuance of the NAL, you have been conducting an investigation of the Bidding Error. This submission is being delivered to you so as to assist you in that investigation.

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[1] PCS 2000, L.P, 12 FCC Rcd. 1703, 1718 (1997) ("NAL").

From all indications to date, the Commission and the Bureau place substantial reliance on the February 19, 1996, report on the Bidding Error, which report was prepared by the law firm of Young, Vogl, Harlick, Wilson & Simpson, LLP, and submitted to the Commission by PCS 2000 ("Report"). While we believe that most of the facts presented in the Report are substantially correct in most material respects,[2] we also believe it would be imprudent, unfair, unwarranted and an abdication of responsibility for either the Bureau or the Commission simply to adopt the Report's characterizations and conclusions, many of which are not well founded and, therefore, are inaccurate or incorrect. It should not surprise the Commission or the Bureau that there are deficiencies in the Report's characterizations and conclusions, because the Report, itself, warned:[3]

> This Report was prepared on an extremely tight time schedule. Its contents are based solely on the information we were able to develop during the brief period from February 9 through February 16 [1996], and such information is necessarily incomplete. Moreover, the complexities of the Company's computer systems and processes, combined with the substantially inconsistent versions of events recounted by key participants, made the investigation particularly challenging. It is in this context that the reader should consider the conclusions and reasoning [of the Report].

And the Commission acknowledged that, "[i]n contrast to Mr. [Anthony T.] Easton, [at time of the NAL] the Commission does not know the full extent of Mr. Breen's involvement in the deception."[4] In the face of warnings from both the Report and this submission, and in light of the Commission's stated concern as to the completeness of the record, it is incumbent on the Commission and the Bureau to avoid undue reliance on the Report's characterizations and conclusions when considering Westel's applications or Mr. Breen's qualifications. In addition, the

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[2] Of course, where the Report presents inconsistent or contradictory factual assertions or contentions, or where the Report notes that an individual has taken exception to another's version of the facts, such facts cannot be taken as settled.

[3] Report, at p. 1, emphasis added.

[4] NAL, at 1717, emphasis in original.

Commission and the Bureau, in reviewing Westel's applications and Mr. Breen's qualifications, must consider the additional facts provided by the attached declarations, which facts either were not perceived by the Report's authors, or were ignored by those authors.

The Commission has indicated it is concerned specifically about Mr. Breen's candor. That concern is based on a perception derived from the Report that Mr. Breen was "aware of Mr. Easton's actions," but did not cause them to be reported to the Commission.[5] In accusing Mr. Breen of possibly having lacked candor as to facts of which he is believed to have been "aware", the Report, and the Commission in reliance on the Report, reached conclusions as to both the knowledge and state of mind of Mr. Breen. Where, as here, so much depends on an individual's perception and state of mind, it is essential that chronology, sequence, nuance, and the quantity and quality of information be given proper consideration. It is submitted that any fair and objective review and consideration of the attached declarations of Mr. Breen and Cynthia L. Hamilton will illuminate, clarify, or conclusively rebut certain erroneous characterizations and conclusions set forth in the Report. And any open-minded reexamination of Mr. Breen's activities in light of those declarations will compel a determination that Mr. Breen did not lack candor with regard to the Bidding Error.

Any objective examination of Mr. Breen's qualifications should start, and probably should end, at the focal point of the Commission's concern regarding Mr. Breen: the January 26, 1996, meeting between Ms. Hamilton and Mr. Breen.[6] Neither Ms. Hamilton nor Mr. Breen had planned the meeting; it was completely spontaneous.[7] And it was not a lengthy or intense meeting; it

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[5] Id.

[6] There has been absolutely no indication that Mr. Breen had any first-hand knowledge of Mr. Easton's activities. As noted in the Report, and as confirmed by Mr. Breen's attached Declaration, Mr. Breen was not present at the times "Mr. Easton's actions" were perpetrated.

[7] One of the unjust ironies of this matter is that, had Mr. Breen simply ignored Ms. Hamilton's arrival at SMG on January 26, 1996, his conduct would not today be a subject of controversy. But, because he diligently and conscientiously initiated contact

was brief and touched on several personal matters in addition to the Bidding Error. During the meeting, Ms. Hamilton, who had not anticipated encountering Mr. Breen, made a purely extemporaneous presentation, presumably based on what she had observed before her January 23, 1996 departure from the offices of the San Mateo Group ("SMG"). Because of her acknowledged concern about retaliation by Mr. Easton, however, Ms. Hamilton refrained from speaking openly; she was "circumspect". She chose to not even mention to Mr. Breen that she had been able to save vital documentary evidence, much less that she had seen fit to bring such evidence to the attention of the Commission. On the other hand, Mr. Breen brought to his unanticipated meeting with Ms. Hamilton certain preconceptions derived from three days of involvement in PCS 2000's ongoing examination of the Bidding Error; three days during which Ms. Hamilton had been absent from SMG's offices. He also was aware of the content and intent of PCS 2000's waiver request, which had already been filed with the Commission in Washington by the time Ms. Hamilton and Mr. Easton met in San Mateo. The tenor and context of the Hamilton-Breen meeting portrayed in both declarations certainly gives credence to Mr. Breen's statement that he "perceived no material inconsistencies between what Ms. Hamilton told [him] on January 26, 1996, and the representations in the waiver request PCS 2000 had filed earlier that day."[8] The only reasonable conclusion

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with Ms. Hamilton, even though he knew she had a negative view of the events of January 23, 1996 (to the extent she had resigned from her job without any apparent assurance of other immediate employment), Mr. Breen now finds his conduct and motives being second-guessed by some claiming the benefits of 20/20 hindsight, but, actually hampered by 20/20 tunnel vision. If one now seeks to judge Mr. Breen's conduct, one must consider the broad context of that conduct; selective recollection cannot be tolerated.

[8] Michael Duell Sullivan, of the law firm of Wilkinson, Barker, Knauer & Quinn, is the communications attorney who advised and assisted PCS 2000 in the immediate wake of the Bidding Error, and particularly in the preparation of the "Request for Waiver" filed with the Commission on January 26, 1996. You interviewed Mr. Sullivan on March 20, 1997, at which interview the undersigned was present. It is suggested that the information imparted to you by Mr. Sullivan in the course of that interview gives further credence to Mr. Breen's statement that he "perceived no material inconsistencies between what Ms. Hamilton told [him] on January 26, 1996, and the representations in the

one can fairly draw from the various portrayals of the Hamilton-Breen meeting is that, as a result of their differing perspectives, two conscientious and well-intentioned people attributed very different meanings to the same conversation. Colloquially stated, while Ms. Hamilton sought to tell Mr. Breen about "apples", he perceived her to be talking about "oranges". In any event, because Mr. Breen certainly was not made "aware of Mr. Easton's actions" as a result of his meeting with Ms. Hamilton, he cannot be found to have lacked candor for failing to reveal that which he did not perceive.

Although we would expect a fair and objective examination of the Hamilton-Breen meeting to fully exonerate Mr. Breen, we must caution the Commission against following the Report into an unwarranted comparison between Mr. Breen's response to his meeting with Ms. Hamilton, and Javier Lamoso's response to Ms. Hamilton's subsequent telephone conversation with Mr. Lamoso. Any such comparison is invalid and unfair, in part because of the very different circumstances surrounding Ms. Hamilton's respective encounters with each of those gentlemen, and because there were enormous differences in both the quantity and the quality of the information Ms. Hamilton imparted to each of them. Ms. Hamilton had not planned to meet with Mr. Breen, but she initiated her telephone conversation with Mr. Lamoso. When Ms. Hamilton met with Mr. Breen, she was "circumspect". When she called Mr. Lamoso, she was direct and emphatic. Ms. Hamilton "did not even give Mr. Breen an indication that any documentary evidence still existed." Ms. Hamilton not only told Mr. Lamoso that she had relevant documents she had rescued from the SMG offices, she also informed him she had provided copies of the documents to the Commission (and she made arrangements to send Mr. Lamoso copies by facsimile). Is it any wonder that Mr. Breen and Mr. Lamoso had different reactions to their respective conversations with Ms. Hamilton? This recitation does not in any way diminish Mr. Lamoso's unquestioned integrity, nor should it. Instead, these facts simply show that Mr. Breen's reaction was not comparable to Mr. Lamoso's because their respective encounters with Ms. Hamilton were not comparable, either in form or in substance. The reactions of these two men were not the same because the stimuli were not the same. Accordingly, there is no valid reason to judge Mr. Breen and Mr. Lamoso on a comparative basis. Instead, each man's reaction should be recognized and accepted for what it was: an appropriate and

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waiver request PCS 2000 had filed earlier that day."

legitimate response to the quantity and quality of information presented to him.

We are submitting these materials for your use in your investigation(s) of the Bidding Error, Mr. Breen or Westel. However, because of the generally non-public nature of agency investigations, these materials have not been tendered through the Office of the Secretary, but, instead, are being delivered directly to you, the members of the Commission's Staff whom we understand to be responsible for conducting an appropriate investigation of the Bidding Error. We understand that, by our proceeding in this manner, it will be within the Bureau's discretion to determine whether and when these materials should be made part of the public record in the Westel application proceedings (or in any other proceeding to which the Bureau or the Commission may deem them relevant). In that light, we are assuming that, by our delivery of these materials to you, they will be viewed as part of the record before the Bureau and the Commission during any consideration of the Bidding Error, including any consideration of the Bidding Error's implications for the Westel application proceedings.[9] If our assumption in this regard is not correct, please so notify us in order that we may effectuate a formal submission of these materials to the public record in the Westel application proceedings. Absent any notification from you to the contrary, we will assume that these materials will be considered by any and all components of the Commission which may consider the Bidding Error in any context.[10]

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[9] Our records reflect that the Commission has assigned the Westel applications the following file numbers: 00560-CW-L-96; 00129-CW-L-97; 00862-CW-L-97; 00863-CW-L-97; 00864-CW-L-97; 00865-CW-L-97; and 00866-CW-L-97.

[10] This submission is intended solely for use in connection with your investigation, which is focussed on the Bidding Error. Because this submission has not been formally directed to the Westel application proceedings, and because the petition of National Telecom PCS, Inc. ("NatTel") against the C Block application of Westel Samoa did not address the Bidding Error, and in light of NatTel's "Withdrawal of Supplement to Petition to Deny" disclaiming any interest in the Bidding Error, we do not believe service upon NatTel is required. Therefore, NatTel has not been served with a copy of this submission. However, if you have any reason to be concerned that the Commission's ex parte

Although we have attempted to be thorough in conducting an investigation of the Bidding Error on behalf of Mr. Breen and Westel, we cannot claim that our efforts have exhausted all potential sources. Certain resources available to the Commission have not been available to us (e.g., compulsory process or the threat of compulsory process). And, not surprisingly, continuing controversy and litigation between Mr. Breen and Mr. Easton have presented insurmountable obstacles to obtaining any information of probative value from that quarter. Also, in some instances, we have forborne from contacting witnesses identified in the Report (e.g., Rosalyn Makris) because their testimony would be merely cumulative to that of another, more critical witness. Despite these limitations, we believe our investigation and this submission have brought to light critical information sufficient to allow the Commission to determine that Mr. Breen and Westel possess the qualifications required of Commission licensees.

Should the Commission or its Staff still have questions regarding, or would benefit from further clarification of, any matters surrounding the Bidding Error, Mr. Breen stands ready to revisit those matters in an attempt to further facilitate the Commission's review of the matter. If the Commission or the Bureau wish to avail themselves of Mr. Breen's offer in this regard, please contact either of the undersigned.

Sincerely,

BELL, BOYD & LLOYD

By: A. Thomas Carroccio

By: Ross A. Buntrock

cc: William E. Kennard, Esquire
Peter A. Tenhula, Esquire

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rules may require that NatTel be served with a copy of this submission, we will undertake to serve NatTel immediately upon being informed that you have a concern in this regard.

DECLARATION OF QUENTIN L. BREEN

I, Quentin L. Breen, under penalty of perjury, hereby declare and state as follows:

1. During the Broadband PCS C Block Auction conducted by the Federal Communications Commission ("FCC"), I was one of the authorized bidding agents for PCS 2000, L.P. ("PCS 2000"). The bidding activities of PCS 2000 were conducted from the offices of the San Mateo Group, Inc. ("SMG") in San Mateo, California.

2. Because of a weather-related delay in my return to San Mateo from my residence in Chiloquin, Oregon, I was not in the SMG offices during the business day on January 23, 1996. Accordingly, I have no first-hand knowledge as to anything that transpired in the SMG offices prior to my 6:30 p.m. (PST) arrival on that date.

3. Before departing my residence on January 23, 1996, I discussed PCS 2000's bidding strategy for the day with Anthony T. Easton. In addition, during the nine-hour drive from Oregon to San Mateo, I received and made telephone calls to and from the SMG offices. Because of hazardous driving conditions, especially in the early part of my trip, most of those calls were very brief. One of the calls I received on my mobile telephone was from Mr. Easton, who had called to inform me that the FCC's reports for Round 11 showed PCS 2000 as making a $180 million bid, instead of an $18 million bid, for the Norfolk, Virginia BTA. I told Mr. Easton that having such a bid charged to PCS 2000 was a problem to be addressed by communications counsel and that he immediately should contact PCS 2000's counsel, Michael Duell Sullivan, of Wilkinson, Barker, Knauer & Quinn. In another of my en route conversations, I asked Ronit Milstein to consult with Mr. Sullivan regarding appropriate language to be used in disclosing the bid error on the voice mail auction status information system used by PCS 2000 limited partners.

4. On Wednesday morning, January 24, 1996, Mr. Easton and I conferred with Mr. Sullivan regarding procedures for bid withdrawal. In accordance with Mr. Sullivan's instructions, PCS 2000's bid for the Norfolk, Virginia BTA was withdrawn during that day's bid withdrawal period.

5. Also on January 24, 1996, Ms. Milstein informed me that Cynthia L. Hamilton had submitted her resignation from SMG by facsimile. That day Ms. Milstein further informed me that Ms. Hamilton had told her that Ms. Hamilton thought the Norfolk bid was Mr. Easton's fault, and that he had been less than truthful when he blamed the bidding error on the FCC's computer system. Ms. Milstein also indicated that Ms. Hamilton was concerned that

Mr. Easton would attempt to blame Ms. Hamilton for the bidding error.

6. After initial discussions with Mr. Sullivan and Mr. Easton, I concluded that the Norfolk bidding error could not legitimately be blamed on anything other than an error in PCS 2000's own computer system or bidding procedures, and certainly was not attributable to the FCC or its auction procedures. Because of Mr. Easton's familiarity with PCS 2000's computer system and bidding processes, and because he had prepared and overseen the submission of PCS 2000's Round 11 bids, it was decided that Mr. Easton's primary responsibility for the immediate future would be to work with Mr. Sullivan in the preparation of a waiver request. It also was decided that any waiver request should acknowledge PCS 2000's responsibility for the bidding error and should make clear that PCS 2000 attributed no blame to the FCC. Although my primary responsibility would be to conduct PCS 2000's bidding activities, I was to be kept informed of critical facts and decisions regarding the waiver request.

7. After Mr. Easton and Mr. Sullivan drafted a waiver request package, I reviewed their drafts before they were filed with the FCC. In reviewing the drafts, I found nothing that was inconsistent with the facts as I understood them at that time, and I was satisfied that the waiver request included an appropriate acknowledgment of PCS 2000's responsibility for the bidding error. On that basis, I acceded to the filing of the waiver request with the FCC. The waiver request was filed with the FCC before its close of business on January 26, 1996.

8. During the late afternoon of January 26, 1996, I was participating in a meeting of the Executive Committee of Unicom Corporation, which was held in the conference room at the offices of SMG. One wall of that conference room is glass and looks out on SMG's reception area. Around 4:30 p.m. (PST), I noticed Ms. Hamilton in the reception area. Recalling Ms. Milstein's comments about Ms. Hamilton's concerns, I left the meeting to talk with her. When I asked how she was doing, Ms. Hamilton indicated there was something she wanted to tell me in private, and asked if we could go into my office.

9. While in my office, Ms. Hamilton informed me that she believed Mr. Easton had personally made the error which resulted in PCS 2000's Norfolk bid, and that he was attempting to pin the blame elsewhere. I responded with a phrase routinely used at SMG, "That's just Terry being Terry," which referred to Mr. Easton's aversion to acknowledging blame for any problem or error. Ms. Hamilton went on to indicate that Mr. Easton had lied to the FCC and had disposed of documents in attempts to cover up his error. However, nothing I perceived in listening to Ms. Hamilton caused me to believe that Mr. Easton's deception to the

FCC had gone beyond his initial attempt to shift blame in the wake of learning of the Norfolk bid error, or involved more than choosing among and discarding drafts of bid sheets in the process of getting to a final bid. At no time did Ms. Hamilton inform me that she had possession of or access to documents or other evidence regarding the Norfolk bid or its aftermath. After listening to Ms. Hamilton's concerns regarding the bid error and the ensuing events of January 23, 1996, and her concerns that Mr. Easton might attempt to blame her for the error, I assured Ms. Hamilton that I knew her work for SMG had always been professional and competent, and that I would be willing to provide her with letters of reference for future employment. We then discussed personal matters for a few minutes until Ms. Hamilton indicated she needed to get to her bank before it closed, and we parted. I then returned to the Executive Committee meeting.

10. My meeting with Ms. Hamilton took place after the bidding error had been examined by PCS 2000 and its counsel for three days, and after the waiver request had been filed with the FCC. I knew Ms. Hamilton had not been in SMG's offices since the close of business on January 23 and, therefore, could not be aware of the facts uncovered, the determinations made, or the documents filed with the FCC, after that date. In addition, because of the relatively general nature of Ms. Hamilton's statements to me, I understood her statements to relate to events or actions other than the specific ones she thought she was bringing to my attention. Therefore, my interpretation of what Ms. Hamilton was relating to me was influenced both by my perception as to the currency of her knowledge relative to my own, and by my good faith belief that PCS 2000's waiver request had repudiated any prior imputation of blame to the FCC and had addressed, and acknowledged responsibility for, the bidding error. For example, at the time Ms. Hamilton told me Mr. Easton had lied to the FCC after learning of the Norfolk bid, I thought she was referring to Mr. Easton's initial telephonic claim of FCC error, which I believed had since been repudiated by PCS 2000's waiver request. In addition, I perceived no material inconsistencies between what Ms. Hamilton told me on January 26, 1996, and the representations in the waiver request PCS 2000 had filed with the FCC earlier that day. In sum, nothing I then perceived Ms. Hamilton to be saying implicated PCS 2000 or Mr. Easton in any activity that had not been appropriately addressed by PCS 2000's already filed waiver request.

11. I want to make clear that I did not consciously attempt to avoid receiving any information Ms. Hamilton may have had with regard to the Norfolk bid or its aftermath. I initiated the January 26, 1996 meeting between Ms. Hamilton and me, and did so after Ms. Milstein had alerted me that Ms. Hamilton had strong negative beliefs regarding both the responsibility for the Norfolk bid and Mr. Easton's actions in the wake of that bid. By

accommodating Ms. Hamilton's request to move to the privacy of my office, I provided a setting conducive to full disclosure of sensitive information. I did not put any time limit on Ms. Hamilton's presentation of her concerns; the only limitation on the length of our meeting was her own schedule. I can recall nothing I said or did which should have caused Ms. Hamilton to be concerned that I was anything but receptive to her disclosures and accusations. Although Ms. Hamilton indicated she was concerned that Mr. Easton might retaliate against her, I did not perceive that her concerns extended to me. In any event, I tried to assuage those concerns by assuring Ms. Hamilton that her forthrightness with regard to the Norfolk bid and Mr. Easton's actions would have no negative impact on our future relations, including any employer reference I might be asked to provide with regard to her. In short, I tried to indicate that I was receptive to any disclosure Ms. Hamilton wished to make with regard to any matters involving the Norfolk bid, SMG or PCS 2000.

12. After Ms. Hamilton provided PCS 2000 with copies of her declaration to the FCC and the documents she had maintained, and after I reviewed the subsequent report of independent counsel, it became apparent to me that there had been a significant gap between what Ms. Hamilton thought she was conveying to me during our January 26, 1996 meeting and what I had then perceived her to be telling me.

IN WITNESS of the foregoing I hereby set my hand and seal this 28th day of May, 1997.

Quentin L. Breen

DECLARATION

I, Cynthia L. Hamilton, under penalty of perjury, hereby declare and state as follows:

1. On January 23, 1996, I was an employee of San Mateo Group, Inc. ("SMG") at its offices in San Mateo, California, where I assisted in the preparation and submission of the bids of PCS 2000, L.P. ("PCS 2000") for the Broadband PCS C Block Auction conducted by the Federal Communications Commission ("FCC"). My supervisors with regard to auction bidding activities usually were Anthony T. "Terry" Easton and Quentin L. Breen. On January 23, 1996, however, Mr. Breen was absent from SMG's office.

2. I resigned from my position with SMG by facsimile message of January 24, 1996.

3. On January 26, 1996, I went to SMG's offices to pick-up my final SMG paycheck. When I arrived at those offices, a meeting was taking place in the glass-walled conference room adjoining the reception area. Among those in the meeting were Javier Lamoso, Mr. Breen and Mr. Easton. Mr. Breen left the meeting, approached me, inquired as to whether I was alright, and expressed his regrets that I had resigned. I told him that there was something I needed to discuss with him, and suggested we go into his office. My meeting with Mr. Breen was brief, we discussed several topics, and less than half of it was devoted to a discussion of the events of January 23, 1996.

4. Although I had not anticipated meeting with Mr. Breen and, therefore, had not prepared any comments, I attempted to alert him as to my observations and beliefs regarding Mr. Easton's actions and statements during and after PCS 2000's Round 11 bidding activities on January 23, 1996. However, I was circumspect in speaking with Mr. Breen because I was concerned that Mr. Easton might retaliate against me if he became aware that I had informed anyone as to my perceptions of his activities on January 23, 1996. I also was concerned because, as of the time I was meeting with Mr. Breen, I had not received my final paycheck from SMG, much less been able to cash it.

5. Although I generally described my observations and beliefs regarding Mr. Easton's January 23, 1996 activities to Mr. Breen, I gave him no indication that I had been able to rescue documents supporting those observations and beliefs. I did not inform Mr. Breen as to where documentary evidence might be found, much less inform him that I had any documentary evidence in my possession. In fact, I did not even give Mr. Breen an indication that any documentary evidence still existed. I certainly did not indicate to Mr. Breen that I knew of, or was in possession of, any materials I considered appropriate for delivery to the FCC, much less that I had delivered copies of such materials to the FCC.

6. Because of the late afternoon hour and the need to deposit my final SMG paycheck before my bank closed for the weekend, I did not seek to extend my meeting with Mr. Breen.

7. When I subsequently received a copy of PCS 2000's "Request for Expedited Waiver or Reduction of Withdrawal Penalty" ("Waiver Request") from the FCC staff and reviewed it, I erroneously assumed that the Waiver Request had been prepared and filed with the FCC after my meeting with Mr. Breen, not before. The concerns I expressed to the FCC staff about the Waiver Request were based on that erroneous assumption, and the FCC staff did not alert me as to the correct sequence of events. Further, I was not aware of the correct sequence of events or its significance at the time I called Mr. Lamoso to make him aware of my observations and beliefs regarding the January 23, 1996 bidding error and its aftermath, and to inform him that I had provided the FCC with both my declaration of January 24, 1996 and the documents I had rescued from the offices of SMG. In addition, I still was not aware of the Waiver Request-meeting sequence or its significance at the times I was interviewed in connection with the preparation of the report of Young, Vogl, Harlick, Wilson & Simpson, LLP ("Independent Counsel"). Had I been aware that the Waiver Request had been prepared and filed before my meeting with Mr. Breen, my concerns regarding Mr. Breen's reaction to our meeting would have been substantially different than they were through the time of the interviews conducted by the Independent Counsel.

8. I am making this Declaration with the expectation that it will be submitted to the FCC and become a part of the record in any proceeding(s) involving Mr. Breen, PCS 2000, SMG, Romulus Telecommunications, Westel, L.P., Mr. Easton, or any of them.

IN WITNESS WHEREOF, I hereby affix my signature to this Declaration this 24th day of May, 1997.

Cynthia L. Hamilton

Cynthia L. Hamilton