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December 19, 1997

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

Dear Ms. Salas:

I am writing to support the majority of filers that submitted Petitions for Reconsideration in WT Docket 97-82 asking the Commission to adopt a commercially reasonable restructuring alternative. Specifically, we believe that C-Block licenses should receive full credit for the down payments made to the Commission. Furthermore, we believe that license prices should be adjusted net present value under the Prepayment option. These modest modifications will lead to increased network build out and new wireless competition.

I represent Florida Power Corporation, a power utility in Central Florida. We have a dedicated staff of employees who are relying on a rapid build-out of C-Block markets. Florida Power Corporation develops tower sites for the wireless telecommunications business and due to C-Block uncertainty has been forced to re-think its tower business strategy. These activities have created a void in further development and has affected those involved in developing such facilities such as: tower manufacturers, general contractors and tower erectors, etc..

We appreciate the Commission's efforts to craft a solution which attempted to provide relief for C-Block licensees while maintaining auction integrity. However, the menu options provided by the Commission are not commercially reasonable alternatives to bankruptcy.

I urge you to revisit the restructuring decision made in the *Second Report and Order*. Florida Power Corporation and its employees are ready today to support a rapid C-Block build out. We already have been adversely affected by regulatory delays; we simply cannot afford to wait for the Commission to reactivate C-Block licenses.

Sincerely,

George N. Townsend by Ada D. West.

George N. Townsend
Business Development Account Manager

cc: The Honorable Susan Ness
The Honorable Harold Furchtgott-Roth
The Honorable Michael Powell
The Honorable Gloria Tristani
The Honorable William Kennard
Mr. Daniel Phythyon
Ms Sandra Danner

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Before the
Federal Communications Commission
Washington, D.C. 20554

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DEC 23 1997

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) Licensees)

COMMENTS ON PETITIONS FOR RECONSIDERATION

AmeriCall International, LLC ("AmeriCall"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby files its Comments concerning Petitions for Reconsideration of the Second Report and Order, WT Docket No. 97-82, 62 Fed. Reg. 55,348, 1997 FCC LEXIS 5687 (October 16, 1997) (Second Report and Order). AmeriCall holds 15 C and F block licenses, with market areas in four states.

EXECUTIVE SUMMARY

We believe any major alterations of the careful balance achieved in the Second Report and Order would increase the risk of litigation, resulting in further deployment delays. For the most part, AmeriCall advocates simple clarification and support of the order, with several refinements to ensure fundamental fairness between those who choose to exercise different options made available by the Commission's decision.

To decrease the risk of litigation, we advocate clarification, in the order on reconsideration, of the distinctions between the C block and other spectrum bands that merited the Commission's decisions in the Second Report and Order.

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In order to increase the certainty that is critical to obtaining and retaining capital for system construction and implementation, AmeriCall urges the Commission to:

- provide rapid goals for processing of refund requests;
- provide refunds either with a note or check for readily available funds or as a credit against any pending payments for other auctioned licenses, as a credit for use in the C block reauction or other future auctions, or in a combination of these alternatives (with the licensee permitted to determine which payments will receive such allocations); and
- either determine that Department of Justice coordination is unnecessary or pre-coordinate C block issues with the Department such that its review will neither delay nor impede the effect of the Commission's decisions.

We also urge the Commission to determine that fairness and equity require that the down payment should be returned to licensees electing amnesty or disaggregation, or in any event should not exceed the 30% assessment upon licensees electing prepayment. We suggest methods by which the government could return the down payment or portion thereof.

Rather than take additional restructuring approaches suggested by several petitioners, we advocate resurrecting the concept, introduced into this docket in February of this year, of eliminating the special ownership limitations for C and F block institutional investors within a control group and nonattributable investors outside the control group.

Finally, we strongly disagree with those who contend the Commission made the wrong decision on cross-default. The decision correctly tailors the penalty to the size of the violation and is vitally necessary to retaining any new flow of investment to the C block. This pleading sets forth compelling reasons why the decision was sound, equitable and in the best interests of licensees, investors and the public.

I. The Commission Should Set Forth Its Reasons Why The C Block Is Different

AmeriCall does not agree with those dissatisfied licensees in other spectrum bands, see, e.g., Reconsideration Petitions of Cellular Holding, Inc., Central Oregon, CONXUS, and Omnipoint, who ask the Commission to open the C block options to D, E, and F block and narrowband PCS licensees, and suggest that the only difference between those licensees and C block licensees is a “handful of bidders” who placed unusually high bids.^{1/} The Commission stated in its order that per-MHz-pop prices were higher in the C block auction than in the F block auction. In addition, unlike other spectrum bands, the C block also experienced the following unique combination of events, several of which are also noted by Hyundai Electronics America:

- litigation delays before the auction;
- administrative delays in the licensing process after the auction (understandable, since this was the first broadband entrepreneurs block auction);
- subordination of security interests, announced after the auction (unlike the F block), discouraged sources of debt financing;
- no simultaneous non-entrepreneur auction (licensees could have used the non-entrepreneurial blocks as a pressure valve, easing price pressures in the entrepreneurs band by placing new bids in the non-entrepreneur blocks);

^{1/} AmeriCall placed extremely low per-pop bids in the C block auction and has made every payment due. Conservative bidders should not be made to suffer when capital markets inaccurately paint the entire C block with a broad brush as “high bidders.”

- unlike the D block, E block, and narrowband PCS auctions, the C block auction was implemented under the congressional mandates of 47 U.S.C. § 309(j), that the FCC disseminate licenses to a wide variety of applicants, including small businesses, and make available opportunities for small businesses to engage in provision of spectrum-based services.

In sum, unpredictable events intervened, necessitating special remedies. To dispel the risk of litigation by counteracting allegations that the FCC did not sufficiently distinguish between allegedly similarly situated groups, we urge the Commission to clearly set forth those distinctions between the C block and other auctioned spectrum that merited and formed the basis for the actions taken in the Second Report and Order and any modifications thereof in the forthcoming order on reconsideration.

II. Provide Certainty That Department of Justice Coordination Will Not Result in Delay

Because license returns will terminate the legal merit of licensees' obligations as to remaining license debt and installment payments already made, there will be no need for the Commission to coordinate amnesty debt relief and amnesty-related installment payment refund requests with the Department of Justice. See 4 C.F.R. § 104.1(b) ("in the case of claims (debts) that exceed \$20,000, "[I]f an agency determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence").

Should the FCC find otherwise, however, we strongly advocate "pre-coordinating" the entire group of C block issues with the Department of Justice, so the next FCC release will be able to contain reassurance to licensees that the Department will not delay or reverse the effect of the Commission's decisions.

III. Provide Timing Goals For Rapid Refund of Installment Payments

Second, AmeriCall urges the Commission to set timing goals for provision of installment payment refunds to licensees electing the amnesty option. Rapid refunds within a definite time frame would provide greater certainty in recordkeeping, reassure investors and licensees, and facilitate more rapid deployment of service to the public. We ask the Commission, at a minimum, to set flexible timing goals or date bands for provision of refunds to licensees electing amnesty. For example, the Commission could determine refunds will be provided within one to three weeks after an acceptable refund request is filed.

In the event of any statutory restrictions on outright money refunds, the Commission could permit licensees to choose whether to allocate refunds toward (1) payments due for other spectrum licenses (*with the licensee permitted to determine which pending payments will receive such allocations*), (2) the C block reauction or other future auctions (similarly, with the licensee permitted to determine which payments will receive such allocations), or (3) some combination of these alternatives.

IV. 70% or More of Down Payment Should Be Returned to Licensees Electing Amnesty

We agree with Alpine PCS that the Commission should not require forfeiture of the down payment allocable to returned spectrum. The vast majority of C block licensees did not place unusually high bids and are not in default. Most C block licensees are suffering only because the bottom fell out of spectrum market, due to events beyond their control. We believe that forfeiture of the entire down payment is not rationally related to any actual harm, nor is it based in fact upon any penalty, previously provided for in Commission rules, of which licensees had notice. Bidders who played by

the rules should, upon returning the asset they purchased, receive a full refund of all moneys paid to date, including the full down payment.

Moreover, should the financial situation ease as a result of the Commission's action, and new investors appear, we are quite certain they will not permit allocation of any share of a down payment forfeiture to their own ownership shares (and if ordered to do so, they simply will not invest). In our experience, potential investors will insist the down payment forfeiture will result from events relating to the prior business of the existing investors, regardless of the fact that such a forfeiture may occur despite even the soundest C block business plan. Thus, the greater the down payment forfeiture, the greater the devaluation of the initial, qualifying investors' equity. This will result in effective increase in actual ownership percentage for new investors in relation to the existing small business investors. Should the control group rules counteract this increase, new investors likely will refuse to enter into any arrangement with the existing licensees.

Finally, fairness and equity require at least that the forfeiture in an amnesty or disaggregation election be no greater than the forfeiture by a licensee electing prepayment, *i.e.*, no more than 30% of the down payment. We request a level playing field such that all C block licensees selecting among the new options will benefit from refund of at least 70% of the down payments they have made to the FCC.

We suggest down payments allocable to returned spectrum should be refunded to the licensee in the form of a note, check or other instrument exercisable for immediately available funds, or as a credit exercisable against payments for other auctioned services or for use in future spectrum auctions such as the C block reauction, or

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as a combination of such credits, and in any case should be usable against any such payments as are specifically designated by the licensee. In light of the decreasing actual value of a set dollar amount over time, see letter from Jonathan D. Foxman, COO, AmeriCall International, LLC, to FCC Chairman and Commissioners (September 24, 1997) (discussing time value of money), and in view of the apparent restriction of FCC payments of interest to licensees, the combination of alternatives described here should best permit the value of a refund to most nearly approach the actual value that the refunded dollars represented at the time they were paid to the government.

V. The Commission Should Substantially Eliminate Nonattributable Ownership Limits

NextWave, Northern Michigan and others put forward suggestions, such as further suspension of installment payment due dates, in addition to the four options the Commission adopted to remedy marketplace damage to entrepreneurs' access to capital. In our view, the better method of restoring investment and growth opportunities is to retrieve a concept once raised in the Part 1 rulemaking in this docket, and perhaps better suited to exploration in this PCS entrepreneurs block context: that is, recognize that the special nonattributable ownership limits for the C and F blocks have served out their purpose and should be laid to rest.

At this time, when entrepreneurs block licensees are experiencing extraordinary need to call upon existing and new investors for funds, the 10% control group institutional investor and 25% nonattributable ownership limits (in connection with the so-called "25% option," see 47 C.F.R. §§ 24.709(b)(3), (b)(5)) are simply a roadblock to sustenance and a hindrance to expedited deployment. These limits restrict the amount of capital that can be obtained from noncontrolling investors, regardless of any showing that

such investors have no authority over day-to-day operations, or the hiring, firing, promotion and demotion of senior employees, or other critical licensee control functions. In our view, in light of the impediments that, the Commission has recognized, hinder small business access to capital, and in light of increasing bankruptcies and indications of financial distress by entrepreneurs block licensees, the special ownership and voting limits applied to entrepreneurs block companies should be lifted to permit increased flow of capital into C and F block companies. In the alternative, a licensee should be permitted to operate without further regard to such limits, if the licensee files certification that it remains firmly in control of the licensed operations.

VI. The FCC Correctly Decided The Cross-Default Issue

Cook Inlet Region (“CIRI”) asserts that the FCC should “pursue cross default remedies against C block licensees who default on installment payments. These bidders should not be permitted to use the Commission’s payment rules as a money management system while collecting new licenses.” CIRI links cross-default to an assertion that the FCC should sanction neither bid speculation during an auction nor license “cherry-picking” thereafter.

We strongly disagree. Suffering default penalties is not an encouragement to “cherry-pick.” The Commission’s clarification that there will be no cross-default penalties simply limits the penalty to relate to the violation. We see two reasons why the Commission took the only fair and equitable action.

First, without this clarification, there will be an inexplicable disparity in penalty among licensees, relating only to the value of *other* licenses they hold. Assume, for example, that Licensee A holds 10 licenses and Licensee B holds 50. Both default on

payments for a single license. The winning bid for each of these two licenses was reasonably equivalent (\$500,000 for Licensee A's defaulted license and \$503,000 for Licensee B's defaulted license). If cross-default penalties exist, Licensee B, merely by virtue of the fact that it holds more licenses, will be subject to a five-times greater penalty.

Second, we have held discussions with regional equity funds that invest in operations in a single or contiguous group of states. Such funds are common investment vehicles for those who are familiar only with markets and conditions affecting industries in a particular region. These investors are unwilling to invest in a company should market conditions in other states affect the company. Thus, if the fund determines its investment in XYZ PCS Missouri Licensee Co. will be lost or significantly affected should XYZ PCS Florida Licensee Co. experience difficulties and default on its license payments, the investment company simply will not invest. Given the difficulty small businesses experience in obtaining access to capital, we believe the Commission accurately comprehended the desirability of isolating each license and addressing defaults separately, as if the license-holding subsidiaries were under distinct ownership (because in many cases the passive investors in fact differ).

In addition, we find it hard to believe the small businesses surrendering all C block licenses in an amnesty, thus foregoing any revenue stream from the returned licenses as a means of support, burning lease moneys and salaries in the meantime, and potentially also suffering down payment forfeitures in the millions or hundreds of thousands of dollars, will be in a position to rebid for the same or adequate substitute licenses in a reauction. At most, the reauction may provide a "band-aid" function so

licensees can darn together disconnected F block licenses with a few sparse intervening territories. CIRI should be ashamed of making blatantly anticompetitive, unsupported arguments against other sources of competition and service to the public.

We also note that CIRI resorts to nonsense, discussing “a bidder that acquires a market that it does not truly desire.” Similarly, Sprint asserts that the amnesty option encourages participants to bid without regard to financial ability or market realities, knowing they can surrender their licenses if their bids prove imprudent and rebid at likely lower prices in a reauction.

Why would a licensee make payments, and ultimately forfeit default or other significant penalties, for a market it does not desire? CIRI’s hindsight is 20/20. It would have been irrational for licensees to “game the system” to acquire licenses they fully expected would be subject to default penalties, and even could have resulted in cancellation of all their licenses (since cross-default had not yet been clarified at the time of the auction), in the event of any nonpayment. Sprint’s sense of timing is similarly mixed up. This is a one-shot set of options. When the bidding took place, no one knew they might be able to surrender licenses later, nor did they know what would be the ultimate decision on cross-default. This is a one-time method of restoring opportunities that were damaged by unusual and unforeseeable market hardships, in light of congressional objectives encouraging participation by small businesses.

In reality, the only reason licensees will take amnesty is to return assets that were rapidly devalued as a result of a combination of unforeseeable circumstances. The only reason for default is absolute dire straits. Default penalties are substantial and no licensee with a business plan and a future of FCC dealings would permit occurrence of

such an obligation absent near insolvency. Accordingly, we respectfully suggest, it is an overly facile and shameful tactic to argue that licensees will or feasibly could default for strategic reasons. The Commission's cross-default decision was accurate and, by tailoring the penalty to the size of the violation, and avoiding undue cancellation or revocation of a parent company's licenses in other regions, the decision will not unduly punish investors or customers served by operations utilizing those other authorized frequencies.

CONCLUSION

To decrease the risk of litigation, we ask the Commission to avoid making major changes to the decisions in its carefully crafted Second Report and Order in this docket, and we advocate clarification of the distinctions between the C block and other spectrum bands that merited the Commission's decisions.

In order to increase the certainty that is critical to obtaining and retaining capital for system construction and implementation, we urge the Commission to provide rapid goals for processing of installment payment refund requests, and to determine that termination of C block debt obligations need not be coordinated with the Department of Justice, or in the alternative, will be "pre-coordinated" with the Department.

We also urge the Commission to determine that fairness and equity require that the down payment should be returned to licensees electing amnesty, or in any event should not exceed the 30% assessment upon licensees electing prepayment. In addition, the Commission should resurrect the concept of eliminating the special ownership limitations for C and F block institutional investors within a control group and nonattributable investors outside the control group. Finally, it is critical that the Commission retain its cross-default

decision, which correctly tailors the penalty to the size of the violation and is vital to the meeting the best interests of licensees, investors and most importantly, the public.

Respectfully submitted,

AMERICALL INTERNATIONAL, LLC

A handwritten signature in black ink that reads "Julia F. Kogan". The signature is written in a cursive style with a large, sweeping flourish at the end.

By: Julia F. Kogan, Esq.
General Counsel / V.P.

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December 23, 1997

CERTIFICATE OF SERVICE

I, *Lisa Johnson*, an administrative assistant in the office of AmeriCall International, LLC, do hereby certify under penalty of perjury that on this 23^d day of December, 1997, the foregoing Comments were delivered by hand to the Secretary of the Federal Communications Commission and to the following persons:

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