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Before the  
Federal Communications Commission  
Washington, D.C.

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DEC 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**OPPOSITION TO AND COMMENTS IN SUPPORT OF PETITIONS FOR  
RECONSIDERATION AND CLARIFICATION**

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## Summary

Omnipoint believes that the Commission should take the following actions in response to the Petitions for Reconsideration filed by other parties in this proceeding:

- *Revisit*, and perhaps *eliminate*, the prepayment option, as it will serve the interests of only a few of the very largest and most irresponsible Block C bidders, and discriminates against all other bidders.
- If the prepayment option remains, *reject* proposals for a 100% credit for down payments under the prepayment option. A full credit buy back is completely unfair to all other bidders that never had the opportunity to engage in such a free "call option" on Block C licenses. The 70% credit is reasonable, and is consistent with the Commission's rules.
- If the prepayment option remains, *reject* proposals for a Net Present Value ("NPV") reduction of the auction debt under the prepayment option. For the high bidder to pay, post-auction, only a fraction of its bid is fundamentally unfair to, and discriminates against, all other auction participants who were never offered that additional discount on their bids. Further, it is conceptually flawed and would skew the results of the auction if any bidder had a discount rate even 1% below the post-auction discount rate selected by the Commission. Moreover, without express authority for such post-auction debt reduction, an NPV reduction would only invite significant litigation delay for all Block C licensees.
- *Eliminate* the apparent "cherry-picking" under the prepayment option for licensees claiming that they now "can't afford" the costs of their own bidding in a given MTA, or, alternatively, *offer* it to all parties under all options, including the Built-Out option.
- *Reject* NextWave's proposal to eviscerate the provisions defining the Built-Out licensees. The current Built-Out definition is objective, and reflects compliance with the Commission's existing five-year build-out rule for Block C licensees.

- *Extend* the same relief options to Block D, E, and F small business licensees as are offered to Block C licensees. There is no sustainable reason to favor one set of PCS small businesses over the other, and bidders in the Block D,E, and F auction would surely have bid differently if they could have known that Block C licenses or the 15 MHz licenses would be soon coming back for reauction at potentially lower prices.
- *Bring Certainty* to a number of outstanding legal issues so that licensees can make a truly rational and informed election decision. These issues include: the process of election; the Commission's treatment of licensees in bankruptcy; the process of debt forgiveness under the three options, including coordination with other governmental agencies.

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**OPPOSITION TO AND COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

**Introduction**

Omnipoint Corporation ("Omnipoint"), by its attorneys, hereby files this opposition and comments in support of the petitions for reconsideration and clarification of the Second Report and Order<sup>1</sup> ("Second R&O"). Omnipoint, through its subsidiaries, holds 18 Block C broadband PCS licenses for which it bid a net price of \$509 million, and it also holds 108 Block D, E and F licenses for which it bid a net price of \$181 million (including 50 Block F licenses at a net price of \$74 million). The Second R&O significantly affects Omnipoint's participation in the Block C auction and its business of providing innovative, entrepreneurial wireless telecommunications in markets throughout the United States.

As noted in Omnipoint's Petition for Reconsideration, the Commission and the wireless industry should seek to maintain the overwhelming success of the Entrepreneur's Band. Out of the 90

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<sup>1</sup> 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 Rule Making, WT Dkt. No. 97-82, FCC 97-342, 62 Fed. Reg. 55348 (Oct. 24, 1997).

Entrepreneurs placing high bids in the C Block auction, only seven (less than 8 percent) are requesting any reconsideration to the major structure of the Second R&O.<sup>2</sup> Omnipoint appreciates that the Second R&O did not embrace many of the more irresponsible and drastic rule changes advocated by some parties. However, in their petitions for reconsideration, several parties have once again requested that the Commission adopt rules that would undermine the integrity of the auction process and harm small business auction participants. The Commission should deny those petitions for reconsideration.

### Discussion

#### **I. The Commission Should Refrain From Modifying the Pre-Payment Option In Ways That Are More Fundamentally Unfair and Suspect to Additional Legal Challenge.**

Any prepayment option, including the prepayment option adopted by the Commission, may be quite unfair to all other auction participants.<sup>3</sup> Prepayment using the licensee's consolidated down payments on all Block C licenses is inherently discriminatory, since mathematically it can be used only by the very largest bidders: "[t]he largest bidders, in effect, will have banked their money at the FCC and [will] now be allowed to cherry pick which licenses they keep."<sup>4</sup> In addition, prepayment is contrary to the rules extant at the time of Block C bidding, by which deposits were applied to specific licenses and could not be lumped together for paying off some licenses and relinquishing others with no consequence. The only fair cash buyout for a given license would simply be the nominal net high bid

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<sup>2</sup> The seven petitioners are: Alpine PCS, Inc.; DiGiPH PCS, Inc.; GWI; MFRI Inc.; NextWave; Northern Michigan PCS Consortium; RFW PCS Inc.; and Urban Communicators PCS Limited Partnership. Other petitioners requesting radical change to the Second R&O are either affiliates of NextWave (or other bidders), resellers, or parties owed money by various bidders seeking relief.

<sup>3</sup> See, Ex Parte Presentation of Omnipoint Corporation, WT Dkt. No. 97-82 (filed Sept. 23, 1997) (attachment "The Unfairness of the Deposit Based Buyout Proposal").

<sup>4</sup> Id.

price of that license offset by the down payment made on that license (as well as any principal payment(s) made).

Omnipoint submits that the Commission should refrain from adopting the proposals of some Petitioners who request that the Commission further modify the prepayment option in ways that would further compromise the principles of fairness and integrity of the auction process. Second R&O, at ¶ 2. In significant ways, some Petitioners now request that the Commission revisit certain aspects of the prepayment option in order for those parties to treat their high bids as essentially free "call options," and to completely escape the risk of default that all other bidders had reasonably undertaken.

**A. A Prepayment Option With a 100 Percent Credit on Down Payment Would Be Fundamentally Unfair to All Other Bidders.**

Omnipoint opposes those petitioners seeking further relief through reconsideration of the Commission's prepayment option that provides the licensee with a 70 percent credit of their down payments to be used for license buy back. A small number of Petitioners want the Commission to augment the credit, and provide the licensee with 100 percent of its down payment.<sup>5</sup> Omnipoint opposes this full credit for buyout under the prepayment option for several reasons, not the least of which is that it amounts to a costless call option to engage in post-auction "cherry picking." No other high bidder, except those with extremely unique license holdings across multiple MTAs (which could only be known post-auction), can take advantage of the prepayment option at all. To let such licensees aggregate down payments across licenses and apply that aggregated money to the prepayment of one or more select licenses, with a 3% fee known in advance, is more than generous. Further, as noted by the Commission, a full credit buyout would be unfair because "there would be no deterrent effect against bidding excessively in the auction or otherwise gaming the process."<sup>6</sup> To avoid further harm to the integrity of

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<sup>5</sup> See, generally, Petitions for Reconsideration of Alpine, MFRI, NextWave, and RFW PCS.

<sup>6</sup> Second R&O at ¶ 65.

the auction process, the Commission should deny those petitions seeking to provide licensees with a full credit for the prepayment option.

In its Petition for Reconsideration (at 11-15), NextWave brazenly asserts that the Second R&O unfairly penalizes C Block licensees and is "a startling, after-the-fact revision of an established rule." *Id.* at 11.<sup>7</sup> NextWave seems convinced that anything but full credit for its deposits is beyond the reach of the Commission's authority. *Id.* at 13. Furthermore, Urban Communicators believes that the Commission's rulemaking action -- to analogize the existing 3% default charge to the situation of a licensee returning licenses in the prepayment option -- is an "unjustified" punitive decision."<sup>8</sup> Omnipoint urges the Commission to reject this line of argument.

When a high bidder licensee chooses to be in default of its payment obligation, it is effectively trying to "free" itself from its bid. Likewise, under the prepayment option, by returning some licenses, the licensee "frees" itself of bidding commitments that it no longer wish to honor. In either case, the societal costs and government costs are similar, and should be accounted for by the licensee cost-causer. As the Commission has explained, the three percent penalty provides the proper incentives for the licensee to take into account the costs of its decision, which include (a) reduction in efficiency of the assignment process; (b) loss of opportunities for other bidders to incorporate the returned license into the bidders' initial auction strategy; (c) loss of opportunities for assignment to bidder that may have valued the license more highly than the first licensee; (d) costs to the government for re-auction of the license.<sup>9</sup>

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<sup>7</sup> Curiously, the rule that NextWave claims the Commission has violated (47 C.F.R. § 1.2110(e)(4)(ii)) in no way suggests that the Commission is prevented from applying the 3% charge for the purposes, as described above, of preserving some fairness to other bidders and the integrity of the auction process.

<sup>8</sup> Petition for Reconsideration of Urban Communicators at 10.

<sup>9</sup> Second Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 2348, 2374 (1994), *aff'd on recon.*, Second Memorandum Opinion and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 7245, 7251 (1994).

As the Commission has previously explained, the three percent penalty is approximately the commission cost that cellular licensee brokers charge for a private resale of a license, and so such a fee is more than appropriate in this case.<sup>10</sup>

Further, a three percent charge is not a "punitive" measure since the default provision was part of the Commission's rules even before the start of the Block C auction,<sup>11</sup> and as it merely ensures that the licensee acts in a responsible manner when it decides to give up its license. Second Report and Order, para. 155 (Commission determined that a higher or "punitive" fee would not be justified, and would encourage private resale, as opposed to resale by public auction). In addition, the three percent fee provides an easily ascertainable measure for the benefit of the Commission, the licensee, and its investors.

Finally, a 100% credit on deposits would provide the prepayment option licensee with a tremendous windfall -- a cost-free call option. The unfairness of such a cost-free option is demonstrated by the considering the situation of bidders that dropped out of the Block C auction entirely -- GO, US Airwaves, etc. -- who had no ability to bank their deposits at the FCC and have no post-auction choices of which licenses they wish to keep. Instead, those bidders lost everything. By not allowing licensees to utilize the full amounts they bid, the Commission is ensuring for this and future auctions that bidders will not be permitted "walk away" from their bids without consequence whatever.

**B. The Pre-Payment Option On a Net Present Value Basis Is Unfair to All Other Bidders, And is Legally Suspect.**

Omnipoint opposes Petitioners' requests for the Commission to apply a discount, or net present value ("NPV"), to reduce the outstanding Block C debt under the prepayment option. See, e.g., Petition

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<sup>10</sup> Second Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. at 2374 (¶ 155).

<sup>11</sup> At a minimum, all reasonable bidders should have anticipated that the Commission would not simply allow licensees to use the Block C auction to acquire cost-free call options.

for Reconsideration of NextWave Telecom Inc., at 5-10 ("NextWave Petition").<sup>12</sup> Petitioners raise no new arguments or facts to support their reconsideration request; these claims were thoroughly considered and rejected by the Commission. See Second R&O, at ¶ 66. In addition, applying an NPV to further reduce the Block C obligation under the payment option would be fundamentally unfair to all other bidders in the auction who properly relied on the Commission's rules when they bid (i.e., a high bidder must pay back the entire nominal amount of its bid or the license is automatically canceled (47 C.F.R. § 1.2110(e)(3)(iii)). Further, an NPV reduction in the license debt owed would be impossible to implement in a manner that is fair and avoids unjust enrichment, because all parties -- including each Block C licensee and the U.S. Government -- have separate costs of capital. Finally, a post-auction NPV reduction is legally suspect because the Commission has no express statutory authority to discount debt owed to the federal government.

After the auction has closed, it is fundamentally unfair for the Commission to offer only the "high" bidder an opportunity to pay a discounted fraction of its high bid. See, e.g., Petition for Reconsideration of Alpine PCS at 10 (requesting 59% discounts off its net high bid price). All other competing bidders in the auction would be deprived of such a payment option, and denied the opportunity to win that license on the same added "discounts" and terms as are now offered to the licensee. Thus, such a rule would treat equally qualified small business auction participants in a disparate manner. In addition, such a rule would significantly upset valid reliance interests because, at the time of the auction, the only reasonable premise that all other competing bidders could have relied on

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<sup>12</sup> Omnipoint notes that NextWave's Petition (at 9, n. 19) suggests that Omnipoint supports an NPV reduction of Block C auction debt. That suggestion is simply inaccurate. Omnipoint has never supported proposals to reduce Block C debt on an NPV basis. See Omnipoint Ex Parte Letter of July 2, 1997, WT Dkt. No. 97-82 at 1 ("Omnipoint is concerned about other proposals, such as Amnesty or NPV pre-payment, because of the problems of fair implementation and significant litigation."); Ex Parte Presentation of Omnipoint Corporation, WT Dkt. No. 97-82 (filed Sept. 23, 1997) (NPV "cash buyout" would "raise a host of new issues that have never been contemplated in the [Commission's] prior reports and orders on PCS").

was that the Commission would enforce the existing rules -- licensees must "pay what they bid"<sup>13</sup> or lose the license. 47 C.F.R. § 1.2110(e)(3)(iii)("the license will automatically cancel" on default of license debt).

Moreover, implementation of an NPV reduction -- especially the selection of an appropriate discount rate -- would be quite problematic. The very premise of a single "one size fits all" discount rate, such as 15%, is inapt because Block C licensees may have widely differing actual costs of capital. In fact, Petitioners requesting an NPV reduction cannot even provide a consistent cost of capital estimate.<sup>14</sup> Even within a single company, the cost of capital of a given venture will vary depending on a number of factors, including the services to be offered, the level of wireless competition and demand in the market. Actual cost of capital also varies over time with general (i.e., inflation) and industry-specific economic indices (i.e., telecommunications stock market performance). Thus, if the Commission were to select a post-auction discount rate today, it will certainly be either too high or too low for any particular bidder at the time the licensee actually pays the debt. Mathematically, if any bidder had a discount rate even 1% below the one selected post-auction by the Commission, the outcome of the Block C auction would be significantly changed. In sum, Petitioners ask for the Commission to engage in a post-auction and highly arbitrary process of selecting a proxy discount rate for the entire Block C industry, which will benefit only a few "high" bidders.<sup>15</sup>

Petitioners also fail to explain why the Commission should focus solely on the debtor's cost of capital. An NPV analysis should properly focus on what the creditor of the debt, the U.S. Government,

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13 Id.

14 Compare, Petition for Reconsideration of Alpine PCS at 10 (assumes a 25% cost of capital), with, NextWave Petition at 9 (suggesting costs of capital of 15%, 20.2%, or 16.5%).

15 Alternatively, setting an individualized discount rate for each Block C licensee risks even more arbitrariness, and would entail complex and expensive financial projections, audits, etc. See NextWave Petition at n.22 (accord).

could otherwise earn by placing the money in alternative investments. In this case, that alternative discount rate is already established: the yield on ten year U.S. Treasury notes. The Commission does not, for example, have some alternative investment on which it earns a rate of 15%. Applying a discount rate that advantages the licensee-debtor necessarily deprives the U.S. Government, and thereby the American taxpayer, of the benefit of its agreement.

As a result of these variables, the prepayment option with an NPV reduction of debt would be transmuted into a relief option only for the very largest licensees that have a lower actual cost of capital than the Commission-selected rate. Those licensees will, however, receive an unjust enrichment because they are paying off debt for lower than their actual costs. As the Commission noted, such an arrangement "is outside normal commercial practices and otherwise appears to be a 'bail out' of C Block licensees . . . after the auction was completed and the financial commitments were made." Second R&O, at ¶ 66.

Finally, it is highly questionable whether the Commission has the statutory authority to discount the debt owed by Block C high bidders. Section 309(j) of the Act does not provide for the Commission to engage in such post-auction reductions of debt. In fact, Section 309(j)(3) would suggest otherwise: the competitive bidding allocation process, not the Commission, is intended to select winners and losers and to recover "for the public a portion of the value of the public spectrum resource . . ." and to "avoid[] unjust enrichment." 47 U.S.C. § 309(j)(3)(C). Of course, the Commission is also directed to regulate competitive bidding for licenses in a manner that promotes small businesses. Id. at § 309(j)(3)(B). However, a whole-scale reduction of auction debt serves to disadvantage all competing small businesses that did not win a given Block C license merely for the sake of the single small business licensee. It is questionable that such a regulatory intervention furthers the Congressional goals to promote small business, it only favors a few specific bidders over a myriad of other bidders. It is also important to note that, to the extent that some licenses are turned in because an NPV discount is not offered, such licenses will be re-auctioned to other small businesses willing to meet their auction promises, which is far more clearly in furtherance of the same Congressional mandates.

The Commission should avoid the arbitrary decisionmaking and jurisdictional perils associated with the formulation of an NPV discount, and should avoid the delay that the resulting legal battles would entail.<sup>16</sup>

**C. The Pre-Payment Option Should Either Eliminate "Cherry Picking" or Offer It to All Parties Under All Options**

Omnipoint believes the Commission should either eliminate the "cannot afford" exception to the prepayment option or offer general "cherry picking" to all licensees under any of the options, including the Built-out provision. Elimination of the "cannot afford" exception, as currently crafted, would be appropriate because it permits a licensee to evade the proscription against "cherry picking" by claiming that it cannot "afford" to buy out all BTA licenses in an MTA.<sup>17</sup> In the alternative, and for the sake of parity, the right to "cherry pick" should apply to all the options. No public policy goal is served by penalizing licensees like Omnipoint that acted in reliance on the premise that the rules would be enforced and went forward to build-out licenses and offer service to the public. Yet, the current prepayment rule provides "cherry picking" opportunities for those that have failed to build out their licenses, while the current amnesty and disaggregation options effectively trap those licensees that have carried on with build out and service to the public by having to pay for all the BTAs in an MTA even if it has only built-out certain BTAs.

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<sup>16</sup> See Sixth Report and Order, 11 FCC Rcd. 136, para. -- (1995) (legal uncertainty associated with is itself a rationale for taking course which "would be minimally disruptive to as many of the interested parties, potential bidders as well as members of the financial and investment communities as possible"), aff'd, Omnipoint Corp. v. FCC, 78 F.3d 620 (D.C. Cir. 1996).

<sup>17</sup> Comments of DiGiPH at 11.

## II. The Commission Should Reject NextWave's Proposal to Change the "Built Out" Provision of Amnesty Option.

In its petition for reconsideration, NextWave argues that the built out exception, as currently written, is impossible to apply.<sup>18</sup> It states that the Second R&O requires an entity to have initiated commercial operation, which is "difficult to assess."<sup>19</sup> Rather, NextWave would have the Commission clarify the built out exception to include all licensees that have "invested significantly" in network build out activities.<sup>20</sup> For the reasons stated below, Omnipoint opposes this request, and believes that NextWave is simply wrong. Compliance with the current build-out rule is straightforward and easy to assess.

In the Second R&O, the Commission states that "licensees that have met or exceeded the five year build out requirements by September 25, 1997 . . . will not be required to surrender licenses for built out markets."<sup>21</sup> In its petition, NextWave finds this definition to be "difficult to assess." Omnipoint submits that this standard is easily definable -- there exists a Commission Rule defining the five year build out requirement<sup>22</sup> -- and thus the exception can be applied with ease and certainty. Using this regulatory definition, the Commission will be able to ascertain which licensees have met the build out requirement, and can thus determine which licensees are eligible for the built out exception.

The current built out provision furthers the important public policy goal of ensuring the rapid deployment of wireless services to the public. As noted by the Commission, "the build-out exception

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18 Comments of NextWave at 16.

19 Id.

20 Id. at 17.

21 Second R&O at ¶ 57.

22 47 C.F.R. § 24.203.

facilitates the achievement of the statutory goal set forth in Section 309(j) that we encourage the rapid provision of service to the public . . ."23 Those licensees that have met the built out requirements have a high level of commitment to a particular market. A provider that has met the build out requirements and established service to the public cannot abandon its customers, or its operating systems, and return licenses to the Commission with the hope that the provider could later acquire the same licenses in a subsequent reauction.

Finally, it is important to note that Omnipoint invested heavily in certain markets, and met the five year build out requirements, without asking for the Commission to change the terms of its bid obligation. Operational licensees like Omnipoint need a built out exception only to protect its investment from the regulatory sea-changes wrought on the entire Block C community by a few licensees like NextWave. NextWave, on the other hand, has requested specific relief and has been the early and active catalyst for many of the regulatory changes brought on by the Second R&O. NextWave made its investment at the same time that it was anticipating and, indeed, causing such a restructuring of the Block C debt. Thus, as a matter of fairness, NextWave is in a completely different posture than Omnipoint. Omnipoint made its investment with no intention to seek relief from its debt. Now, because of the current government intervention in the Block C restructuring, Omnipoint needs fairness for its built out markets.

**III. The Final Relief Measures Adopted In This C Block Proceeding Must Also Be Available to D, E, and F Block High Bidders.**

Essential fairness requires that the relief adopted for Block C small businesses in the Second R&O should be available to D, E, and F Block small business licensees. As noted by Cellular Holdings, the C Block and the D, E, and F Blocks represent virtually identical licensed services and licensing schemes, and so changes to the auction payment rules for one set of licensees (Block C) and not the

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23 Second R&O at ¶ 57.

functionally equivalent licensees (Block D, E, and F) after the auctions have closed is fundamentally arbitrary and inequitable.<sup>24</sup> Omnipoint agrees with Central Oregon Cellular that the Commission's observation that the difficulties faced by C Block licensees versus F Block licensees "appear to be different"<sup>25</sup> is arbitrary and capricious.<sup>26</sup>

The Second R&O represents unanticipated changes for Block C licensees that radically change the *relative* values of the Block D, E, and F licenses compared to the Block C licensees, or the new "15 MHz" licensees that may result from the disaggregation option. Thus, the Second R&O changed the reasonable assessments that Omnipoint and other bidders applied during the Block D, E, and F auction regarding the risk/return parameters of those licenses. The Commission cannot ignore these effects. Many D, E, and F auction winners would have bid differently if they had known that, because of regulatory intervention, the Block C licensees would be retrospectively forgiven their debt and that the Block C licenses would come up for reauction in a relatively short period. Block D, E, and F bidders would also surely have bid in a different manner had they known that new 15 MHz licenses in the same geographic areas would suddenly come up for auction, and be available for potentially less than the Block D, E, F prices per MHz. At a minimum, the Commission should provide all D, E, and F licensees with amnesty, disaggregation, and prepayment options that are functionally equivalent to those available to Block C licensees in the Second R&O after the simultaneous reauction of the returned Block C spectrum.

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24 Comments of Cellular Holdings, Inc. at 2.

25 Second R&O at ¶ 20.

26 Central Oregon Cellular at 3.

**IV. Further Clarification of the Second R&O is Necessary Before Licensees Can Make Rational, and Irreversible, License Election Decisions.**

Omnipoint wholeheartedly agrees with the Commission that "[c]ertainty is beneficial to all C block licensees" and it is best, when feasible, to "resolve[] issues now." Second R&O at ¶4. As noted by Omnipoint and other Petitioners, however, the Second R&O fell short of this goal. Further, the Second R&O stated that the Wireless Telecommunications Bureau would provide further guidance on the interest rate applicable to the C Block installment notes (Id. at ¶ 15 & n. 34); the procedures for implementing the resumption of payments (Id. at ¶ 28); and the filing procedures to be used on Election Day (Id. at ¶ 70). To date, the Bureau has released no clarification on any of these matters. Omnipoint believes that timely clarification of the process, in a manner that permits licensees time to weigh their options, is fundamental before licensees can make rational election decisions.

Several petitioners, including Omnipoint, note that the Second R&O does not squarely reconcile the three new payment options with the reality that all licensees have an additional "option" of Chapter 11 bankruptcy. The Second R&O could have "resolved issues now" in a better manner by defining categorically the Commission's position on bankruptcy: is the Commission's general position as stated in its early filings in the Pocket bankruptcy,<sup>27</sup> or is it willing to agree to compromises as the major creditor in a bankruptcy? Without clarification, every licensee is left uncertain as to whether the bankruptcy option is the lowest risk alternative. As noted by Carolina PCS I, the prospect of a court reducing the debt of either Pocket or GWI while the licensee retains its full license could lead to a widespread filing of similar bankruptcy claims by other licensees unhappy with the Commission's C Block options.<sup>28</sup>

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<sup>27</sup> In re Pocket Communications, Inc., Case No. 97-5-4105-ESD, et al. (Bankr. D. MD).

<sup>28</sup> Comments of Carolina PCS I at 9.

Additionally, the Commission needs to provide clarification as to the role the Department of Justice will play in this widescale restructuring of licensee debt. A licensee cannot chose one of the stated options if there is any uncertainty regarding its choice. As noted by other Petitioners, whether or not the Justice Department acquiesces in the Commission's debt forgiveness will be of major consequence to the C Block licensees. Licensees need either a guarantee that the Department of Justice will acquiesce to the restructuring or assurances that the Commission will not hold a licensee to any particular option should the rules of the Second R&O be changed by executive, judicial, or other regulatory fiat. Omnipoint notes that the silence of both the Department of Justice and the Commission on this issue, as well as the issue of tax consequences to licensees associated with making an election, makes the Second R&O even more ambiguous.

Omnipoint agrees with AmeriCall's request that the Commission should clarify the method and the timing for refunding licensees choosing the amnesty option<sup>29</sup> Omnipoint believes that such clarification is equally essential for licensees that may choose the disaggregation option. As noted by AmeriCall, these issues are especially important to Entrepreneurial companies, such as those affected by the Second R&O, that must account for cash flow issues.<sup>30</sup>

### **Conclusion**

For the foregoing reasons, Omnipoint respectfully requests that the Commission, in acting on the pending petitions for reconsideration, carefully consider whether the proposal put forth by various Petitioners promote sound policy objectives. Finally, Omnipoint respectfully requests that the

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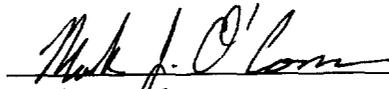
29 Comments of AmeriCall at 4.

30 Id.

Commission further clarify the points contained herein to ensure that all C Block licensees can make rational, informed election decisions.

Respectfully submitted,

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Services (PCS) Licenses )  
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**CERTIFICATE OF SERVICE**

I, Mark J. O'Connor, hereby certify that a copy of the attached "OPPOSITION TO AND COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION AND CLARIFICATION" was served this 30th day of December, 1997 on the following parties via first-class U.S. mail, postage-prepaid:

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The Honorable Harold Furchtgott-Roth\*  
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The Honorable Michael Powell\*  
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The Honorable Gloria Tristani\*  
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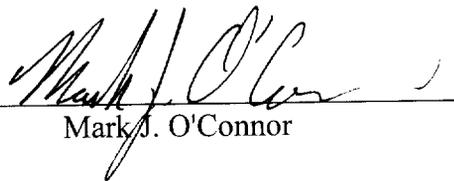
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\*Via Hand Delivery