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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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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) Licensees)

WT Docket No. 97-82

To: The Commission

**OPPOSITION OF NORTHCOAST COMMUNICATIONS, LLC
TO PETITIONS FOR RECONSIDERATION**

Northcoast Communications, LLC,¹ pursuant to Section 1.429(f) of the Commission's rules, hereby files this Opposition to various Petitions for Reconsideration of the Commission's *Second Report and Order and Further Notice of Proposed Rule Making in WT Docket 97-82 ("Second Report and Order")*.² This proceeding began with the release of FCC Public Notice DA 97-679 in June 1997, in which the Commission requested comment on various proposals it had received from financially troubled C Block licensees to restructure C and F block debt, and the FCC's broadband PCS Entrepreneur Block installment payment procedures. Northcoast filed comments strongly opposing any attempts to modify entrepreneur block installment payment frequency, suspend interest payments, reduce the principal amount of debt, or in any other way to relax the entrepreneur block installment

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¹ Northcoast is the licensee of 49 D, E and F Block broadband PCS licenses. An affiliate of Northcoast's, North Coast Mobile Communications, Inc. ("NCMC"), was a bidder in the FCC's C Block auction. However, NCMC withdrew from the auction in late March 1996 after determining that the prices being bid in NCMC's targeted markets had become excessive and outside the scope of even its most aggressive business plan.

² FCC 97-342, released October 16, 1997.

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payment obligations of C and F block licensees. In the *Second Report and Order* in this docket, the Commission largely adopted the strict position advocated by Northcoast and many other C and F block licensee/commenters, and offered C Block licensees limited debt payment relief.

While Northcoast did not favor all aspects of the Commission's decision, it strongly supported the general thrust of the *Second Report and Order*, and determined that it was not necessary to file a Petition for Reconsideration. As a start-up small business attempting to build-out PCS systems in 49 markets, Northcoast is not in the position to expend the resources necessary to prepare and file a lengthy opposition addressing the numerous petitions for reconsideration filed. However, Northcoast has determined that it must go on record, as a directly-affected PCS entrepreneur block licensee, to oppose and refute several of the fallacious arguments being advanced by many petitioners who continue to push for additional financial relief.

First and foremost, Northcoast disputes the repeated "practical" and "policy" arguments advanced by numerous participants in this proceeding, including former Chairman Hundt, that additional debt restructuring is needed to avoid C Block license defaults, licensee bankruptcies and the consequent reactions. One aspect of this argument is that additional debt relief will result in faster build-out of C Block PCS systems, since C Block licenses will not be caught up in bankruptcy litigation or other types legal challenges relating to license default. This argument is simplistic and ignores the fact that if the Commission further modifies the C Block financing and installment payment rules, numerous parties have vowed

to file legal challenges.³ Consequently, bankruptcy litigation is not the only litigation-related source of delay affecting build-out of broadband PCS markets.

These promised appeals would raise serious and substantial legal arguments. Several particularly compelling Administrative Procedure Act ("APA") arguments can be made if any significant changes are adopted. For example, the APA's rule making requirements mandate notice and comment opportunities, with which the Commission complied in developing both general and auction-specific broadband PCS auction rules. C block auction participants not only had the opportunity to participate in the broadband PCS auction rule proceeding, many current C block licensees in fact did participate. Subsequent retroactive auction rule changes that benefit *only one* particular class of entities affected by the rules would constitute disparate treatment and certainly would be deemed arbitrary and capricious. Such a course of action would create an unlevel playing field, be patently unfair to entrepreneur block licensees that bid responsibly and within their financial capabilities, and would undermine the certainty to which interested parties governed by administrative agencies are entitled.

Furthermore, as a practical matter, more lenient C Block payment rules will not result in faster build-out of C Block systems because wide-scale financing for both C Block *and* F Block systems still will not exist. Specifically, if the Commission reconsiders and adopts more lenient C Block installment payment rules, lengthy litigation will result. Northcoast has

³ The Commission should expect lawsuits from C Block licensees who have stated that they are ready, willing and able to meet their installment payment obligations due to their adherence to a responsible business plan, from C Block bidders who withdrew from the auction after the bidding became unrealistic and irresponsible, and from the numerous F Block licensees, such as Northcoast, who did not get caught up in the C Block bidding frenzy, and bid reasonably, without expectation of a second chance if their first, aggressive business plan failed.

been advised by numerous financial lenders and vendors servicing the communications sector that they will not commit to any definitive lender/vendor type relationship until all entrepreneur block litigation is resolved.

Secondly, as a matter of policy, *additional* relaxation of C Block installment payment obligations would be fundamentally unfair to those C block licensees who have honored their financial obligations to the government, and to the majority of C Block licensees who never requested such relief. At a minimum, the Commission would be taking away any competitive advantage these parties may have gained by "playing by the [FCC's competitive bidding] rules". Further, additional C Block installment payment rule changes would be bad policy because it would create uncertainty as to how the Commission will handle situations of licensee default that occur outside of the C Block context. In addition, as the Commission itself has recognized, the Commission must preserve the integrity of its auction process. Additional relaxation of installment payment obligations would only serve to undermine, rather than bolster, that process.

Third and finally, Northcoast would like to reiterate a basic point that it has made repeatedly throughout this proceeding: Any Commission decision to significantly relax C Block debt will have a *dramatic negative impact* on many, if not all, F block licensees. This point is *especially* compelling in light of the *Second Report and Order's* decision that the relief provisions that were adopted are to apply to C Block licensees *only*. For example, many petitioners are still advocating sizeable debt write-off *and* discount to net present value proposals. Obviously, the whole point of these and other proposals is to save C Block

licensees enormous amounts of money in order to not only stave off bankruptcy, but to put them into a more competitive business position.

If the Commission reverses its decision and adopts any of these debt reduction and net present value discount proposals, the financing sources presently available to many F block licensees, such as vendor financing, bank financing and the high yield market, likely will disappear since C block financing opportunities will have become more attractive. Consequently, the Commission would be overtly favoring C Block licensees at the expense of F Block licensees, while also jeopardizing the continued availability of current F block funding sources, placing F block licensees at a severe competitive disadvantage, and in effect penalizing the only group of entrepreneur block licensees that bid responsibly.

The disparity in benefits received between C and F block licensees will only exacerbate the fact that C block licensees already enjoy much more favorable government financing terms, i.e., five year interest-only payments for the C block as opposed to two-year interest-only for the F block.⁴ In sum, if the Commission adopts the petitioners' proposals, it will wipe out any competitive advantage that F block licensees legitimately gained by bidding responsibly and sticking to sound business plans, despite less favorable F block installment payment financing rules.

For the reasons stated above, Northcoast respectfully urges to Commission to deny the Petitions for Reconsideration filed of the Commission's *Second Report and Order*, and to

⁴ See 47 C.F.R. § 24.711(b)(3); 47 C.F.R. § 24.716(b)(3).

move forward with implementing the reasoned, fair and legally defensible approach adopted by the Commission in the *Second Report and Order*.

Respectfully submitted,
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December 30, 1997

CERTIFICATE OF SERVICE

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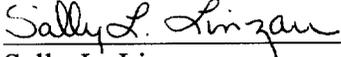
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