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

In the matter of)
)
Amendment of Commission's Rules Regarding)
Installment Payment Financing for Personal)
Communication Services (PCS) Licenses)

WT Docket No. 97-82

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To The Commission

DEC 30 1997

OPPOSITION TO PETITIONS FOR RECONSIDERATION
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Antigone Communications Limited Partnership and PCS Devco, Inc.
(collectively, "Antigone/Devco"), by their attorneys, hereby submit to
the Federal Communications Commission ("Commission") their opposition to
the thirty-plus Petitions for Reconsideration ("Petitions") which were
timely filed in the above-referenced proceeding seeking further debt
payment relief.¹

In the *Second Report and Order*, released October 16, 1997, the
Commission offered four restructuring options to PCS C-block licensees
seeking relief from installment payments owed to the U.S. Government.
Although these options provide substantially more relief than these C-
block licensees are entitled to receive, a small group seeks even more
generous relief from the Commission.

I. Any C-Block Winner Already Is Allowed to Pay Much Less Than It
Owes Under The Buy-out Option and Should Not Be Given any further
Discount

Under the "buy out option", the Commission gave each C-block
licensee the option of using 70% of its down payment to "cherry-pick"
from among the licenses for which it was the high bidder, and purchase

¹ Antigone/Devco does not oppose those Petitions, e.g.,
Omnipoint, Cook Inlet, which seek to eliminate some of the debt relief
already afforded by the Commission.

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any of these licenses at the face value of its bid. The opportunity to "cherry-pick" under this buy out option apparently does not go far enough for some Petitioners, such as NextWave Telecom, Inc. ("NextWave").

In its Petition, NextWave argues that the buy out option should be modified to it to pay some hypothetical "net present value" and not the face value of the bid. NextWave argues that by requiring those C-block licensees who elect this option to pay the already-discounted face value, the Commission is somehow inflating the purchase price. NextWave's claim has no basis in economics or law.

When a person borrows \$300,000 on a 30-year mortgage with a stated interest rate, to finance the purchase of a house the borrower has agreed to pay the lender not \$300,000, but a sum of about \$1,000,000, including the interest component. If the borrower pays the loan off early, the lender discounts the amount due to compensate for the early pay-off, by accepting \$300,000. The lender does not accept a sum of less than \$300,000. Only the unaccrued interest is waived. The "net present value" of a \$300,000 mortgage is -- \$300,000. This is basic economics. ²

In reality, the Commission has acted with too much leniency in allowing high bidders to pick and choose from among licenses. This is especially true when one considers the fact that the face value of the

²Where there is no interest component, then (and only then) is "net present value" different from the principal amount due. Thus, for example, if the PowerBall jackpot is twenty annual payments of \$500,000, then even though the advertised "annuity" value is \$10,000,000, the net present value is perhaps \$5,000,000 (the present value of the twenty payments over time. But the "\$10,000,000 annuity value" is equivalent to the million dollars (principal plus interest) in the mortgage example above, not to the \$300,000 in that example. NextWave mixes apples and oranges.

bid has already been discounted by 25%, by virtue of Petitioners' status as "small businesses".

II. The "Loss of Down Payment" Does Not Constitute a "Restructuring Cost" and Must be Enforced Against Insincere Bidders to Preserve the Integrity of the Auction Process.

Many of the Petitioners would also like to be permitted to utilize their entire down payments under the disaggregation and buy-out options. They argue that by conditioning election to utilize these leniency options upon a C-block licensee surrendering 30 percent of its down payment (under the buy out option) or 50 percent (under the disaggregation option), the Commission is unfairly penalizing licensees whom Petitioners characterize as simply seeking to restructure their payment plans. However, this "loss of down payment" is not a "restructuring cost" and is imposed in order to preserve the integrity of the auction process by penalizing insincere bidding. In her Separate Statement to the *Second Report and Order*, Commissioner Ness addressed this point directly:

If the licensees were able to use 100 percent of their deposits to cherry-pick which licenses they want to keep and which they want to return, they would recoup in full what they paid and there would be no deterrent in future auctions against bidding excessively.

Petitioners have presented no rationale to explain away Commissioner Ness' sage observation.

In its Petition, NextWave blamed post-auction developments and financial difficulties that were "unforeseeable and outside of their control" for the difficulties that it and other insincere bidders now face in raising capital. However, the financial difficulties that C-

block high bidders such as NextWave and General Wireless, Inc. ("GWI") and their prior funding sources, such as Hyundai, now face are directly attributable to one simple fact -- they bid far more than the licenses were generally perceived to be worth at the time the bids were submitted. Many analysts warned before the close of the auction that investors would be wary of the C-block high bidders because they had been bidding prices much higher than that which A- and B-block licensees paid for their licenses. For example, NextWave acknowledged that at the time that it was bidding more than most disinterested observers thought the market would bear. Hyundai had been part of the U.S. Airwaves bidding team, and knew that the leaders of the team -- all cellular veterans -- had dropped out of the bidding because they judged that no reasonable funding sources would be available.³

The Petitioners have not shown that special economic circumstances have affected C-block licensees in any way. Rather, those who now seek further relief submitted insincere bids on the assumption they could renegotiate down (without having to compete against other applications) if they could not attract other people's money. Thus, for example, NextWave told the Securities Exchange Commission that for part of April, 1996 it still did not even have the money for its initial 5% post-auction payment, and would have immediately defaulted (as did BDPCS) if the auction had ended a little earlier.⁴ Quite simply, there is no

³ Hyundai, in particular, displays abnormal audacity in filing its Petition. Hyundai did not provide GWI any funding until late January, 1997, and presumably would not have funded GWI if circumstances had "changed" since May, 1996.

⁴ See NextWave's February, 1997 letter to the SEC, at page 12, response to SEC Comment No. 43, where NextWave said:

[NextWave] did not even have enough contingent Series B [stock] subscriptions to meet the FCC's 5% deposit requirement until shortly before the close of the C-

factual basis for claiming that post-auction developments were "unforeseeable."

If the Commission departs now from its prior decision, the Commission will in effect be imposing no penalty at all upon patently insincere bidders. This would undermine the entire auction process by making speculative bidding virtually risk-free. Any further watering down of the penalties will eviscerate the Commission's ability to punish future wrongdoers and would be unfair to those losing bidders who bid responsibly during the auction.

III. Bidders That Elect One of the Special Relief Options Should Not Be Allowed to Participate in Any Future C-block Reactions.

The Petitioners also want the Commission to not bar C-block licensees that elect the disaggregation or buy out options from participating in future C-block reactions. However, not barring C-block licensees that elect one of these options will have the effect of encouraging bidders in future auctions to submit insincere and speculative bids, knowing that they can opt out of their initial obligations and participate in the reauctioning of the same spectrum at a lower price. A bidder that submits an insincere bid is hoping the perceptions of value will rise post-auction, and will pay its bids if (and only if) this hope comes true. If the hope is not fulfilled, but that same bidder can bid at reauction and acquire the spectrum at a lower price, then the risk of the marketplace is shifted from bidders to

Block Auction.

the U.S. government, while the reward potential is held by the insincere bidder. This will create a great disincentive for making sincere bids, since doing so will become a bad business practice in the face of successful speculative bidding. The Commission should avoid sending such a message, by not permitting licensees that elect the disaggregation and buy-out options to participate in any future C-block reauctions.

IV. No Further Deferral of Payments Should Be Permitted.

The Commission should also not permit any further deferral of payments by C-block licensees. In Appendix A of its Petition, NextWave points out that it has paid the fifth largest sum to the Commission for broadband PCS licenses. However, unlike the other companies listed by NextWave as being in the top ten, NextWave and the other Petitioners have not met their current obligations. The public treasury is harmed by every deferral of payments.

V. Further Delays in the Commencement of Payment Obligations to Await the Commission's Completion of the World Trade Organization Implementation Proceeding and the Auction Rule Rewrite Are Unjustified

To further delay payment due dates and thereby shift even more risk from insincere bidders to the U.S. government (while leaving the reward potential with the insincere bidders) would penalize sincere bidders even further. During the auction, all bidders knew about both foreign ownership restrictions and prospects for a change in the statute, and bid accordingly. Those whose bids assumed that laws would be enforced should not now be penalized for that assumption. Sincere

bidders that made prudent business decisions in withdrawing from the auction did not receive the benefit of the WTO or any new auction rules that the Commission may adopt in the future. If new rules are now available, the beneficiary should be the winners at reauction, not those who violated the old rules. Therefore, allowing Petitioners to further delay payment obligations will create a different set of rules for prior high bidders to which the rule-abiding prior bidders will not receive access.

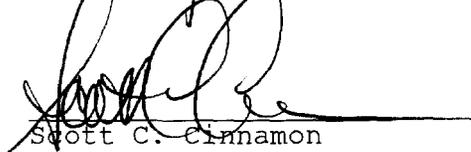
There has been enough delay in payment, and the WTO will be available in due course to everyone. Further interim delays will only make the Commission appear unconcerned about respect for the rule of law.

CONCLUSION

The Petitioners are not entitled to any further relief from their installment payment obligations. Having knowingly and willfully bid what they did on their C-block licenses, the Petitioners must be held responsible for their own actions. If anything, the *Second Report and Order* was too lenient towards the Petitioners. The Petitions that seek further relief should be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, Sandra Tucker, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I caused a copy of the foregoing Opposition to Petitions for Reconsideration to be sent via hand delivery or first class U.S. mail this 30th day of December, 1997 to each of the following:

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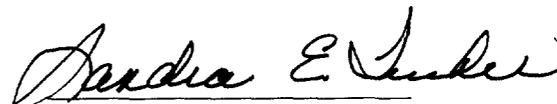
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