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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 6, 1998

EX PARTE OR LATE FILED

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

Re: Notice of Ex Parte Communication;
Broadband PCS C and F Block Installment
Payment Restructuring; WT Docket No. 97-82

Dear Ms. Salas:

NextWave Wireless Inc.

Yesterday Allen Salmasi, Janice Obuchowski and Gabriela Manriquez of NextWave Telecom Inc. ("NextWave" or "company") met with Commissioner Tristani and Karen Gulick to discuss issues in the above-referenced proceeding. The views expressed by NextWave's representatives reflect the positions and ideas previously presented to the Commission in the company's written filings and in the attached material, which was distributed at the meeting.

In accordance with Section 1.1206 of the Commission's rules, an original and two copies of this filing are being submitted to you today. Please direct any questions concerning this matter to me at 202-347-2771.

Sincerely,

Michael R. Wack

Michael R. Wack
Vice President, Regulation

Attachment
cc w/out attach: Commissioner Tristani
Karen Gulick

No. of Copies rec'd 0+2
List A B C D E

FCC Reconsideration of the Restructuring Order -- Limited Steps Will Yield Compounded Public Interest Benefits

NextWave Telecom Inc.

February 5, 1998

Background

- Hundreds of small business companies -- C-Block licensees as well as the real estate, equipment, and construction companies -- are all dependent on the Commission's reconsideration.
- We have raised a billion dollars in government payments; We are <u>not</u> in default.
- NextWave Telecom had less than two months post license and pre April 1, 1997 to raise capital to build our networks.
- C-Block is a unique situation; it will not repeat itself.
- Public interest requires reconsideration

FCC Reconsideration of the Restructuring Order -- Limited Steps Will Yield Public Interest Benefits

Recommendations:

- Credit of down payment under any scenario
  - ✓ No C block licensee is in default.
  - ✓ Credits will fast start build-out of C block networks to promote ultimate public interest benefit of wireless and local loop competition.

- NPV to be factored in under Option IV
  - ✓ SEC, FCC in Part 1, Omnipoint and AirGate all concede benefits of payment amortization.
  - ✓ Record demonstrates that 15% discount is a very conservative discount rate for wireless start-ups.

Recommendations:

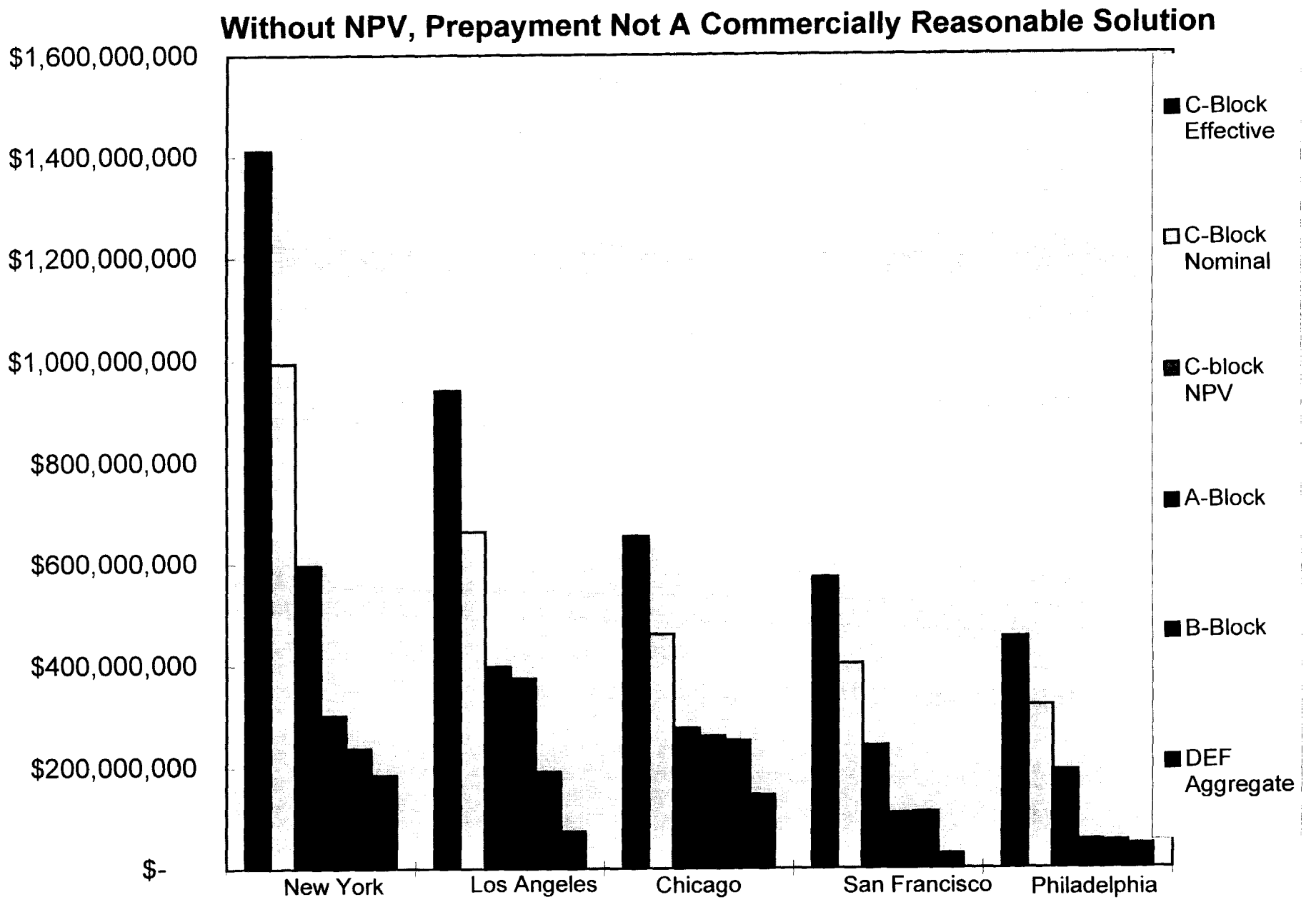
- Flexibility
  - ✓ Can be considered on an MTA-by-MTA basis.
  - ✓ Extends benefits of "Omnipoint exception" to all C block entities.
  - ✓ Guarantees maximum build-out/maximum chance of viability without financial impact on prices bid.

- Deferral
  - ✓ "Stairstep" approach establishes C block bona fides.
  - ✓ Build-out can proceed to promote competition.

- Full auction eligibility for *all qualified small businesses.*
  - ✓ Guarantees most economically efficient reauction.
  - ✓ FCC should recognize the self-serving nature of the Nextel filing:

    – At this late date, the Commission cannot expect new entrant, novice entrepreneurs to enter the broad consumer marketplace expecting to compete effectively against the likes of AT&T Wireless, Sprint Spectrum, BellSouth and Southwestern Bell and other wireless providers operating mature, established systems offering name-brand services. In this marketplace, only those companies – large or small – that have established themselves as providers in particular markets, or that are new entrepreneurial companies with a unique, affordable and technologically-advanced service (for which they can attract significant capital to build out their systems) can expect to put the re-auctioned spectrum to its highest and best use. Therefore, the Commission should make these licenses available to all qualified bidders."

    Nextel, (11/13/97)


Without NPV, Prepayment Not A Commercially Reasonable Solution
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New York
Los Angeles
Chicago
San Francisco
Philadelphia
C-Block Effective
C-Block Nominal
C-block NPV
A-Block
B-Block
DEF Aggregate

C-Block Relief is Unique, and Will Not Have Precedential Forward Impact

- C-Block different from DEF Block:
  - ✓ DEF knew about WCS auction.
  - ✓ DEF knew about installment notes.
  - ✓ DEF did not face similar licensing delays. Uncontested licenses granted 3 months after the date of auction closing, and *before* petition to deny pleading cycle closed.
- C-Block history is one of trial and error. Commission now recognizes the importance of certainty:
  - ✓ "...uniform auction procedures will (1) shorten the rule making process for future auctions ... (2) decrease uncertainty for auction participants; (3) benefit small businesses because uniform rules are more easily understood and complied with ... and (4) enable the Commission to develop a consistent body of law and precedent governing the auction process." Part 1 Rewrite (12/31/97) at para. 5.

- C-Block history is one of trial and error:
  - ✓ "We believe that standardizing the rules regarding definitions of eligible entities, unjust enrichment and bidding credits will assist small, minority and women owned businesses <u>because the rules' predictability will facilitate the business planning and capital fundraising process</u>." Part 1 Rewrite (12/31/97) at para. 14 (<u>emphasis added</u>).

Comments Confirm That C-Block Represents the Only Choice For Resellers

- Cellexis: "while we have attempted to work with the A and B block carriers, our experience has shown that many of these carriers thwart our growth efforts." (1/14/98)

- Cellnet: "Will it [AirGate] follow the lead of its larger PCS brethren such as AT&T, Sprint, Aerial and Omnipoint and have no viable resale programs in place … The fact is, the only PCS carrier who has guaranteed favorable resale arrangements is NextWave." (1/8/98)

- Federal Network: "We have yet to figure out how to 'buy high and sell airtime competitively' and still make a profit. The incumbents continue to quote resale pricing at retail pricing levels." (1/12/98)

- New Wave: "In my experience with the Cellular Industry, attaining a reseller agreement with any of the incumbent carriers is nearly impossible." (1/9/98)

- Prime Matrix: "Very often the resale terms provided by [incumbents], if offered at all, are so onerous that they should not be considered 'network choices' at all. (1/9/98)

- *wireless*Nation: "PCS resale is virtually non-existent without 'C' block carriers such as NextWave." (1/9/98)

Wireless "Competition" To-Date Has NOT Resulted in Substantially Lower Prices. A Healthy C-Block Will

- According to Lehman Brothers analyst John Bensche:
  - ✓ "With AT&T pursuing a cellular strategy to emphasize quality over quantity, and not chase the lower end subscribers in the market, most of the smart oligopolists in its markets will likely take the cue, and use the AT&T umbrella to keep their prices going any lower than necessary. Sprint PCS recently indicated it was raising prices, or changing the terms of its offers, such that its service is not at such a dramatic discount to others. It is a great sign to see the two biggest wireless companies in terms of POPs raising their prices. The much-feared wireless price war seems to have abated, at least for now." (1/27/98)

- Carrier consolidation:
  - ✓ AirTouch - U S West
  - ✓ SBC - PacBell - SNET
  - ✓ Bell Atlantic - NYNEX
  - ✓ GSM Alliance
  - ✓ AT&T Teleport
  - ✓ WorldCom - MCI - MFS - Brooks Fiber
- AT&T recently entered the Washington, D.C. market with prices above those of existing market players. Company is shifting focus to "big spending corporate cellular-phone users." (Wall Street Journal, 12/8/97).
- The average price for a 2.4 minute call in San Diego is still high:
  - ✓ $0.59 for heavy users (>400 minutes/month)
  - ✓ $2.50 - $6.66 for light users

- "It is our view that pricing (per minute) should be reasonably stable for some time, since the pricing umbrella is controlled by the incumbent cellular carriers, who today lack sufficient capacity to dramatically reduce pricing. In general, we believe most analog systems are operated at full capacity for most of the business day. Until cellular carriers have digital, which is several years out, we believe they will be reluctant to engage in aggressive pricing battles." -- Thomas J. Lee, Smith Barney

- "Overall, continued delay in building out C-through-F-block PCS networks could slow the pace of price decline and, therefore, the true competitive 'free-for-all' we had been envisioning for the 1999-2000 time frame." -- The Yankee Group

C Block Licensees Have Experienced Unprecedented Financial and Regulatory Events

- Start of C-Block auction delayed 5 times.
- Uncontested C-Block licenses not granted for almost five months, compared to about three months for all A- and B-Block licenses.
- Last contested C-Block licenses granted 9 months after petitions to deny filed *compared to six weeks for contested A- and B-Block licenses.*
- As a result of modified repayment terms, and overall lack of competition in the auction, F-Block auction nets $2.51/POP.
- Pocket, GWI seek Chapter 11 bankruptcy protection.
- Omnipoint stock plummets.

- Congress mandates WCS auction -- bypassing normal FCC spectrum management administrative processes -- in Fall 1996, which significantly undermines spectrum values. The auction eventually raises only $13.6 million, far less than the $1.8 billion projected by Congress.

- FCC indefinitely suspends installment payments.

- Bankruptcy model dominates discussion and is a self-fulfilling prophecy.

- Cross default not clarified.

NextWave Telecom Inc.

The Seven Myths of C-Block Reconsideration

The Claim: "Wireless competition is alive and well."
-- AirGate (12/29/97)

The Facts:

- ✓ Legacy telecommunications players own 79% of the cellular licenses and 87% of the A- and B-Block PCS licenses in the top 50 markets.
- ✓ Legacy players are not providing competitive opportunities to small businesses and resellers today. C-Block entry is needed to change this equation.
- ✓ Wireless resale is stymied by incumbent players, yet in the long distance market, it proved to be an extremely powerful FCC tool used to gain a toehold by new competitive entrants. WorldCom began as a reseller, and is today the second largest, facilities-based long-distance company in the U.S.

- Wall Street analysts declared the FCC's September C-Block order a major win for incumbents because it will delay the entry of meaningful new competition:

  - ✓ "To the extent that the C-block delays continue, it is a boon to incumbent operators, as the competitive landscape will not become as heated as quickly as first anticipated." -- Jeffrey Hines, NatWest Securities.

  - ✓ "The net result [of C-block delays] is that incumbent cellular and PCS operators will continue to benefit from the absence of a major previously expected competitor." -- Barry A. Kaplan, Goldman Sachs

- ✓ "Even if elements of the current [C-Block restructuring] plan are revisited, most C block licensees will still have to revise their business plans and face tremendous difficulties in financing their businesses. Moreover, larger players opting for the prepay option will be shadows of their former selves, and legal challenges could pose significant delays to the reauction process. This adds up to less competition than expected, later than expected, and bolsters our optimism on the prospects of established cellular and PCS carriers." -- Brian Coleman, BT Alex Brown

The Claim: "The C-block marketplace is healthy and functioning" -- AT&T Wireless (12/29/97)

- The Facts:
  - ✓ Nearly one-third of the POPs in the U.S. are covered by licenses held by carriers in bankruptcy proceedings. The FCC can be assured that without modifications to the Restructuring Order, more companies will seek bankruptcy protection.
  - ✓ C-Block carriers have completed network build out and activated commercial service in fewer than five markets.

The Claim: "Wireless resellers have multiple carrier choices even without the C Block."
-- AirGate, (12/29/97)

- The Facts:
  - Resale lowers entry barriers for small- and minority-owned businesses.
  - According to the National Wireless Resellers Association:
    - ✓ More than 70% of resellers reported being denied access to bulk discounts offered by carriers to their retail customers;
    - ✓ Half of all resellers reported being denied access to a cellular resale agreement;
    - ✓ Over 60% of all resellers said they were denied access to a PCS resale agreement.
  - Wireless resellers account for only <u>two</u> percent of total wireless revenues, compared with <u>twenty</u> percent in the long-distance market.

The Claim: "A net present value discount above the notes' interest rate would change the results of the auction."-- AirGate (12/29/97)

- The Facts:
  - All bidders factored NPV into their bids.
  - The SEC requires licensees to report licenses at the NPV, using an appropriate discount rate. This is an accepted financial industry practice.
    - ✓ Omnipoint 8/14/97 10-Q states, "However, favorable financing terms require the Company to record the debt at a net present value…"
  - Commission expressly recognized time value of money in Part 1 rewrite, replacing its benefit with higher discounts for small and very small businesses. Part 1 Rewrite, (12/31/97)

- "Use of C block 'net bid,' however, only accounts for the bidding discount and does not account for the 'value' of the installment payments … In order to use the C block prices, the 'net price' would have to be adjusted further to reduce the price to reflect the value bidders attached to the installment payment financing. This adjustment is necessary because of the dramatic reduction, and possible elimination, of financing terms from the original C block auction … Installment payments are the most valuable form of financing for entrepreneurs in an auction." -- AirGate (11/13/97)

- "While Sprint does not object to a reasonable adjustment to reflect interest rates available to individual licensees at the time the license was issued, discounting the amount owed by a factor greater than that would effectively reduce the price bid and afford a windfall to licensees electing this option." -- Sprint (12/29/97)

- Comparing the NPV value for a market with the second highest net high bid value is an inappropriate, apples-to-oranges comparison:
  - ✓ A true comparison would show the NPV's for both bids;
- Postauction 18 months, in a different financial environment, many of the bids placed by "disappointed bidders" also would be unfinanceable if the bids had prevailed.
  - ✓ All bidders had similar assumptions about legal, financial and regulatory arenas. Bidders with unique business plans and higher expected rates of return were able to place higher bid amounts.