

Before the  
Federal Communications Commission  
Washington, D.C.

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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) Licenses	)	
	)	

**PETITION FOR RECONSIDERATION**

Omnipoint Corporation ("Omnipoint"), by its attorneys, hereby petitions the Commission for reconsideration of the Order on Reconsideration of the Second Report and Order<sup>1</sup> (the "Recon. Order") in the above-captioned proceeding.

**Introduction**

The Recon. Order was the Commission's response to 37 petitions for reconsideration of the Second Report and Order<sup>2</sup> ("Second R&O") in the above-captioned proceeding. In general, Omnipoint believes that the Recon. Order resolved issues in a forward-thinking manner that extracts the C Block from the morass of conflicting claims. While the Commission did not adopt

<sup>1</sup> In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Order on Reconsideration of the Second Report and Order, WT Dkt. No. 97-82, FCC 98-46, 63 Fed. Reg. 17111 (Apr. 8, 1998).

<sup>2</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).

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many of Omnipoint's proposals, neither did it adopt those of other parties in the proceeding. Overall, the importance of moving forward outweighed the interests of further revisions to achieve greater fairness for those that played by the rules. As the Commission is aware, in the interests of trying to foreclose the gaming that has characterized the C Block, Omnipoint voluntarily "went first" by publicly announcing on April 20, 1998 that it would accept the options of the Commission's Recon. Order and even announcing which options it intended to elect. Unfortunately, the April 24 bankruptcy decision regarding GWI PCS, Inc.<sup>3</sup> now has the potential to, once again, cast the C Block backwards. Omnipoint urges the Commission to stand by its Recon. Order and to hold to the June 8, 1998 election date.

In this reconsideration petition, Omnipoint encourages the Commission to take steps to clarify its position in two key areas. Omnipoint was among those seeking reconsideration of the Second Report and Order, and had argued, *inter alia*, that the Commission should not require Block C licensees to make any elections without first (1) securing publicly-stated approval of the Commission's debt forgiveness plan from the Department of Justice ("DoJ") and (2) defining categorically the position it would take toward those Block C licensees who filed for bankruptcy. Unfortunately, the Commission did not address either issue in the Recon. Order. Because both issues could significantly impact the elections that Block C licensees must make on June 8, 1998, particularly in light of the GWI decision, Omnipoint, once again, asks the Commission to consider and resolve these matters.

**1. Department of Justice Concurrence in the Commission's Option Plan.**

Omnipoint believes the Commission is the expert federal agency regulating wireless communications, and that it implements the federal spectrum auctions pursuant to Section 309(j)

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<sup>3</sup> In re GWI PCS, Inc., No. 397-39676-SAF-11 (Bankr. N.D. Tex.; Bench Ruling, April 24, 1998) ("GWI").

of the Communications Act. Each of the new options adopted in the Second R&O and modified in the Recon. Order contemplates the reduction of billions of dollars of debt owed to the federal government in exchange for the return of surrendered spectrum/licenses.<sup>4</sup>

Omnipoint asks, however, that the Commission clarify *in advance* of the June 8 election date that the DoJ has coordinated its position with the FCC, and that the DoJ has accepted the terms of the Recon. Order. Without this clarification, the Commission faces the risk that the election will pose considerable uncertainty for Block C licensees. At the time of the June 8 election, Block C licensees could still be unsure whether the act of surrendering spectrum will, in fact, result in a forgiveness of their debt obligation to the federal government. This uncertainty is perpetuated by the fact that the DoJ has not publicly commented on the Commission's debt forgiveness plan.

**2. The Commission Must Address the Issue of Bankruptcy in This Proceeding.**

In its petition for reconsideration of the Second R&O, Omnipoint suggested that the Commission had not reconciled its three new payment options with the reality that all licensees have an additional option of Chapter 11 bankruptcy. Omnipoint invited the Commission to publicly state its general position to be applied in *every* entrepreneur band bankruptcy, so that Block C licensees could rationally decide with some certainty whether to surrender or retain their licensed spectrum on election day. Indeed, it initially appeared that the Commission intended to take the unwavering position that it would not compromise its agency status in a bankruptcy.

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<sup>4</sup> As Omnipoint and others pointed out in their petitions for reconsideration of the Second R&O, it is not apparent that Section 309(j) vests solely in the Commission the authority to engage in such debt forgiveness, especially since 31 U.S.C. § 3711(a)(2) on its face limits the amount of a government claim that an agency like the FCC may compromise to "not more than \$100,000 . . . ." The Commission also indicated in the Second R&O that debt forgiveness "*will be subject to coordination* with the Department of Justice . . . ." Second R&O at ¶ 53 (emphasis added); *id.*, at n. 123.

However, in its Recon. Order, the Commission declined Omnipoint's invitation and did not comment on the bankruptcy issue at all. Given that a single judge in one bankruptcy court reduced GWI's Block C debt by approximately \$900 million under a fraudulent conveyance argument, the Commission should enunciate before June 8, 1998 the position it will take with respect to such decisions in every bankruptcy case, and what it intends to do if the GWI decision stands.

Omnipoint urges the Commission to maintain the options available in the Recon. Order, keep to the principles enunciated in the Recon. Order (at ¶¶ 7-8, 10), and continue to vigorously oppose such aberrational results as the GWI fraudulent conveyance decision. There is a huge difference between a fraudulent conveyance decision and other outcomes in a bankruptcy. Omnipoint also supports the Commission's decision to expeditiously reconcile the Block C restructuring process by maintaining the June 8 election date. However, on reconsideration, the Commission must clarify that it will not permit Block C licensees that abide by the Recon. Order -- that is, licensees that make June 8 elections and pursue a foothold in the competitive wireless market (instead of holding onto "call options" for future bankruptcy litigation) -- to be left stranded vis-a-vis Block C licensees that opt for bankruptcy.

It is not Omnipoint's position on reconsideration here to propose changes to the Recon. Order, but rather for the Commission to clarify its position and, in particular, to affirm that C Block licensees abiding by the Recon. Order and making elections on June 8 will continue to be treated fairly and equally by the Commission, especially if future C Block bankruptcy decisions effectively undermine the principles of fairness and equal treatment for all licensees. No one can deny that the GWI decision will have a profound effect on the licenses held by Block C entrepreneurs who decide not to elect the bankruptcy option if decisions like GWI become more prevalent or are not overturned by higher courts. The inability to predict what legal principles the bankruptcy courts will establish to resolve the unique and peculiar circumstances of the C Block will create an uncertainty in the marketplace. This, in turn, makes it harder for licensees

who work within the Commission's Recon. Order to finance and pay for their operations, unless the Commission commits to fairness for all licensees (even on a retroactive basis).

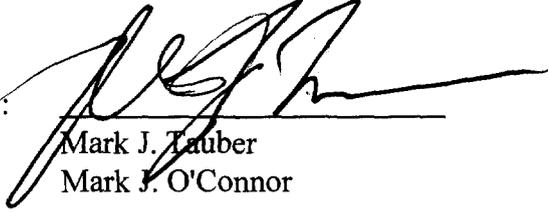
The Commission needs to assure the Block C community that it will not permit licensees making good-faith elections on June 8 to be adversely affected by post-election bankruptcy court decisions. To the extent that (a) the Commission decides to significantly alter its position on bankruptcy, or (b) the aberrational results such as the GWI decision become a viable bankruptcy option (and are not overturned by higher courts), then the Commission must clarify that it will also treat nonbankrupt Block C licensees fairly, in retrospect. Specifically, if such conditions ((a) or (b)) occur, the Commission should offer to return the C Block licenses/spectrum surrendered, and then adjust the debt of those entrepreneurs not electing the bankruptcy option to a debt level equivalent to what the bankruptcy courts are providing to C Block licensees choosing the bankruptcy option. Only in this way can the Commission assure even-handed treatment of all Block C licensees under circumstances that, in some respects, are beyond even the Commission's control.

**Conclusion**

Omnipoint urges the Commission to clarify its commitment to C Block licensees, and the June 8, 1998 election process, in the manner described above.

Respectfully submitted,

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Date: May 8, 1998