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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)
)
)
)
Petition of)
ANISHNABE COMMUNICATIONS)
ENTERPRISE, INC.)
for a Waiver of the June 8, 1998)
Personal Communications Services)
C Block Date to Elect)
Resumption of Payments Option)

WT Docket No. 97-82

**PETITION OF ANISHNABE COMMUNICATIONS ENTERPRISE, INC.
FOR A WAIVER OF THE JUNE 8, 1998 PERSONAL
COMMUNICATIONS SERVICES C BLOCK DATE TO ELECT
RESUMPTION OF PAYMENTS OPTION**

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ENTERPRISE, INC.**

July 20, 1998

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Summary

This Petition seeks a waiver of a time deadline. Anishnabe Communications Enterprise, Inc. (“Anishnabe”), a Michigan Corporation entirely owned and managed by a federally recognized Indian Tribe, the Saginaw Chippewa Indian Tribe of Michigan, requests a waiver of the June 8, 1998 PCS C Block date to elect the resumption of payments option. Due to a regrettable oversight and the April 28, 1998 termination of its outside technical advisors, Anishnabe failed to timely file its election notice by June 8, 1998 as specified in the *Second Report and Order and Order on Reconsideration*. Anishnabe only seeks to elect its option now. Aside from the time waiver, it does not seek to change the terms of the option it selects or challenge the Commission’s decisions in any way.

For the reasons set forth below, granting a waiver of this deadline to allow Anishnabe to elect the resumption of payments option is in the public interest. Among others reasons, granting this Petition will further Congress’ mandate of the promotion of genuine participation of minority businesses in the provision of spectrum-based telecommunication services.¹ The Tribe has been in compliance with Commission rules in all other respects, and hopes that this error in missing the election date will be excused so that it may proceed with developing its PCS business. In light of the Commission’s current payment resumption date of July 31, 1998, Anishnabe respectfully requests that the Commission act on this Petition expeditiously and without waiting for the filing of oppositions or replies.

¹The Tribe is already established in the wireless business. The Tribe also owns an interest in a joint venture that provides cellular service to reservation and non-reservation areas in lower central Michigan. PCS will bring the Tribe, as well as the reservation and surrounding areas, the next step in wireless communications. PCS revenues will be used to fund governmental services and economic development for the Tribe. Anishnabe has invested approximately \$1.3 million in the PCS build-out project, and has completed 80 percent of the first stage RF engineering and build-out.

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**PETITION OF ANISHNABE COMMUNICATIONS ENTERPRISE, INC.
FOR A WAIVER OF THE JUNE 8, 1998 PERSONAL
COMMUNICATIONS SERVICES C BLOCK DATE TO ELECT
RESUMPTION OF PAYMENTS OPTION**

This Petition seeks a waiver of a time deadline. Pursuant to Section 1.41 of the Commission's rules, 47 C.F.R. 1.41, and Sections 4(i), 303(r), 309(j), and 416(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(j), and 416(b), Anishnabe Communications Enterprise, Inc. ("Anishnabe"), a Michigan Corporation entirely managed and owned by a federally recognized Indian Tribe, the Saginaw Chippewa Indian Tribe of Michigan, requests a waiver of the June 8, 1998 Personal Communications Services C Block date to elect the resumption of payments option. This option is detailed in the terms of the First Modification of Installment Payment Plan Note for Broadband PCS C Block included in the Commission's May 28, 1998 letter to Anishnabe ("First Modification") and discussed in the *Order on Reconsideration of the Second Report and Order*.¹ Exhibit A. Due to a regrettable oversight and the April 28, 1998 termination of its outside

¹See, Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket 97-82, *Order on*

technical advisors, Anishnabe failed to timely file its election notice by June 8, 1998 as specified in the *Second Report and Order and Order on Reconsideration*.² Aside from the time extension, Anishnabe does not seek to change any terms of the option selected, or challenge the Commission's decision in any way.

For the reasons set forth below, granting a waiver of this deadline to allow Anishnabe to elect the resumption of payments option is in the public interest. Among others reasons, granting this Petition will further Congress' mandate in the promotion of genuine participation of minority businesses in the provision of spectrum-based services. If Anishnabe is not granted the waiver to elect the resumption of payments option, it is expected to pay on the resumption date all unpaid simple interest accruing from the date of the license grant through the payment resumption date. Currently, there are insufficient funds in Anishnabe's current account to pay this amount on July 31, 1998 and continue the current build-out and construction schedule. Anishnabe's current account does contain sufficient funds to make the appropriate payment under the resumption of payments election option and remain on schedule. In light of the Commission's current payment resumption date of July 31, 1998, Anishnabe respectfully requests that the Commission act on this Petition expeditiously and without waiting for the filing of oppositions or replies.

Reconsideration of the Second Report and Order, 13 FCC Rcd 8345 at paras. 21-23 (*Order on Reconsideration*) (released March 24, 1998).

² See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket 97-82, *Second Report and Order and Further Notice of Proposed Rule Making (Second Report and Order)*, 12 FCC Rcd. 16,436 (released Oct. 16, 1997); *Order on Reconsideration*, 13 FCC Rcd. 8345 (released March 24, 1998).

A. Procedural and Factual Background

1. The Saginaw Chippewa Indian Tribe of Michigan, a federally recognized Indian Tribe, owns and manages Anishnabe.

The Saginaw Chippewa Indian Tribe of Michigan is a federally recognized Indian Tribe under the Indian Reorganization Act of 1934, 25 U.S.C. § 476.³ Pursuant to the Indian Reorganization Act of 1934, a constitutional government governs the Tribe. An 1864 treaty established the Tribe's reservation. This reservation consists of six adjacent townships near the City of Mount Pleasant, Michigan. The Tribe is the sole shareholder in Anishnabe, a Michigan Corporation. All management personnel are Tribal members and the Board of Directors is comprised entirely of Tribal members.

The Saginaw Chippewa Indian Tribe created the corporation Anishnabe solely to obtain and manage the PCS license. As its sole shareholder, the Tribe expects Anishnabe to generate revenue for the Tribe's governmental services and not for any individual. This revenue will fund Tribe economic development and is intended to improve reservation schools, roads, health, and infrastructure. In addition, the Tribe hopes that the PCS license will be a bridge to new technology for Tribal members and others in the central lower Michigan. Additionally, the Tribe also hopes the PCS will diversify economic development and investment, provide business training and experience for Tribal members, and complement current cellular technology. With the exception of this June 8, 1998 election, Anishnabe has been in compliance with Commission rules, regulations, and payments.

³ See 62 Fed. Reg. 205 at 55273 (October 23, 1997)(published list of federally recognized Indian Tribes).

2. **The Saginaw Chippewa Indian Tribe of Michigan also owns a major interest in a joint venture that holds an interest in the RSA-7 Michigan Cellular Partnership. The Tribe has been in full compliance with Commission rules, regulations, and payments.**

The Saginaw Chippewa Indian Tribe of Michigan also owns a major interest in a joint venture that holds an interest in the RSA-7 Michigan Cellular Partnership (“MCP”). MCP is the owner of the cellular license Michigan RSA-7 and serves a large portion of central lower Michigan including reservation and non-reservation lands. This organization has operated for approximately nine years. The Tribe has been in compliance with Commission rules and regulations. MCP generates revenues for the Tribe’s governmental services.

The Tribe has already shown that telecommunication services are an important part of its economic development. Provision of PCS is the next logical step in developing its wireless businesses.

3. **Under Section 309(j)(4)(B), Congress mandated the promotion and participation of entities such as Anishnabe in the provision of spectrum-based services.**

Under Section 309(j)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §309(j)(4)(B), Congress mandated the promotion of the participation of small businesses and other minorities in the provision of spectrum-based services. For each class of licenses the Commission grants through the use of competitive bidding system, Congress required the Commission to promote the objective of “promoting economic opportunity” by “disseminating licenses among a wide variety of applicants including small business, rural telephone companies, and businesses owned by members of minority groups and women.” 47 U.S.C. §309(j) (3)(B). Pursuant to the broadband PCS C block auction and this Congressional mandate, the Commission granted Anishnabe PCS license numbers

PBB241C, PBB307C, and PBB390C. As detailed above, as the sole shareholder of Anishnabe, the Tribe expects that Anishnabe will provide many other benefits to the Tribe and Tribal members, and Anishnabe hopes to serve both the reservation and non-reservation community in central lower Michigan.

4. The Commission extended the deadline for broadband PCS C block licenses to elect a payment option to June 8, 1998; The Commission sent Anishnabe the First Modification on May 28, 1998.

On September 25, 1997, the Commission adopted a *Second Report and Order* which established January 15, 1998, as the deadline for broadband PCS C block licensees to elect to continue under the existing installment payment plan or to elect one of the three alternative payment options.⁴ The election date is the date by which broadband PCS C block licenses were expected to elect what option they will pursue for license payment. On January 7, 1998, the Commission changed that election date to February 26, 1998 in order to allow time to respond to petitions seeking reconsideration of the *Second Report and Order*.⁵ The Commission subsequently determined that additional time would be needed to consider the numerous and wide-ranging issues involved. The Commission moved the election date for C Block licensees to 60 days after publication of the *Order on Reconsideration of the Second Report and Order (Reconsideration Order)* in the *Federal*

⁴ Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,436 (1997).

⁵ Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order*, FCC 98-2 (released January 7, 1998).

Register.⁶ Subsequently, the Wireless Telecommunications Bureau announced an election date of June 8, 1998, and a payment resumption date of July 31, 1998.⁷

On May 28, 1998, the Commission sent Anishnabe the First Modification. *See* Exhibit A. Under the resumption of payments option detailed in this document, Anishnabe would continue to operate under the licenses and continue making payments under the original note in accordance with its terms subject to the modification to the payment terms with respect to suspension interest and deferred interest. *See* Exhibit A, First Modification at 2. The “first installment of ‘Suspension Interest’ (1/8 of all accrued and unpaid interest from the date of the license grant through and including March 31, 1998) is due on July 31, 1998. Each subsequent installment of suspension interest is due and payable with the regularly scheduled quarterly payments” until the Suspension Interest has been fully paid. Exhibit A, First Modification (May 28, 1998 letter) at 2.⁸ As such, all interest accrued from the date of license grant through March 31, 1998 will continue to be payable over eight equal payments. In addition, *inter alia*, all of the accrued and unpaid interest from April 1, 1998 through and including July 31, 1998 is due on July 31, 1998 and the regular quarterly installment payments resume three months after July 31, 1998 and are due on October 29, 1998. *Id.*

If Anishnabe is not granted the waiver to elect the resumption of payments option, it must pay on the resumption date “all unpaid simple interest accruing from the date of the license grant through

⁶ Amendment of the Commission’s Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order*, FCC 98-28 (released February 24, 1998). *See* 47 C.F.R. § 1.4 regarding computation of time.

⁷ “Wireless Telecommunications Bureau Announces June 8, 1998 Election Date for Broadband PCS C Block Licensees,” *Public Notice*, DA 98-741 (rel. April 17, 1998).

⁸ *See Second Report and Order*, 12 FCC Rcd 16449-51 paras. 25-27

the payment resumption date.”⁹ Currently, there are insufficient funds in Anishnabe’s current account to pay this amount on July 31, 1998 and continue the current build-out and construction schedule. Conversely, Anishnabe’s current account contains sufficient funds to make the appropriate payment under the resumption of payments election option and remain on schedule.

5. Anishnabe’s relationship with its outside technical advisors was terminated on April 28, 1998; this left a void of expertise at the same time it was expected to make an election; Regrettably, Anishnabe failed to make an election by June 8, 1998.

For the past several years, Associated Communications & Research Services, Inc. (“ACRS”) of Oklahoma City, Oklahoma provided telecommunications technical advice to Anishnabe. ACRS provided technical advice on the PCS C Block auction and consulting on the PCS build-out. This relationship was terminated on April 28, 1998 and left a void of expertise during the time Anishnabe was considering the various election options. Without this technical advice, Anishnabe was unable to make an informed and meaningful election decision by June 8, 1998. Anishnabe deeply regrets this oversight.

B. For several reasons, the public interest justifies granting Anishnabe a waiver of the June 8, 1998 election date so that it can accept the resumption of payments election prior to the July 31, 1998 resumption of payments date.

Anishnabe respectfully requests a waiver of the June 8, 1998 election date so that it can immediately make an election. Anishnabe wants to elect the resumption of payments plan as detailed under the terms of the First Modification. The public interest justifies this action for several reasons. First, under Section 309(j)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(4)(B), Congress mandated the promotion of the genuine participation of small businesses and

⁹ See *Order on Reconsideration*, 13 FCC Rcd 8345 para 65.

other minorities in the provision of spectrum-based services. Congress also mandated the promotion of economic opportunity. This mandate is a continuing one, as the Commission recognized when it determined that restructuring was necessary. Congress' directive covers both substantive and procedural decisions. Granting this waiver and allowing Anishnabe to elect the resumption option would serve the Commission in carrying out these Congressional mandates.

Second, with exception of the failure to make an election by June 8, 1998, the Saginaw Chippewa Indian Tribe of Michigan and Anishnabe have been in complete compliance with the Commissions regulations, rules, and the payment plans for the cellular license (Michigan RSA No. 7) and the PCS licenses (PBB241C, PBB307C, and PBB390C).¹⁰

Third, on April 28, 1998, around the same time Anishnabe was considering which election to make, the contract with Anishnabe's technical advisors, Associated Communications & Research Services, Inc., was terminated leaving a void in the decision making process. Without this technical advice, Anishnabe was unable to make an informed and meaningful election decision by June 8, 1998. Anishnabe deeply regrets this oversight.

Fourth, Anishnabe's request is very limited. Anishnabe is merely requesting a waiver of the June 8, 1998 deadline to exercise its election option. This delay will only be about 6-7 weeks and is before the July 31, 1998 resumption of payments date. The Commission already has pushed back this deadline several times. Anishnabe is not challenging the other terms of the licenses or any other

¹⁰ MTA 5, BTA 241, BTA Market Name Lansing, Michigan, Call Sign KNLF416; MTA 5 BTA 307, BTA Market Name Mt. Pleasant, Michigan, Call Sign KNLF417; and MTA 5, BTA 390, BTA Market Name Saginaw, Michigan, Call Sign KNLF418.

provisions of the *Order on Reconsideration*. Aside from the time extension, Anishnabe also does not request any modifications or waivers to the *Order on Reconsideration*.¹¹

Fifth, the public interest also favors preserving the viability of existing entities that have paid money to the federal government and commenced the construction and build-out of competitive PCS networks. Anishnabe already has spent considerable resources on this project, including approximately \$1.3 million building out the system. RF engineering and site acquisition for the first stage of the 57 tower project is 80 percent complete. Tribal members also have invested considerable time into this project. All management personnel are Tribal members and the Board of Directors is comprised of only Tribal members. In light of Congressional mandates, a waste of Tribe resources would be poor public policy and would not further the Commission's goals concerning the provision of telecommunications services and the participation of minorities in the provision of such services.

Sixth, the public interest is further served because the net revenue the PCS business generates will fund governmental services and economic development for the Saginaw Chippewa Indian Tribe of Michigan. As stated above, the Tribe is the sole shareholder of Anishnabe. Among other benefits described above, the Tribe hopes that Anishnabe revenue will improve reservation roads, schools, infrastructure, and health services.

Seventh, if Anishnabe is not granted the waiver to elect the resumption of payments option, it is expected to pay on the resumption date all unpaid simple interest accruing from the date of the license grant through the payment resumption date. Currently, there are insufficient funds in the

¹¹ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd. 8345 (*Order on Reconsideration*) (released March 24, 1998).

current account to pay this amount and continue the build-out and construction schedule. This would cause Anishnabe substantial and irreparable harm because Anishnabe was specifically created for the provision of PCS, and Anishnabe has no other source of revenue besides PCS. Anishnabe's current account does have sufficient funds to remain on schedule and make the appropriate payment if it were to be allowed to elect the resumption of payments election option.

C. Conclusion

For the forgoing reasons, the public interest justifies issuing a waiver of the June 8, 1998 deadline to allow Anishnabe to elect the Resumption of Payments Option as detailed in the May 28, 1998 First Modification of Installment Payment Plan Note and Security Agreement for Broadband PCS C Block and discussed in the *Order on Reconsideration of the Second Report and Order*. Anishnabe hopes that this regrettable error can be remedied prior to the July 31, 1998 resumption of payments date.

Anishnabe respectfully requests that the Commission act on this Petition expeditiously so that Anishnabe will have sufficient time to take appropriate steps prior to the July 31, 1998 resumption of payments date.

Dated this 20th day of July, 1998.

Respectfully submitted,
**ANISHNABE COMMUNICATIONS
ENTERPRISE, INC.**

Elisabeth H. Ross

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ENTERPRISE, INC.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

May 28, 1998

RECEIVED

Re: First Modification of Installment Payment Plan Note and
Security Agreement for Broadband PCS C Block

JUL 1 1998

MORISSET, SCHLOSSER, AYER & JOZWIAK
SEATTLE OFFICE
OVERNIGHT () / SMALL () / HAND DELIVERED

Dear C Block Licensee:

As you know, on March 31, 1997, the Federal Communications Commission (Commission) suspended the deadline for payment of installment payments for C block licensees.¹ On September 25, 1997, the Commission adopted the *Second Report and Order and Further Notice of Proposed Rule Making (Second Report and Order)*, which rescinded the payment suspension and ordered the reinstatement of payments under your original notes effective March 31, 1998.² In addition, the Commission offered C block licensees a choice of three options in lieu of resuming payments under the terms of their original payment plans: amnesty, disaggregation, and prepayment. The *Second Report and Order* also provided for interest accrued during the suspension period to be repaid over eight equal payments. On March 23, 1998, the Commission adopted the *Order on Reconsideration of the Second Report and Order (Order on Reconsideration)*, which broadened some of the options available to C block licensees while generally affirming the *Second Report and Order*.³ Pursuant to the *Order on Reconsideration*, C block licensees electing to resume installment payments for their licenses, or electing to disaggregate their licenses and resume installment payments for their retained spectrum, are required to resume their installment payments on July 31, 1998.⁴

In this regard, enclosed please find two (2) copies of a master blank First Modification of Installment Payment Note for Broadband PCS C Block (Note Modification), which incorporate the payment changes provided in the *Order on Reconsideration*. The first copy pertains to licensees electing to resume installment payments and the second copy pertains to licensees electing to disaggregate and resume installment payments. We are providing all licensees with advance copies of the Note Modifications to assist them in assessing their election options. Depending on the election that a licensee makes, we will send the licensee an original Note Modification filled in with the specific information pertaining to that licensee. The Commission will issue the Note Modification as soon as possible after June 8, 1998, and each licensee will be required to execute and return the Note Modification within the time period specified in the letter from the Commission accompanying the Note Modification, which will be no less than seven calendar days.

¹ Installment Payments for PCS Licenses, *Order*, 12 FCC Rcd. 17,325 (WTB 1997).

² Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd. 16,436 (1997).

³ 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*, 13 FCC Rcd. 8345 (1998).

⁴ See Wireless Telecommunications Bureau Announces June 8, 1998 Election Date for Broadband PCS C Block Licensees, *Public Notice*, DA 98-741 (released April 17, 1998).

EXHIBIT A

Page 2

Licenses who do not intend to resume installment payments, and do not intend to disaggregate their licenses and resume installment payments for their retained spectrum, may disregard this letter.

In reviewing the enclosed Note Modifications, please be aware of the following:

1. The first installment of "Suspension Interest" (1/8th of all accrued and unpaid interest from the date of the license grant through and including March 31, 1998) is due on July 31, 1998. Each subsequent installment of Suspension Interest is due and payable with your regularly scheduled quarterly payment.
2. All of the accrued and unpaid interest from April 1, 1998 through and including July 31, 1998 is due on July 31, 1998.
3. Your regular quarterly installment payments resume three months after July 31, 1998, and are due on October 29, 1998.
4. Pursuant to the *Third Report and Order*,⁵ the late fee and default provisions have been modified. The Note Modifications provide that (1) a Non-Delinquency Late Fee of 5% of the payment amount is automatically assessed on any payment not made on its regularly scheduled payment date, (2) an additional Grace Period Late Fee of 10% of the payment amount is automatically assessed if the late payment and the previously imposed Non-Delinquency Late Fee is not made within 90 days of its regularly scheduled payment date, and (3) an Event of Default automatically occurs anytime a payment and/or its accompanying Late Fee is unpaid after 180 days. The grace periods permitted by the *Third Report and Order* do not apply to the payments due on July 31, 1998.
5. The Note Modifications incorporate a Security Agreement, and licensees will not receive a separate Security Agreement.
6. Under the Note Modification concerning disaggregation with resumption of installment payments, the original principal balance will be reduced by 50%. Based on this reduced principal balance, the licensee's debt obligation, including Suspension Interest, will be recalculated from the date of the original license grant.

Please have the enclosed Note Modifications carefully reviewed by the appropriate person in your organization. We also strongly suggest that you have your counsel review the enclosed Note Modifications. Any questions that you or your counsel have concerning the Note Modifications should be directed to Rachel Kazan or Rita Cookmeyer at (202)418-0660.

Thank you for your attention to this matter.

Very truly yours,

Federal Communications Commission

⁵ Amendment of Part I of the Commission's Rules - Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making (Third Report and Order)*, 13 FCC Rcd. 374 (1997).

License No.: _____

C Block - Resume Payments

**FIRST MODIFICATION OF
INSTALLMENT PAYMENT PLAN NOTE
FOR BROADBAND PCS C BLOCK**

THIS FIRST MODIFICATION OF INSTALLMENT PAYMENT PLAN NOTE ("**First Modification**") is executed on the ____ day of _____, 1998, and is intended to be effective for all purposes as of the 31st day of July, 1998 ("**Effective Date**"), by and between: (i) _____, a _____ ("**Maker**"); and (ii) FEDERAL COMMUNICATIONS COMMISSION, an independent regulatory agency of the United States ("**Payee**" or "**Commission**").

W I T N E S S E T H:

RECITALS:

R-1. Reference is made to that certain Installment Payment Plan Note made by Maker, payable to the order of the Commission, in the original principal amount of \$ _____ ("**Original Note**"). The Original Note is secured by, amongst other things: (i) that certain Security Agreement by and between the Maker and the Commission ("**Security Agreement**"); and (ii) those certain Financing Statements related thereto (collectively, "**Financing Statements**"). The Original Note, Security Agreement, Financing Statements and all other documents evidencing, governing or securing the Original Note, together with any and all amendments, modifications or supplements thereto, are hereinafter collectively referred to as the "**Loan Documents**". All of the terms, conditions and provisions of the Loan Documents are hereby incorporated herein and made a part hereof in their entireties by this reference.

R-2. The Security Agreement and Financing Statements created a first lien security interest in the "**License**" and the "**Collateral**" (as those terms are defined in the Security Agreement).

R-3. Pursuant to that certain Public Notice, DA 97-649 (rel. March 31, 1997) ("**Suspension Order**"), the Commission suspended the deadline for payment of installment payments required to be made under the Original Note. Pursuant to that certain *Second*

Report and Order and Further Notice of Proposed Rule Making adopted September 25, 1997 and released October 16, 1997 ("*Second Report and Order*"), the Commission rescinded the Suspension Order and ordered the reinstatement of payments under the Original Note effective March 31, 1998 and agreed to a schedule for payment of all accrued and unpaid interest due under the Original Note. The *Second Report and Order* was subsequently modified by that certain *Order on Reconsideration of the Second Report and Order* adopted March 23, 1998 and released March 24, 1998 ("*Order on Reconsideration*"). Pursuant to the Order on Reconsideration and the Public Notice, DA-98-741 (rel. April 17, 1998), the date for the resumption of payments under the Original Note was changed to July 31, 1998 as well as certain other modifications to the terms contained in the *Second Report and Order*.

R-4. Pursuant to the terms of the *Second Report and Order*, as modified by the *Order on Reconsideration*, the Maker elected to continue to operate under the License and continue making payments under the Original Note in accordance with its terms, subject to the modification to the payment terms with respect to "Suspension Interest" and "Deferred Interest" (as those terms are defined below).

R-5. Pursuant to such election by Maker, Maker and the Commission are entering into this First Modification for the purpose of modifying the Original Note to provide for the repayment of all accrued and unpaid interest due under the Original Note and to make certain other conforming changes to the Original Note as provided herein. It is the intention of the Maker and the Payee that except as specifically modified by this First Modification, the Original Note shall continue in full force and effect.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the sum of Ten dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties hereby covenant and agree and amend the Original Note as follows:

1. The foregoing Recitals, including all terms defined therein, are hereby incorporated in this First Modification to the same extent as if they had been herein stated in full. The documents referred to in the Original Note shall include the documents referred to therein, as well as any and all modifications, amendments, additions and/or supplements thereto and/or replacements thereof.

2. This First Modification shall amplify and modify where specifically provided herein but shall not replace the Original Note. Except as specifically modified herein, all of the terms, conditions and obligations of the Original Note shall remain in full force and effect, and all of the rights and remedies provided for therein shall be preserved to the Commission. If there is any conflict between the provisions of this First Modification and

the provisions of the Original Note, the provisions of this First Modification shall govern and prevail. **THE COMMISSION AND MAKER COVENANT AND AGREE THAT THIS FIRST MODIFICATION ONLY MODIFIES THE TERMS OF THE ORIGINAL NOTE AND IS NOT A NOVATION OF THE ORIGINAL NOTE.**

3. The Security Agreement and Financing Statements will continue to encumber the License and Collateral with a first lien security interest. The Original Note, as modified by this First Modification (hereinafter collectively referred to as the "Note"), and all extensions, renewals, modifications and amendments and consolidations thereof or substitutions therefore shall continue to be secured by the Security Agreement and all other documents, instruments, certifications, security agreements and financing statements executed and delivered in connection therewith by the Maker or by its successors. The Original Note and this First Modification shall be entitled to the benefits of, and to the security required to be provided by, the aforesaid documents, some of which contain provisions for the acceleration of the maturity of the Note upon the happening of certain stated events.

4. The Amortization Schedule attached to the Original Note as Schedule A is hereby deleted in its entirety. All references in the Original Note to Schedule A are hereby deleted. All payments under the Note shall continue to be made in accordance with the terms of the Original Note, as modified by the provisions of this First Modification.

5. Maker and the Commission covenant and agree that pursuant to the terms of the Suspension Order and the *Second Report and Order*, interest payments under the Original Note were suspended for the period effective as of March 31, 1997 through and including March 31, 1998. The entire amount of unpaid interest that accrued during the period beginning with the grant date of the License through and including March 31, 1998 is hereinafter referred to as the "**Suspension Interest**". All Suspension Interest is to be repaid in eight (8) equal payments with the first such payment being due on the Effective Date. In addition, pursuant to the terms of the *Order on Reconsideration*, (i) all interest accrued on the Original Note from April 1, 1998 through the Effective Date ("**Deferred Interest**") is due and payable in full on the Effective Date, (ii) all payments under the Note were reinstated as of the Effective Date, and (iii) the schedule for making quarterly interest and/or principal payments under the Note was changed to require quarterly payments on October 31, January 31, April 30 and July 31 of each year without any modification to the amounts for each payment as provided in the Original Note, with the first such payment being due and payable on October 31, 1998. Based upon the foregoing, the Original Note is hereby amended to provide that the payments of interest and principal shall be as follows:

a. On the Effective Date, Maker shall make a payment to Payee in the amount of all Deferred Interest ("**Deferred Interest Payment**").

b. On the Effective Date, and continuing on each following October 31, January 31, April 30 and July 31 thereafter until all Suspension Interest has been paid in full, Maker shall make a payment equal to one-eighth (1/8th) of the Suspension Interest outstanding as of March 31, 1998 ("Suspension Interest Payment").

c. Thereafter, except as provided in Sections 5.a and 5.b above, Maker shall continue to make interest only payments to the Commission at the "Annual Rate" (as that term is defined in the Original Note) in equal consecutive quarterly installments, and principal and interest payments to the Commission in equal quarterly installments in the amount provided in the Original Note, all as provided in the Original Note, except for the following modifications:

(i) payments of interest accruing from and after the Effective Date shall now be due on October 31, January 31, April 30 and July 31 of each year (such quarterly dates are hereinafter referred to as the "New Quarterly Payment Dates" or individually a "New Quarterly Payment Date");

(ii) the last quarterly interest only payment shall be due on the New Quarterly Payment Date occurring immediately prior to the date that the first payment of principal and interest is due;

(iii) if the first quarterly payment of principal and interest required under the Original Note is due on a New Quarterly Payment Date, the first quarterly payment of principal and interest shall be due on such New Quarterly Payment Date as provided in the Original Note and thereafter, Maker shall be required to make its payments of principal and interest in equal quarterly installments in the amount provided in the Original Note on each succeeding New Quarterly Payment Date; and

(iv) if the first quarterly payment of principal and interest required under the Original Note is due on a day other than one of the New Quarterly Payment Dates, the Original Note is hereby modified to provide that the first quarterly payment of principal and interest shall be due on the first New Quarterly Payment Date following the date currently provided in the Original Note for the first payment of principal and interest and thereafter, Maker shall be required to make its payments of principal and interest in equal quarterly installments in the amount provided in the Original Note on each succeeding New Quarterly Payment Date.

The Maker and the Commission acknowledge and agree that no modification is being made to the "Maturity Date" (as that term is defined in the Original Note) and that the entire "Principal Amount" (as that term is defined in the Original Note),

together with accrued and unpaid interest thereon, and all other remaining obligations of Maker under the Note, if not sooner paid, shall be due and payable on the Maturity Date.

6. The sixth (6th) paragraph of the Original Note reading "All interest shall be computed on the basis of a 360-day year for actual days elapsed." is hereby deleted in its entirety and replaced with the following:

Interest on the Principal Amount of this Note shall be computed at the Annual Rate on the basis of a three hundred sixty (360) -day year composed of twelve (12) months of thirty (30) days each, except that interest due and payable for a period of less than a full quarterly payment period shall be calculated by dividing the full quarterly payment by the actual number of calendar days in the applicable quarterly payment period to create a daily rate that is multiplied by the actual number of days elapsed since the last day of the previous quarterly payment period.

7. If the Suspension Interest Payment and Deferred Interest Payment due on the Effective Date are received by the Commission on or before October 29, 1998, together with any applicable late fee, Maker and the Commission agree that the paragraphs of the Original Note defining when an "Event of Default" occurs will be modified by deleting in their entirety the provisions beginning with the phrase "a. non-payment by Maker of any Principal or Interest on the due date..." and continuing through "...Maker has not resumed payments of Interest and Principal in accordance with the terms of this Note; or" and replaced with the following:

a. Any non-payment by Maker of any Principal and/or Interest on the due date specified hereinabove, and the failure to make such payment, together with all applicable "Late Fees" (as hereinafter defined) within one hundred eighty (180) days after such Principal and/or Interest payment due date; or

8. The Original Note is hereby amended to provide that in addition to the Events of Default listed therein, as modified by this First Modification, it shall be an Event of Default under the Note if either the Suspension Interest Payment due on the Effective Date or the Deferred Interest Payment due on the Effective Date is not received by the Commission on or before October 29, 1998. No additional grace or cure period shall be applicable to such

payment. All other payments of Suspension Interest shall be subject to the same terms and conditions as the remaining Principal and/or Interest payments under the Note.

9. The paragraph of the Original Note which imposes a late fee upon the occurrence of any Event of Default is hereby modified by deleting in its entirety the sentence reading "Upon any Event of Default under this Note, Payee may assess a late fee and/or administrative charge, plus the costs of collection, litigation, attorneys' fees, and default payment as specified in the then-applicable orders and regulations of the Commission as amended, and Maker acknowledges that it is liable and herein expressly promises to pay on demand such additional costs, expenses, late charges, administrative charges, attorneys fees, and default payment." and substituting in its place the following:

Should any payment of Principal and/or Interest required under this Note not be paid in full on the due date as specified hereinabove, Maker acknowledges that the Payee will incur extra expenses for the handling of the delinquent payment and servicing the indebtedness evidenced hereby, and that the exact amount of these extra expenses is extremely difficult and impractical to ascertain. Therefore, Maker shall, in such event, without further notice, and without prejudice to the right of the Payee to collect any other amounts provided to be paid hereunder or under the Security Agreement, or to declare an Event of Default, pay to the Commission the "Late Fee" (as hereinafter defined) to compensate Payee for expenses incurred in handling delinquent payments and the Maker confirms and agrees that the Late Fee is a fair approximation of the expense so incurred by the Payee. The "Late Fee" is defined as the total, if any, of the "Non-Delinquency Late Fee" and the "Grace Period Late Fee" (as hereinafter defined). The "Non-Delinquency Late Fee" shall be an amount equal to five percent (5.0%) of any Principal and/or Interest payment required to be made hereunder and shall be automatically assessed if such payment is not made on the original date that such Principal and/or Interest Payment is due (without the benefit of any notice or grace period). If such Principal and/or Interest payment, together with the Non-Delinquency Late Fee, is not made on or before the ninetieth (90th) -day after the original date that such Principal and/or Interest payment was due, such payment shall automatically be subject to a second late fee (the "Grace Period Late Fee") equal to ten percent (10.0%) of the amount of such past due Principal and/or Interest Payment (without the benefit of any notice or grace period) in addition to the Non-Delinquency Late Fee.

In addition to the foregoing, there shall also automatically be imposed on Maker, and Maker shall pay to the Commission without further notice, and without prejudice to the right of the Payee to collect any other amounts provided to be paid hereunder or under the Security Agreement, or to declare an Event of Default, the "Resumption Date Late Fee" (as hereinafter defined) to compensate Payee for expenses incurred in handling delinquent payment of the Suspension Interest Payment due on the Effective Date and/or the Deferred Interest Payment. The Maker confirms and agrees that the Resumption Date Late Fee is a fair approximation of the expense so incurred by the Payee. The "Resumption Date Late Fee" shall be an amount equal to (i) five percent (5.0%) of the Suspension Interest Payment due on the Effective Date if such payment is not received by the Payee on the Effective Date (without the benefit of any notice or grace period), and (ii) five percent (5.0%) of the Deferred Interest Payment due on the Effective Date if such payment is not received by the Payee on the Effective Date (without the benefit of any notice or grace period).

Maker and Payee agree that all references in the Original Note to a late fee shall be deemed to be a reference to the Late Fee and/or the Resumption Date Late Fee, as applicable.

10. All defined terms contained in the Loan Documents shall have the same meaning as set forth therein except as may otherwise be expressly set forth in this First Modification. Maker and the Commission covenant and agree that the reference in the Security Agreement to the "Note" shall be deemed a reference to the Original Note, as modified by this First Modification.

11. This First Modification constitutes the entire agreement regarding the amendment and modification of the Original Note between Maker and the Commission and is intended by Maker and the Commission to be a complete, exclusive and final integration of all prior and contemporaneous agreements and negotiations of Maker and the Commission concerning the amendment and modification of the Original Note. There have been no other agreements, covenants, representations or warranties between Maker and the Commission regarding the amendment and modification of the Original Note other than those expressly stated or referred to in this First Modification or in any document delivered pursuant hereto.

12. This First Modification may be amended or modified only by written instruments signed by Maker and the Commission. If any covenant, condition or provision of this First Modification is declared by a court of competent jurisdiction to be invalid and not

binding on the Maker and/or the Commission, such declaration shall in no way affect the validity of the other remaining covenants, conditions and provisions of this First Modification.

13. This First Modification shall bind, inure to the benefit of and be enforceable by Maker and the Commission, their respective heirs, beneficiaries, legal representatives, successors and assigns.

14. Except as modified by this First Modification, Maker agrees that the Original Note shall continue in full force and effect without modification, and the Original Note and all of the other Loan Documents are hereby expressly approved, ratified, confirmed and reaffirmed by all parties to this First Modification. Maker hereby acknowledges and agrees that it has no claims, counterclaims, set-offs, defenses or other causes of action against the Commission and/or under the Note, Security Agreement or any of the other Loan Documents and to the extent that any such set-offs, counterclaims, defenses or other causes of action may exist, whether known or unknown, they are hereby waived and forever relinquished by the Maker.

15. This First Modification shall be governed and construed in accordance with the Communications Act of 1934, as amended from time to time, the then applicable orders and regulations of the Commission and federal law.

16. This First Modification may be executed in counterparts, each of which shall be deemed to be an original and all of which shall collectively be deemed to constitute a single document.

IN WITNESS WHEREOF, intending to be legally bound, the undersigned Maker and the Commission have each executed this First Modification, under seal, as of the day and year first hereinabove written.

[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE
FIRST MODIFICATION OF
INSTALLMENT PAYMENT PLAN NOTE**

MAKER:

Witness/Attest:

A _____

By: _____ (SEAL)

Name: _____

Title: _____

Date: _____, 1998