Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
COMMERCIAL REALTY ST. PETE, INC., JAMES C. HARTLEY, TERESA HARTLEY AND RALPH E. HOWE	)	WT Docket No. 95-26
	)	
	)	
	)	

TO: The Full Commission

PETITION FOR DECLARATORY RULING AND OTHER RELIEF

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SUMMARY

Petitioner, Commercial Realty St. Pete, Inc., was a high bidder at an auction for IVDS licenses held in July, 1994. Thereafter, as a result of proceedings brought against the Petitioner and its principals by the Commission and without conceding any wrongdoing, the Petitioner and its principals entered into an agreement with the Wireless Telecommunications Bureau, dated October 10, 1995, which precluded the Petitioner from pursuing the licenses which it had purchased.

Time and events have now shown that the proceedings below against the Petitioner and its principals were tainted by a conflict of interest on the part of former Chairman Hundt. Time and circumstances have also shown that the Petitioner was correct when it refused initially to pay for the licenses, because no technology was available to implement an IVDS system. The Petitioner now stands ready to work with the Commission to pay full price for the licenses which it had purchased, albeit on extended payment terms. Therefore, the Petitioner is requesting the Commissio n to relieve the Petitioner and its principals from any provisions of the October 10, 1995, agreement which would prevent the Petitioner from purchasing the licenses.

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Commercial Realty St. Pete, Inc. ("CRSPI"), by its attorney, hereby respectfully requests the full Commission to reopen this proceeding and issue a ruling, declaring that the Agreement of Settlement dated October 10, 1995, between the Commission's Wireless Telecommunications Bureau ("WTB") and CRSPI and James C. Hartley and Teresa Hartley, is no longer a barrier to the pursuit by CRSPI of the licenses which it purchased at the IVDS auction on July 26-28, 1994. CRSPI also requests other and different relief, as set forth hereinafter. In support thereof, it is alleged:

I. Preliminary Statement:

1. CRSPI is a Florida corporation, which participated in the IVDS auction on July 26-28, 1994. Acting through its principals, James and Teresa Hartley, CRSPI was the successful bidder for a number of IVDS licenses. After the auction was completed, the Hartleys discovered to

their dismay that no equipment was available to implement an IVDS system.

2. Indeed, they discovered that nobody had even developed the necessary technology to implement an IVDS system. Consequently, the Hartleys declined to pay for the spectrum which they had purchased. Instead, CRSPI filed a Petition for Extraordinary Relief, asking for a delay in payments until equipment and technology became available.

3. By Order (FCC 94-222), released August 30, 1994, the FCC initiated a Section 403 investigation to punish CRSPI and its principals for their failure to pay for the spectrum. A Section 403 investigation is an extraordinary affair. It proceeds under the provisions of Section 403 of the Communications Act, which gives the Commission extraordinary powers to chase the target of an investigation; make him disclose information and documents which would otherwise be highly confidential; and expose him to enormous legal expenses. In the 64 year history of this agency, there have been no more than, perhaps, half a dozen such investigations.

4. The Commission pursued the investigation of CRSPI and its principals with uncommon zeal. Depositions were taken in both Florida and D.C., and CRSPI and its principals turned over hundreds of pages of documents.

5. The Commission also issued an Order (FCC 95-59), released February 16, 1995, in Docket No. WT 95-26, directing CRSPI and the Hartleys to show cause why they should not be prohibited from participating in future FCC spectrum auctions and from holding any Commission licenses. Ultimately, facing the enormous legal expense and harassment to which they were subjected as a result of the 403 investigation and the proceedings in Docket 95-59, CRSPI and the Hartleys entered into an Agreement of Settlement with the WTB dated October 10, 1995. That Agreement provides expressly that CRSPI and the Hartleys admit no wrongdoing. However, the

Agreement provides in substance that CRSPI will not pursue the licenses which it purchased at the IVDS auction, except by an appeal to the U.S. Court of Appeals for the D.C. Circuit.

6. CRSPI did take an appeal to the U.S. Court of Appeals for the D.C. Circuit, which was not successful. However, as we will show, a key piece of information, which might have changed the Court's view of the case, did not become available until after the appeal was filed and, accordingly, the Court was barred from considering that key piece of information by the provisions of Section 405 of the Communications Act, which prohibits an appellate court from considering matters not first raised with the agency. That key piece of information related to a blatant conflict of interest involving former Chairman Hundt who, it turns out, had been an attorney in private practice for a party having an extraordinary interest in the IVDS proceedings.

7. In any event, time and circumstances have vindicated the Hartleys. Time and circumstances have shown that they were completly correct when they asserted that IVDS was not viable as a technology at the time of the 1994 auction.

8. In the proceedings in WT Docket Nos. 98-169 and 95-47, the Commission proposes to change the nature and character of the IVDS service; indeed, it appears that the service may be renamed the "218-219 Mhz Service" to evidence the expanded uses which the Commission contemplates for IVDS.[1]

9. During the entire time since the original IVDS auction, the Hartleys have continued their keen interest in finding uses for these frequencies. Equipment and technology have now been developed to use these frequencies, inter alia, for reading gas, electric and water meters.

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[1]See Memorandum Opinion and Order and Notice of Proposed Rulemaking, released September 17, 1998, in WT Docket No. 98-169.

CRSPI believes that this technology is both workable and developable. Furthermore, there is a market for this technology since it enables utilities to read load factors at 30 minute intervals as opposed to the monthly or less frequent readings taken by human meter readers. Thus, utilities will be enabled to operate much more efficiently and to reduce costs to the public.

10. In the proceedings in WT Dockets 98-169 and 95-47, moreover, the Commission proposes long term payments for licenses in the 218-219 Mhz service. CRSPI stands ready and willing to work with the FCC to pay the full price for the licenses which it purchased at the auction, under the payment terms such as those proposed by the Commission.

11. CRSPI understands that some parties to this proceeding may suggest the holding of a new auction. That would be a major mistake. The original auction conferred significant benefits to minority and women-owned businesses. After that auction was held, however, the U.S. Court of Appeals for the D.C. Circuit held that these preferences were unconstitutional and directed the FCC to remedy the Constitutional problem. Graceba Total Communications, Inc. v. FCC, 115 F.3d 1038, 325 U.S. App. 135 (1997). The Commission can do this simply by extending the same payment terms and credits to non-minorities and non-women-owned businesses that are extended to minority and women- owned businesses.

12. Many minorities and women participated in the original auction. If a new auction is held, those minorities and women are likely to lose out to larger companies who have greater financial resources. That would be a great pity, in light of the Commission's expressed concern to promote minority and women ownership of telecommunications facilities.

II. Statement of Facts:

13. On July 26-28, 1994, the FCC held an auction at the Omni Shoreham Hotel in

Washington, D.C., to sell licenses for spectrum to be used for the interactive video data service (IVDS). Acting through its principals, James and Teresa Hartley, CRSPI was the successful bidder for a number of these licenses.

14. The auction was an extraordinary affair for a government auction. The auction company, Tradewinds, Inc., employed motivators or "bidding assistants", some of whom were attractive women. When participants stopped bidding, the bidding assistants frequently slapped them on the back and uttered sharp words of encouragement for bidders to increase their bids. On information and belief, the bidding assistants received commissions for their efforts.[2]

15. On August 15, 1994, CRSPI filed a Petition for Extraordinary Relief, asking the FCC to issue an order, directing that all payment deadlines established for bidders in the auction be suspended and postponed until such time as: (a) there are at least two vendors, certified by the FCC to provide equipment for the IVDS services; (b) both such vendors have demonstrated to the satisfaction of the FCC and independent engineers that they have developed technology that works, and are prepared to ship the equipment required to meet the "build out" deadlines, established by the FCC; and (c) that the technical specifications for the aforesaid systems shall have been made a matter of public record.

16. In its Petition, CRSPI recited the background underlying the IVDS auction. It showed that on December 7, 1987, TV Answer, Inc. (now known as "EON Corporation") filed a Petition for Rulemaking, requesting allocation of spectrum for the provision of inter-active video and data services ("IVDS"). On information and belief, EON Corporation was at the time a

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[2]See Application for Review, filed with the FCC by CRSPI on October 19, 1994.

corporation owned and controlled substantially by Mexican citizens.

17. By Report and Order in General Docket No. 91-2, released February 13, 1992, the Commission granted EON's request and adopted rules authorizing IVDS. Amendment of the Commission's Rules to Provide Interactive Video and Data Services, 7 FCC Rcd 1630 (1992). The rules adopted, however, were quite different from the rules adopted by the FCC in the past to accommodate new technology. In the past, the FCC had always specified the standards to be used in implementing the new technology. Thus, for example, when the FCC adopted rules to allow FM broadcasting, it did not do so until the FM technology had been proven fully operational, and the rules provided for uniform standards for carrier deviation, etc.[3] The same was true when FM stereo was authorized.[4] Similarly, with television, the rules have always specified the number of lines in a picture, the number of vertical fields per second, etc. Likewise, with color television, the rules originally adopted specified the frequency of the color sub-carrier, the duration of the color burst, etc.[5] Even in the case of AM stereo, where the FCC initially authorized three different systems, the modulation characteristics of each system were reduced to mathematical equations, and those equations were made part of the rules, so that any qualified manufacturer could produce equipment for any system.[6]

18. The IVDS rules were quite different. Section 95.803 of the Rules (47 C.F.R

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[3] Currently those standards are set forth in 47 C.F.R. §310, et seq.

[4] See 47 C.F.R. §73.297 and the other rules referenced therein.

[5] The television standards, both monochrome and color, are currently set forth in 47 C.F.R. §73.681, et seq.

[6] 47 C.F.R. §128.

§95.803) described IVDS systems, making it clear that they are, or will be, essentially packet radio systems, of the kind which have been used by radio amateurs for many years. There were, however, no standards specified. Thus, one manufacturer might elect to use 2400 baud packets, while another might choose 9600 baud. Thus, if a consumer in Washington, D.C., elected to use the equipment of manufacturer "A", the consumer would be required to discard that equipment if he moved to Chicago, where the system used the equipment of manufacturer "B".

19. Section 95.811 of the Rules provided that each IVDS system must be licensed, and the license term would be five years. Section 95.833 of the Rules was highly unusual; in fact, counsel for the Petitioner CRSPI had never seen a similar provision in any other FCC licensed service. That section required each IVDS licensee to construct at least 10% of its system within one year after a grant of a license; 30% within three years, and 50% within 5 years. These provisions are commonly called "build out" requirements.

20. Section 95.851 of the Rules required all equipment to be type accepted. Only the equipment to be manufactured by EON had, in fact, been type accepted at the time the auction was held.[7]

21. Section 95.816 of the Rules provided for IVDS licenses to be awarded by auction. This particular section was not enacted without some controversy. Several commentators in the rule making (Docket 93-253) suggested that the IVDS system would be self-supporting, receiving revenues from individual participating businesses and advertisers, so that no auction would be needed. In a Second Report and Order, 9 FCC Rcd 2348, released April 20, 1994, the FCC

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[7]Subsequently, other equipment has been type accepted. However, as we shall show, it remains true to this day that no commercially viable working equipment is available.

brushed aside these comments, saying that it has received an ex parte communication from EON Corporation, which satisfied it that the auction was the way to go. Second Report, ¶¶49-50.

22. The practical effect of all of these provisions, whether intended or not, was to set up a situation in which bidders for IVDS spectrum were, in fact, merely bidding for the privilege of buying equipment from a single vendor, EON, controlled by off shore interests. EON enjoyed a monopoly position and was free to charge whatever the traffic would bear, for any equipment it chose to make available. Moreover, in what appears to be a gross conflict of interest EON, itself, purchased large quantities of IVDS spectrum at the 1994 auction, thereby bidding up the prices to its own captive customers and depriving those customers of the opportunity to purchase potentially lucrative spectrum.

23. One of these customers was CRSPI, a corporation then owned 60% by Teresa Hartley and 40% by her husband, James C. Hartley. CRSPI attached to its Petition for Extraordinary Relief a declaration of Mr. Hartley, describing his experiences at the auction.

24. In the Petition, CRSPI averred that the Commission was well aware of the problems encountered with application mills and promoters in the broadcast services. CRSPI showed that a similar problem existed in IVDS. As Mr. Hartley related, he was a real estate entrepreneur, accustomed to putting together sizeable business deals. In this instance, he became interested in IVDS as a result of listening to and/or viewing an audio tape put out by some promoters (Chase McNulty Group) and a video tape put out by none other than TV Answer, the predecessor in interest to EON Corporation, itself. Not surprisingly, these slick materials painted IVDS as a working technology, already fully developed and ready to bring exciting new services to every American household.

25. Excited by these prospects, Hartley called EON Corporation a couple of months before the auction, in an effort to get more details. He spoke to one Michele Stiebel, who identified herself as a representative of the corporation. Mr. Hartley asked if he could come up to Reston, Virginia, and visit the corporation's headquarters. Ms. Stiebel explained, however, that the corporation was too busy preparing for the auction to accommodate any visitors. She also explained that the corporation was planning to bid for IVDS spectrum, itself, and that they could not, therefore, discuss bidding strategy with prospective competing bidders.

26. Despite this rejection, Mr. Hartley continued to be enthusiastic about the investment opportunities described in the video and audio tapes which he had audited. Therefore, he obtained a $4,000,000 commitment from an investor (for the down payment). The week of July 25, moreover, Mr. Hartley came to Washington and personally participated in the auction, held in an ornate ballroom of the stately old Omni Shoreham Hotel. There, acting on behalf of CRSPI, Mr. Hartley bought some $32.8 million worth of assorted IVDS spectrum.

27. Thereafter, however, Hartley came to realization that getting equipment for the newly purchased spectrum might not be so easy, especially given the "build out" deadlines. He called EON Corporation on the telephone, and even went out to Reston and visited the "plant". He found, to his dismay, that EON was in no position to ship any equipment at that time. Furthermore, he learned from a former EON employee that when EON tested an early prototype system a few months before, the test failed. Confirming this information, Michael Sheridan, the President of EON Corporation was quoted in a story in the Washington Post, dated August 6, 1994, as saying that the technology "will be ready in six months to a year". By that time, of course, the initial 10% build out deadline would have expired.

28. Given the results of these investigations, Mr. Hartley was forced to advise his investor that, at the time, the IVDS investment was not feasible. For one thing, there were no guarantees that EON or anybody else had working technology, ready to go. Furthermore, even when technology became available, there were no guarantees that equipment could be timely shipped. Finally, with only one vendor in the field, CRSPI would be at the complete mercy of a monopoly, controlled by alien nationals, and free to control, absolutely, the price of equipment. That they would do that cannot be doubted; after all, it was EON who bid for IVDS spectrum at the auction, in competition with its own prospective customers.

29. Furthermore, there was the "bottleneck problem". There were hundreds of bidders at the IVDS auction, all are under the same "build out" deadlines. No corporation, not even GE or IBM, was large enough to satisfy all of the potential demands for equipment from so many bidders, coming all at once. By the manner in which it conducted the auction (selling all of the spectrum all at once, at a time when only one vendor has been certified to supply hardware), the FCC had set up a giant bottleneck, which virtually guaranteed that most of the IVDS licenses would be forfeited for failure to timely complete construction.

30. CRSPI argued that the FCC had a public interest obligation to protect those who bid for IVDS spectrum. It should not be a willing accomplice to the creation of a monopoly, nor should it participate in any scheme which has the appearance of benefitting only one hardware manufacturer. To that end, CRSPI urged the FCC to postpone all of the bidding payment deadlines until it has had an opportunity to fully investigate the availability of both the technology and the equipment, and to assure itself that the technology exists to properly exploit the IVDS spectrum.

31. On October 7, 1994, the FCC's Common Carrier Bureau denied CRSPI's Petition

for Extraordinary Relief. CRSPI filed a timely Application for Review, asking the full Commission to review and set aside the action of the Common Carrier Bureau. That Application for Review, however, languished for a long time. It was finally denied by the full Commission by Memorandum Opinion and Order, 95-367, released September 1, 1995, Chairman Hundt participating.

32. With the denial of the Application for Review, CRSPI was afforded an opportunity to file a Petition for Reconsideration.[8] CRSPI took that opportunity, bringing to the attention of the FCC many new facts which had not been available at the time when CRSPI filed its Petition for Extraordinary Relief.

33. In its Petition, CRSPI showed that there was still no equipment available to implement an IVDS system and that, because of the unavailability of equipment, the Commission, itself, had been compelled to issue a Notice of Proposed Rulemaking in Docket No. 95-131 (FCC 95-318), 10 FCC Rcd 8700 (1995), looking towards eliminating the first and second years of build out requirements for IVDS. CRSPI pointed out that the Commission's action, proposing to eliminate these build out requirements, was taken on October 14, 1995 and, as CRSPI observed, the FCC would not have done this unless it realized that IVDS licensees would be unable to meet the original build out requirements because of lack of equipment.

34. The most important information provided to the Commission in CRSPI's Petition, however, related to statements made by representatives of EON Corporation and the FCC, itself, to induce people to bid at the auction. For the first time, CRSPI was able to present the Commission with a transcript of a videotape produced by EON Corporation's predecessor in interest,

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[8]47 U.S.C. §405 provides for the filing of such petitions at any time within 30 days after the release of a Commission action.

TV Answer, Inc. CRSPI showed that the Hartleys were induced to bid at the auction at least in part by that videotape. The tape was very glitzy and implied that technology was already developed and fully in existence to provide consumers with the ability to order merchandise, do banking, and receive a variety of valuable services through their own TV set.

35. CRSPI also showed that it was not alone; that others had bid for spectrum based upon false representations by representatives of EON Corporation and the FCC, itself, that technology and equipment existed to actually implement an IVDS system. CRSPI presented an affidavit or statement of Marilyn U. Moore, a successful bidder at the auction, who was planning to actually mortgage her home to make the downpayment on the license she had purchased. Like Mr. Hartley, she eventually discovered that no equipment was available. As in the case of CRSPI, she eventually decided that she had to tell her prospective backers that this was the case. When she did so, they decided not to invest.

36. CRSPI also presented the Commission with a copy of the newspaper article which appeared in the Washington Post on July 2, 1995. The writer of the article described some of the problems which affected the IVDS auction. Many of the participants apparently had no idea what they were buying. Some thought that they were buying a license for a TV station. Few, if any, realized that no working IVDS system had yet been developed.

37. Most important of all, CRSPI called the attention of the Commission to a speech made by Joy Alford, an FCC official, on June 6, 1994, at an FCC educational seminar given in Washington, D.C. In her speech, which was entitled "IVDS: Description of the Product", Ms. Alford began by saying that, "This [IVDS technology] has the potential to change the way we shop, the way we learn, the way we bank, the way we receive healthcare, ultimately, the way we live."

She went on to say that, "IVDS was designed to serve as one of the many access ramps to the nation's information superhighway. It will permit short distance two-way transmissions of electronic data", and "As I indicated during my opening remarks, the potential opportunities in IVDS are numerous. We expect service offerings to include, for instance, home shopping. The service may also be used for polling. There are also commercial applications such as home banking and the downloading of data. Service offerings are expected to include opportunities for television-viewer interaction, in real time, to pay-per-view and educational programming. This service is excellent for in-classroom training for homebound students. Imagine teachers instructing 20 classrooms simultaneously, at an equal number of learning institutions. In the area of medicine, for example, a physician may engage in a 'dialogue of sorts' while demonstrating a new medical procedure to fellow physicians or medical students located across the country. Keep in mind that an IVDS system may incorporate numerous electronic media to provide the desired service to the subscribers. IVDS systems can be coordinated with television broadcast stations, cable television stations and wireless cable as well as direct broadcast satellite (DBS)."

38. CRSPI observed that it had no doubt that Joy Alford was speaking in entirely good faith and that her remarks were intended to be completely truthful and accurate. In fairness to her, she specifically mentioned that only one company, EON Corporation, had received type acceptance for equipment to operate in the IVDS. Nonetheless, as CRSPI observed, her enthusiasm and the enthusiasm of other FCC speakers certainly tended to reinforce the belief, which was not correct, that interactive video technology had already been developed and that if equipment was not already available it would be available very shortly. Further reinforcing this belief was the fact that the FCC interactive video rules required 10% of an IVDS system to be constructed within one year

after the award of a license. Surely, participants must have thought the FCC would not have included such a "build out" requirement, unless equipment was, in fact, available to comply with the requirement.

39. CRSPI concluded in its Petition for Reconsideration by again requesting the FCC to postpone all of the payment deadlines stemming from the 1994 IVDS auction until equipment became available from competitive vendors. In a decision which Chairman Hundt participated, the FCC refused to do so, and CRSPI filed its unsuccessful appeal to the D.C. Circuit.

III. Reasons Why the Settlement Agreement Should Be Set Aside:

A. Conflict of Interest.

40. As can be seen from the Statement of Facts, IVDS was the creation of a single company, EON Corporation, and its predecessor, TV Answer. The IVDS rules were constructed in such a way as to give EON the opportunity to achieve a tremendous windfall from the sale of equipment if it had equipment to sell.

41. Unfortunately, despite an enormous amount of "hype", EON never developed any equipment; it did not even develop a workable system. It had hundreds of people on the payroll in Reston, Virginia, for many years but, to this date, it remains a mystery what these people actually did, except to draw salaries. Nothing came of their efforts.

42. On February 17, 1997, while CRSPI's appeals was pending in the D.C. Circuit, a remarkable article by Mike Mills appeared in the Washington Post. A copy of that article is attached and marked Exhibit A. In the article, Mr. Mills discloses that former Chairman Hundt had served EON and its predecessor, TV Answer, both as an attorney and a lobbyist. Hundt is quoted in the article as saying that he disclosed his involvement to the FCC when he became Chairman in

December of 1993, and that he had been advised by the General Counsel that he would not need to recuse himself from any issues involving the company. He also said that no issues directly involving TV Answer [or EON] had arisen.

43. We do not know exactly what Chairman Hundt meant by the latter statement that no issues had arisen. On its face, it would seem to be an incorrect statement. In its pleadings filed with the Commission, CRSPI had directly challenged the bona fides of the EON "system", arguing, correctly as it turns out, that EON did not have any system. It was obviously beneficial to EON not to have CRSPI's claims be upheld, since at a minimum those claims diminished EON's credibility.

44. Whatever the case, human nature being what it is, Chairman Hundt must have found it very difficult to objectively evaluate CRSPI's problem in light of his prior representation of EON. He had defended EON against the very sort of allegations made by CRSPI that the company's advertising practices were misleading. Like any lawyer, he would have had a tendency to believe in his client's innocence and to react negatively to anyone who challenged that client.

45. CRSPI respectfully submits that the Commission's Inspector General should make a full investigation of this matter to determine the exact nature and extent of Chairman Hundt's relationship with EON Corporation. The Inspector General should determine the amount of the fees received by the former Chairman from EON; the Inspector General should also determine the extent to which the Chairman played a role in initiating the highly unusual Section 403 investigation which was initiated against CRSPI and another company, Interactive America Corporation, who also had the temerity to challenge EON's claims and representations.

46. Irrespective of what the investigation shows, however, there is enough information before the Commission at this time to demonstrate that the participation of Chairman

Hundt in the IVDS proceedings tended to taint those proceedings. When the General Counsel advised Mr. Hundt that he did not need to recuse himself from IVDS matters (if, in fact, the General Counsel gave such advice), the General Counsel may have been completely unaware of the relationship between EON Corporation and IVDS. At the time, IVDS was an obscure service. Few people realized that it was almost entirely a creature of EON Corporation and that the service rules had been designed in such a way at to make EON a major beneficiary of those rules.

47. With the wisdom of hindsight, however, it can be seen that EON had an extremely strong interest in every aspect of the IVDS proceedings. When CRSPI and the Hartleys challenged the bona fides of EON's overblown and exaggerated claims, it served the interest of EON for the Commission to come down hard on CRSPI and the Hartleys to shut them up. This the Commission did.

48. With the revelation that former Chairman Hundt had an apparently close prior connection with EON and TV Answer, it becomes apparent that there was a conflict of interest. That conflict may not have been fully recognized and understood by the Chairman, himself, at that time. However, looking back, it is clear that there was a conflict and that is the first reason that the Commission should relieve CRSPI and the Hartleys of their obligations under the Agreement of Settlement not to further pursue the licenses purchased at the IVDS auction.

B. Subsequent Events Have Fully Vindicated CRSPI and the Hartleys.

49. The second reason why the Commission should set aside the Agreement of Settlement is that subsequent events have fully vindicated the position taken by CRSPI in the IVDS proceedings. Everything that CRSPI argued to the Commission has turned out to be one hundred percent true and accurate. Conversely, representations made by EON Corporation (which seems to

have faded completely from the scene) turn out to have been wholly false and misleading.

50. Today, more than four years after the original IVDS auction, there is still no equipment or technology available to implement an IVDS system. There is, however, equipment and technology available to fully utilize the frequencies in the 218-219 Mhz band which are allotted to the IVDS service. CRSPI and the Hartleys are anxious to work with the Commission to purchase the licenses which they bid for at the IVDS auction at the full price which was bid, albeit on sensible terms. Thus, if the Commission grants this Petition, the prospect exists for the Treasury to receive full value for these licenses.

51. Reauctioning the spectrum which was the subject of CRSPI's petition is not a viable alternative. Given the current state of technology, a reauction cannot possibly fetch as much money for the Treasury as CRSPI is prepared to pay. Furthermore, any new auction will have to be held in accordance with the principles set forth in the Graceba decision. That means that many minority-owned and women-owned businesses who purchased licenses but are now currently in default will lose those licenses. That would be an unfortunate result.

52. In closing, one more word needs to be said concerning the ability of CRSPI to fulfill its commitment to buy these licenses. In the more than four years since the IVDS auction, CRSPI and its principals have invested substantial amounts of time and money in the IVDS industry. They have waged an enormously expensive legal battle, first to defend themselves against the Commission's investigatory proceeding and the Order to Show Cause proceeding, and later to pursue the licenses in the Court of Appeals and, ultimately, through a Petition for Certiorari, filed in the Supreme Court. During this entire time period, they have kept in active touch with the fledgling industry. They are convinced that the time has finally arrived when the equipment and technology

is available to put this spectrum to good use in the public interest. That is why they are requesting the relief described in this Petition.

WHEREFORE, CRSPI requests the full Commission to grant the relief requested in this Petition.

Respectfully submitted,

October 8, 1998

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EXHIBIT A

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Interactive TV Dream Fades For Licensees Some Say FCC Hyped Unproven Technology
The Washington Post, February 17, 1997,
FINAL Edition
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The federal government had told women, minorities and small-business owners that a special 'access ramp to the information superhighway' would be opened to them.

But a 1994 federal auction of hundreds of licenses to offer interactive television has instead proven to be a bad dream, both for the 'winners' of the auction and the auctioneer, the Federal Communications Commission.

After more than two years, not a single person who owns an Interactive Video and Data Services (IVDS) license has a paying customer. Instead, one-fifth of the 594 licenses have been repossessed for nonpayment and dozens of small businesses are on the verge of financial ruin.

'The FCC really sold us a purple cow,' said Henry Mayfield, 59, a black District resident who had bid $450,000 to win a license to serve New Brunswick, Conn. 'This will bankrupt most of us. Some of us will never recover.' All told, the winners pledged $214 million for the licenses.

The FCC responds that it told bidders they were not guaranteed a profit. It was up to them to research the risks their bids entailed, FCC officials said. 'I don't think we were guaranteeing anyone's success,' said Michelle Farquhar, chief of the FCC's wireless bureau. 'The marketplace speaks and sometimes . . . things take a bad turn. But that's not the FCC's bailiwick.'

The idea behind IVDS was to allow millions of Americans to 'talk back' to their TV sets. With remote-control devices in hand, they would use their televisions to shop, bank and perform other interactions. So far IVDS has not led to that, and all sides agree now that the IVDS auction was a disaster, marring what otherwise has been a hugely successful auction program by the FCC that has raised more than $23 billion for the U.S. Treasury.

But the interactive television auctions were unlike any other. An examination of the auctions by The Washington Post found:

Many of the bidders had no experience in the telecommunications business and relied almost entirely on the FCC for information about the service's future prospects. Many were buoyed by the fact that the commission was portraying these licenses as a good way for women and minorities to enter an information-age business.

In a 'fact sheet' and other statements to potential bidders, the FCC made scant reference to the financial risks of paying dearly for a license to enter an unproven business. Instead, it frequently hyped the prospects for IVDS, saying in one document that it 'will have a major impact on our society in the 21st century.'

IVDS was largely the brainchild of Eon Corp. of Reston, which led the fight to open the airwaves to the service and then failed to deliver the necessary equipment. Along the way Eon hired Washington lobbyists to represent its interests before the FCC, including on one occasion, after the commission had agreed to assign spectrum to the service, FCC Chairman Reed E. Hundt, then a lawyer in private practice.

At the time of the auctions, Eon predicted it would have equipment ready to sell to them soon. Two and a half years later, it has not delivered it, nor has any other company. Instead, Eon and a handful of other companies are now pursuing more mundane uses for the licenses, such as utility meter reading.

The FCC, after taking a hard line of caveat emptor -- let the buyer beware -- for months, forcing many licensees into foreclosure for failing to meet payment schedules for the licenses, two weeks ago became more conciliatory. It has put off another auction of the seized licenses and is talking about giving people who still hold licenses more time and flexibility to find some other way to make a business with their frequencies.

Hundt said the license holders 'tell a very sympathetic story,' but says the FCC is not to blame for their problems.

Despite the problems with IVDS, the FCC said it has been able to indirectly diversify the communications business somewhat through its auctions. According to FCC figures, nearly half of all licenses it has auctioned so far, including those for mobile phones and pagers, have gone to companies qualifying for bidding incentives under other various FCC definitions as 'small businesses.' Some of these are controlled by women

and minorities.

A Device Born in Reston

The story begins in the mid-1980s with TV Answer, a small Reston company with seemingly limitless financial backing from three of Mexico's wealthiest industrial families. The company, renamed Eon in 1993, spent more than $150 million to develop a device that people could use to send messages back to local TV stations or cable channels.

The signals to and from the house would need to travel over the airwaves. That meant persuading the FCC to set aside radio frequencies. Eon executives hired a clutch of Washington lobbyists, including former FCC chairman Mark Fowler, a lawyer for the law firm of Latham & Watkins. Eon also recruited to its board George Keyworth, who served as science adviser to President George Bush.

In 1992, the FCC agreed to set aside frequencies for IVDS as designed by Eon.

Among the people praising IVDS in TV Answer's promotional material was FCC Commissioner Ervin Duggin. In a video the company distributed in 1992 to potential investors, he is shown saying the following, according to a transcript of the video: 'It is very exciting to be on the threshold of the age of interactivity and I think all of you are to be praised. And I think the folks at TV Answer are to be praised.'

Duggin, now head of the Public Broadcasting Service, made the statement during a panel discussion on new technologies, according to his spokesman Stu Kantor. When Duggin learned of his appearance in the promotional video, Kantor said, he tried unsuccessfully to get TV Answer to remove it.

'In the warmth of the moment he may have expressed some kind words regarding TV Answer, but he never made any express endorsement,' Kantor said.

TV Answer also hired a future FCC chairman, Hundt, to lobby on its behalf. In an interview, Hundt said he represented the company at the FCC in mid-1992, while working as an attorney for Latham & Watkins. Hundt said he was hired to defend a series of advertisements by TV Answer that promoted upcoming lotteries of IVDS licenses, after the FCC complained about the ads.

said he disclosed his involvement with TV Answer and all other industry clients to the FCC upon becoming chairman in December 1993. The

agency's general counsel informed him, he said, that he would not need to recuse himself from any issues involving the company. He also said no issues directly involving TV Answer have arisen.

After handing out licenses free by lottery to serve the nine biggest U.S. cities, the FCC shifted to auctions soon after Hundt's arrival in 1994, heeding a mandate by Congress to make money for the Treasury.

The law Congress had passed also ordered the FCC to try to diversify the communications industry, which is dominated by white businessmen. To that end, the agency announced it would make IVDS a localized service, thereby lowering the potential cost of a license.

It would also grant bidding discounts to minorities and women. They could, for example, win an auction by bidding $100,000, but would have only to pay $75,000. This was before the Supreme Court in 1995 ruled that most federal affirmative action programs were unconstitutional.

More than a dozen license holders interviewed for this article said they were persuaded by the FCC's statements at the time that it was backing IVDS as a legitimate business opportunity.

Risks Unspoken

Unlike a company selling shares to the public on a stock market, the FCC was under no legal obligation to disclose the risks inherent in what it was selling. The FCC says that it sells only the rights to the airwaves and makes no promises about whether the license can be used to create a viable business.

But the FCC did promote the potential uses for IVDS. An October 1993 'Fact Sheet' issued by the FCC said IVDS would allow consumers to talk back to their television sets, 'choose the camera angle during a sporting event, pay bills, shop-until-they-drop at malls, choose endings to TV shows, check college catalogues, play video games, choose movies on demand, or order a pizza with or without the toppings.'

An FCC booklet sent to each bidder noted that 'this spectrum has been called the access ramp to the information superhighway. . . . IVDS technologies will have a major impact on our society in the 21st century.'

Jack Clarke, an apartment building owner who lives in Adelphi, said that was enough to convince him that he should get in. Clarke said the FCC booklet led him to believe the FCC was endorsing the viability of IVDS technology. 'The FCC believed that what Eon had worked. And we believed in

the FCC,' he said.

Let the Bidding Begin

On July 28, 1994, Hundt banged the gavel to open the auction for IVDS licenses. There were two auctions going on at the Omni Shoreham Hotel that day -- the IVDS auction in the Regency Ballroom and an auction for nationwide paging licenses in the main ballroom.

The atmospheres in the two rooms were starkly different. For the paging licenses, bidders tapped bids into computers set up in kiosks. Corporate lawyers and executives quietly watched television monitors for results of the latest bidding round results, then retreated into hotel suites to plot the next round.

But down the hall at the Regency room, where the FCC was trying a licenses, a circus
atmosphere prevailed. As a pair of energetic young female 'bidding assistants' raced up and down the aisles collecting bids, an auctioneer rattled off the city names and highest bids of markets up for sale.

'The whole thing behind open outcry is to pump people up and get them excited,' said Sherman Ragland, president of Tradewinds International Inc., which was hired by the FCC to hold the auctions. 'It was a very festive auction.'

FCC officials now concede that many of the people who walked into the ballroom probably should not have been there. Most had no experience in information services. Hundt later said that the FCC erred by allowing people to bid by paying only $2,500 up front. 'That was the only mistake we made,' he said one year after the auction.

Clarke, for example, who teamed with his father to bid $100,000 and win a license to serve State College, Pa., said the closest thing he had to experience in this field was helping run the Columbia Union College radio station in Takoma Park. 'I didn't know the difference between a megahertz and a milliwatt,' he said.

When the auction was finished, the FCC hailed the demographics of the winners: Roughly a third, the agency said, were businesses owned by minorities and more than 40 percent were owned by women.

Post-Auction Problems

Trouble began with the licenses shortly after the auctions closed. Eon bused groups of license winners to Reston from downtown Washington to show

off its technology. It was then that Clarke said he became suspicious that IVDS was more glitter than reality.

'When I came back on the bus I said to my seatmate, who was a nurse, You know, I'm a little worried about this,' ' he said. 'The stuff they showed us was either broken or it didn't work. Something just didn't seem right.'

In the end, Eon was unable to develop a home device inexpensive enough to sell to a mass audience, officials at the company now say. Eon repeatedly postponed its delivery date for the technology, and then gradually backed away from interactive television completely.

Just one month after the auctions, financial arrangements began to crumble. The FCC said two dozen bidders failed to make required down payments on their licenses. Among them were the top two bidders, Commercial Realty St. Pete Inc. of St. Petersburg, Fla., which bid $29.8 million for 20 licenses, and Interactive America Corp. of Sun Valley, Calif., which bid $14 million for 15 licenses. Since, each has had its license taken away by the FCC.

Even if Eon's technology had arrived on time, the licensees might have had a very hard time making a viable business with it. Other types of interactive TV have turned out to be a bust.

Industry analysts said Americans who want interactive services are much more interested in getting them through online computer services, such as the Internet and America Online, which now have tens of millions of users. The television set has remained largely an entertainment and news medium for passive viewing.

Deadline Approaches

The license holders now approach a key deadline, March 31, on which they are obligated to begin paying principal on their licenses, not just interest. Don Linoubos, a Californian who has organized a group of fellow license holders, predicts that this will force dozens more licensees into default.

Forfeiture doesn't get them off the hook financially. Under the rules of the auction, repossessed licenses will be re-auctioned and the original owner still must pay the difference between the old and the new price, plus a penalty.

Many predict that IVDS licenses will fetch just a fraction of their original prices. But there are signs that IVDS should not be counted out

entirely.

Wincom Inc. of Los Angeles has negotiated the purchase of 190 IVDS licenses and hopes to combine them to form a nationwide network providing cable television companies with low-cost interactivity, company President Sean O'Keefe said. License owners sign their titles over to Wincom, in exchange for shares in the company and Wincom taking over payments to the FCC.

And several equipment makers, including Welcome to the Future Inc. of Columbia, and Intrinzik Technologies Inc. of Baltimore, continue to try to develop technology that IVDS license holders would buy and use to offer services.

As for Eon, it now has entirely new management and has relocated to Chantilly with only a dozen employees. The company said the $150 million it spent on IVDS research now is focused on a more modest application -- wireless methods of monitoring vending machines and utility meters.

'We feel a great responsibility,' said Robert H. Turner, Eon's president and chief executive. 'Our obligation is to make this industry work and wipe away all the bad stuff in one fell swoop.'

CAPTIONS: The FCC's fact sheets gave no warnings about the risks of entering an unproven business based on undelivered technology.

DESCRIPTORS: Television; Technology; Auctions; Federal government

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CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 8th day of October, 1998, to the offices of the following:

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