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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	
Regarding Installment Payment Financing	)	WT Docket No. 97-82
for Personal Communications Services	)	
(PCS) Licenses	)	

To: The Commission

PETITION FOR RECONSIDERATION
OF CONESTOGA WIRELESS COMPANY

Conestoga Wireless Company ("Conestoga"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules [47 C.F.R. § 1.429], hereby requests reconsideration of the August 19, 1998 *Fourth Report and Order*[1] insofar as the Commission sets a minimum opening bid price for *all* available C-Block spectrum at 10 percent of the corresponding net high bid for the market in the original C-Block auction, and insofar as the Commission has decided to conduct a reauction that does not include C-Block licenses and spectrum held by entities that have filed for bankruptcy protection. As demonstrated below, setting the minimum opening bid price based on bid prices that have later proved to be unreasonable and unsupported by commercial markets is arbitrary and capricious, discriminates against bidders in markets where C-Block bidding was irresponsible or unusually high, and acts as a market entry barrier for entrepreneurs and small businesses. Likewise, conducting a C-Block reauction without waiting for the resolution of pending bankruptcy proceedings and/or possible Congressional action would

[1] *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Fourth Report and Order*, FCC 98-176 (*rel.* Aug. 19, 1998) ("*Fourth Report and Order*"). The *Fourth Report and Order* was publised in the Federal Register at 63 FR 50791 (September 23, 1998).

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force entrepreneurs and small businesses to make a decision on whether to participate in a reauction, and to make use of limited financial resources, without knowing if more desirable C-Block spectrum will later become available. In support of Conestoga's request, the following is shown.

BACKGROUND

Conestoga is a small business entrepreneur and wholly-owned subsidiary of The Conestoga Telephone and Telegraph Company ("Conestoga Telephone"), an independent rural telephone company that provides local exchange service in Pennsylvania. Conestoga participated in the C-Block auction but withdrew from the proceeding when bid prices in its markets of interest became unreasonable and exceeded what its business plan would allow. Thereafter, Conestoga successfully participated in the D-, E- and F-Block auction and the company now holds 10 MHz broadband PCS licenses in the basic trading areas ("BTAs") of Reading, Sunbury, Pottsville and Williamsport, Pennsylvania.

I. The Minimum Opening Bid Formula Adopted by the Commission Is Not Appropriate for All Markets and Should Be Reconsidered or Clarified

Conestoga would like to supplement its current spectrum holdings by participating in the C-Block reauction. However Conestoga fears that the minimum opening bid formula adopted by the Commission in the *Fourth Report and Order* will result in minimum opening bid prices that exceed, on a per-MHz/pop basis, winning bid amounts for licenses that it won in the D-. E- and F-Block auction (which represent rational bid levels). As a result, bidders such as Conestoga will be faced with an unacceptable situtation if they wish to participate in the

reauction -- overbidding right from the start and forfeiting their ability to pursue alternative bidding strategies. Conestoga therefore believes that the Commission should instead set the minimum opening bid amount for C-Block spectrum at a price on a par with 10 percent of the average net high bid for D- and E-Block licenses. In the alternative, it should clarify that the Wireless Bureau *shall* reduce the minimum opening bid upon request of a potential bidder, according to factors set forth by the Commission in the *Part 1 Third Report and Order*, also considering prices paid by D- and E-Block licensees in the market, the unavailability of installment financing, and the significant headstart of other PCS licensees.

Taking two of Conestoga's D-Block markets (the Reading and Pottsville BTAs) as an example,[2] Conestoga won its licenses with bids of $277,000 ($0.08 per MHz/pop) and $92,000 ($0.06 per MHz/pop) respectively. However, the net high bid prices for these markets in the C-Block auction were extremely high, at $15,030,761 ($1.49 per MHz/pop) and $4,561,511 ($1.00 per MHz/pop) respectively. Applying the Commission's 10 percent formula to these markets will result in minimum opening bids of $1,503,076 for the Reading BTA and $456,151 for the Pottsville BTA. Even when these levels are adjusted on a per-MHz basis, these C-Block minimum bid amounts exceed or closely approximate the net high bids for D- and E-Block licenses. The *Fourth Report and Order* also does not clearly indicate whether the minimum opening bid will be cut in half where 15 MHz of disaggregated C-Block spectrum is available.[3]

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[2] Spreadsheet calculations for each market are shown in Attachment A.

[3] *Fourth Report and Order* at ¶¶ 26-29.

These examples clearly show that an "across the board" formula won't work for all BTA markets where spectrum becomes available for the C-Block reauction. To be sure, the Commission has indicated that "[t]he Bureau may exercise its discretion to set forth a minimum opening bid smaller than ten percent if, based upon further evaluation, the Bureau believes that a smaller amount is warranted."[4] Conestoga applauds the Commission for granting discretion to the Wireless Bureau and instructing the Bureau, in the context of the *Part 1 Third Report and Order*,[5] to consider such factors as the amount of spectrum being auctioned and levels of incumbency, among others, in managing the auction process and setting valuations for other purposes.[6] However, Conestoga requests that the Commission clarify that the Wireless Bureau *shall* reduce the minimum opening bid upon request of a potential bidder, according to factors set forth by the Commission in the *Part 1 Third Report and Order*, also considering prices paid by D- and E-Block licensees in the market, the unavailability of installment financing for C-Block reauction winners, and the significant headstart of other PCS licensees. Settng *any* minimum bid price based on irrational C-Block bidding, or spectrum where installment financing was available, would be inappropriate for the reauction. If potential bidders in the C-Block reauction do not have assurances that minimum opening bid amounts will be reduced significantly, Conestoga believes there is a substantial likelihood that spectrum could either go unsold, or bidders may be forced to overpay (risking bankruptcy and/or default).

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[4] *Id.* at ¶ 29.

[5] *See* Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Furhter Notice of Proposed Rule Making*, 13 FCC Rcd 374 ("*Part 1 Third Report and Order*").

[6] *Id.* 13 FCC Rcd at 454-55 (para. 139).

II. The Commission Should Delay its C-Block Reauction Until Spectrum Held by Entities That Have Filed for Bankruptcy Becomes Available

The Commission should reconsider its decision to schedule and conduct the C-Block reauction without first waiting for the resolution of pending bankruptcy proceedings and/or possible Congressional action freeing C-Block licenses, and other PCS spectrum, for reauction. Otherwise, small businesses and entrepreneurs will be forced to decide whether to participate in a reauction, and to make use of limited financial resources, without knowing if more desirable C-Block spectrum will later become available.

Conestoga is aware that Congress, during the last few days of its 1998 session, considered adding language to the 1999 Omnibus Appropriations bill that could have made C-Block PCS licenses now frozen in bankruptcy proceedings available for the FCC's scheduled March 23, 1999 reauction. While the measure was not ultimately included in the year-end spending bill, Conestoga believes that this legislation could be revived early next year. If approved, C-Block spectrum for many major markets could become available during or shortly after the scheduled reauction. Thus, potential reauction participants such as Conestoga are being put in the uncomfortable position of having to weigh the likelihood of such options with the limited funds they have available to obtain spectrum licenses. This uncertainty will certainly have a negative impact on participation in any reauction that does not include *all* C-Block spectrum. Like the Commission, Conestoga is wary of adding to the delay in distributing the remaining C-Block licenses. However, the potential for an immediate resolution of the bankrupcy issue will give Conestoga, and other potential participants in the reauction, pause to consider alternative business strategies and is likely to skew the bidding in a reauction that is

that is scheduled as soon as March of 1999. The Commission should therefore wait until the fate of such pending legislation is known before setting a date and schedule for the C-Block reauction.

CONCLUSION

For the foregoing reasons, Conestoga respectfully requests that the Commission reconsider and/or clarify its decision to set a minimum opening bid price for all C-Block spectrum, and reconsider its decision to schedule the C-Block reauction before more is known about the resolution of pending bankruptcy proceedings and/or Congressional action.

Respectfully submitted,

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ATTACHMENT A

FCC Auction BID Comparisons

Market	BTA	Population	License	Spectrum (MHz)	Cost	Company	$/MHz/POP
Reading	370	336,523	D-Block	10	$ 277,000.00	Conestoga	$ 0.08
Reading	370	336,523	C-Block	30	$ 15,030,761.00	Omnipoint	$ 1.49
Minimum BID @ 10% of C Block Cost					$ 1,503,076.10		$ 0.15
Reauction		336,523		15	$ 1,503,076.10		$ 0.30
BID @ D-Block Value ($/MHz/POP)					$ 415,500.00		
					$ 1,087,576.10	PENALTY	
Bankruptcy				10		Nextwave	

Market	BTA	Population	License	Spectrum (MHz)	Cost	Company	$/MHz/POP
Pottsville	360	152,585	D-Block	10	$ 92,000.00	Conestoga	$ 0.06
Pottsville	360	152,585	C-Block	30	$ 4,561,511.00	Omnipoint	$ 1.00
Minimum BID @ 10% of C Block Cost					$ 456,151.10		
Reauction		152,585		30	$ 456,151.10		$ 0.10
BID @ D-Block Value ($/MHz/POP)					$ 276,000.00		
					$ 180,151.10	PENALTY	