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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Rules Regarding Installment Payment	)	WT Docket No. 97-82
Financing for Personal Communications	)	
Services (PCS) Licensees	)	
	)	
Amendment of Part 1 of the	)	
Commission's Rules --	)	
Competitive Bidding Procedures	)	

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SECOND ORDER ON RECONSIDERATION OF THE SECOND REPORT AND ORDER

Adopted: March 31, 1999 **Released: April 5, 1999**

By the Commission:

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I. INTRODUCTION

1. In this *Second Order on Reconsideration of the Second Report and Order ("Second Reconsideration Order")*, we resolve the petitions for reconsideration of the *Order on Reconsideration of the Second Report and Order* ("*First Reconsideration Order*").[1] In so doing, we find that the petitioners have presented no grounds that persuade us to alter any aspect of the limited relief options for C block licensees enumerated in the *First Reconsideration Order*. Accordingly, this *Second Reconsideration Order* affirms the findings of the Commission in the *First Reconsideration Order*.

II. BACKGROUND

2. The C block auction concluded on May 6, 1996,[2] and the subsequent reauction of defaulted licenses concluded on July 16, 1996, with a total of 90 winning bidders on 493 licenses.[3] Consistent with Congress' mandate to promote the participation of small businesses and other "designated entities" in the provision of spectrum-based services,[4] the Commission limited eligibility in the initial C block auctions to entrepreneurs and small businesses.[5] Under the Commission's rules,

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[1] Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998). We refer to this order together with the Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications (PCS) Licensees, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,436 (1997) ("*C Block Second Report and Order*") collectively as the "*C Block Restructuring Orders*."

[2] *See* "FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas: Auction Event No. 5," *Public Notice*, DA 96-716 (rel. May 8, 1996).

[3] *See* "FCC Announces Winning Bidders in the Reauction of 18 Licenses to Provide Broadband PCS in Basic Trading Areas: Auction Event No. 10," *Public Notice*, DA 96-1153, 11 FCC Rcd 8183 (rel. July 17, 1996).

[4] *See* Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 309(j)(4)(D).

[5] *See* 47 C.F.R. §§ 24.709 and 24.720; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532 (1994); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403 (1994); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket 93-253, *Sixth Report and Order*, 11 FCC Rcd 136 (1995).

the winning C block bidders were permitted to pay 90 percent of their net bid price over the ten-year license term.[6] The Wireless Telecommunications Bureau ("Bureau") suspended installment payments for C block licensees on March 31, 1997, after licensees made requests for relief and restructuring.[7] The *C Block Second Report and Order* later required licensees to file a written election notice on or before January 15, 1998, specifying whether they would resume payments under the terms of the original installment payment plan or would proceed under the alternative options.[8] This election date was postponed during the Commission's first reconsideration of the *C Block Second Report and Order*, due to the large number of petitions for reconsideration and the need to address the issues raised by the petitioners.[9]

3. In the *First Reconsideration Order,* the Commission rejected requests from parties seeking deviation from the payment schedule and from amounts bid during the auction and memorialized in the licensees' installment payment notes.[10] This decision was based on the recognition that further delay would threaten the integrity of the auctions process and discourage licensees from confronting the reality of their financial situations.[11] In taking this approach, however, the Commission decided in the *C Block Second Report and Order* (as modified by the *First Reconsideration Order*) to allow each C block licensee to elect one of four options for each of its licenses: resumption of payments under the licensee's original installment payment plan, disaggregation, amnesty, or prepayment.[12] This array of choices was intended to provide limited relief to financially troubled licensees without harming the integrity of the auction process.[13] The Bureau

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[6] *See* 47 C.F.R. § 24.711(b)(3). The net bid price is equal to the winning bid less any bidding credit for which the licensee was eligible. *See* 47 C.F.R. § 24.712.

[7] *See* Installment Payments for PCS Licenses, *Order*, 12 FCC Rcd 17,325 (WTB 1997).

[8] *C Block Second Report and Order*, 12 FCC Rcd at 16,470, ¶ 70.

[9] 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 (rel. January 7, 1998) at ¶ 2 (hereinafter "*Election Date Order I*"); *see also* 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 (rel. February 24, 1998) at ¶ 3 (hereinafter "*Election Date Order II*").

[10] *First Reconsideration Order,* 13 FCC Rcd at 8356, ¶ 29, n. 54.

[11] *Id.* at 8354, ¶ 24.

[12] *Id.* at 8347, ¶ 65.

[13] *Id.* at 8348, ¶ 7 ; *see also C Block Second Report and Order*, 12 FCC Rcd at 16,437-38, ¶ 2 and 16,444-46, ¶¶ 15-17.

announced by public notice on April 17, 1998 an election date of June 8, 1998 and a payment resumption date for C block licensees of July 31, 1998.[14]

4. During the period in which the Commission was considering restructuring options, two licensees filed for bankruptcy, DCR PCS, Inc., the subsidiary of Pocket Communications, Inc. ("Pocket") and GWI PCS, Inc ("GWI").[15] Two weeks before the date for petitions in this matter, the U.S. Bankruptcy Court for the Northern District of Texas ("bankruptcy court") issued a bench ruling in the GWI case,[16] allowing the GWI licensees to retain 14 C block licenses for which GWI PCS was the high bidder at the C block auction, but voiding 84.34 percent of the debt owed to the Commission for these licenses.[17] Accordingly, under the bankruptcy court's ruling, the figure owed by GWI was reduced from $1.06 billion to $166 million. The GWI bankruptcy court found that the value of GWI's licenses declined between the date the C block auction ended and the time that the license grants were issued, and held that GWI's undertaking of the obligation to pay the Commission the full bid price for the license was, therefore, a constructive fraudulent conveyance under Section 548 of the Bankruptcy Code.[18] The bankruptcy court refused to give any deference to the FCC's role as a regulatory licensing agency, thus treating the Commission as a "creditor" instead of a "regulator" with regard to the C block payments.[19]

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

[15] On March 31, 1997, DCR PCS, Inc. and Pocket Communications Inc. filed for bankruptcy in the Bankruptcy Court for the District of Maryland. GWI's subsidiaries petitioned for bankruptcy in October 1997 in the U.S. Bankruptcy Court for the Northern District of Texas. GWI did likewise in January 1998, with both filings challenging GWI's obligation to pay the bid price for licenses as a fraudulent conveyance under Section 548 of the Bankruptcy Code, 11 U.S.C. § 548.

[16] *GWI PCS 1, Inc. v. FCC*, Adversary No. 397-3492 (Bankr. N.D. Tex. April 24, 1998), *appeal pending, United States v. GWI PCS 1, Inc., et. al.*, No. 3:98cv1704-L (N.D. Tex.) ("*GWI Decision*"). The bankruptcy case is cited at: *In re GWI PCS 1, Inc., Debtor*, Case no. 397-39676-SAF-11, (Northern District of Texas, Dallas Division), *appeal pending*, No. 3:98:cv2506-T (N.D. Tex.). On June 4, 1998, the bankruptcy court issued a final judgment incorporating the Bench Ruling by reference. *See Order, GWI PCS 1, Inc. v. FCC*, Adversary No. 397-3492, (N.D. Tex, June 4, 1998). Although some claims and counterclaims pleaded in the proceeding remained for trial, the bankruptcy court expressly determined, under Fed. R. Civ. P. 54(b) and Bankr. R. 7054(b), that there was no just reason for delay in entering the final judgment on the avoidance claims. A stay of this decision was entered on September 30, 1998 and lifted on October 7, 1998. *See Order On Petition for Emergency Stay, United States of America v. GWI OCS1, Inc., et. al.*, 98-11123 (U.S. Court of Appeals for the Fifth Circuit, rel. September 30, 1998) and *Order On Lifting Emergency Stay, United States of America v. GWI OCS1, Inc., et. al.*, 98-11123 (U.S.C.A. 5th Cir., rel. September 30, 1998).

[17] *GWI Decision* at 31.

[18] *Id.* at 39; 11 U.S.C. § 548.

[19] *GWI Decision* at 38-40.

5. The Commission received eleven petitions for reconsideration of the *First Reconsideration Order,*[20] one set of supplemental comments,[21] and no oppositions or replies. In *NextWave Telecom Inc. v. FCC*, D.C. Cir. No. 98-1255 (order issued June 5, 1998) and *McBride v. FCC*, D.C. Cir. No. 98-1255 (order issued June 5, 1998), the U.S. Court of Appeals for the D.C. Circuit denied two motions for stay of the election date.[22] Four licensees also filed Petitions for Review of the *First Reconsideration Order* in the D.C. Circuit.[23] More than 90 percent of C block licensees properly filed their elections in compliance with the *First Reconsideration Order.*[24] The Commission returned any elections conditioned upon the *GWI Decision* for resubmission.[25] On June 8, 1998, NextWave's license-holding subsidiaries commenced Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York.[26]

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[20] *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, Report No. 2283, 63 Fed. Reg. 38,404 (July 16, 1998); *see* Appendix A for a complete list of Petitioners and the abbreviations by which we refer to them.

[21] Supplement to Petition for Reconsideration filed by Vincent McBride (June 12, 1998).

[22] The Commission had previously denied NextWave's Petition for Stay at "Petition of NextWave Telecom, Inc. for a Stay of the June 8, 1998, Personal Communications Services C Block Election Date," *Order*, WT Docket No. 97-82, FCC 98-104 (rel. June 1, 1998). The Commission received additional stay requests but failed to rule on the petitions prior to the D.C. Circuit's consideration of this matter.

[23] *See* NextWave's Petition for Review filed May 29, 1998 (D.C. Circuit); GWI's Petition for Review filed June 8, 1998 (D.C. Circuit); U.S. Airwave's Petition for Review filed June 8, 1998 (D.C. Circuit); Sprint Spectrum L.P.'s Petition for Review, filed June 8, 1998 (D.C. Circuit); and Vincent McBride's Petition for Review filed June 4, 1994 (D.C. Circuit). The Court dismissed NextWave's Petition for Review by an order dated June 11, 1998 (D.C. Cir. No. 98-1255) and McBride's Petition for Review by an order dated July 7, 1998 (D.C. Cir. No. 98-1264). The Court consolidated the remaining cases into *U.S. Airwaves, Inc. v. FCC* (D.C. Cir. No. 98-1266). The Court granted the Commission's motion to hold this case in abeyance on August 20, 1998. NextWave and McBride had already filed petitions for reconsideration and their arguments are addressed in this proceeding. U.S. Airwave, Sprint and GWI did not file petitions for reconsideration.

[24] "Wireless Telecommunications Bureau Announces Broadband Personal Communications Services (PCS) C Block Unconditional Elections," *Public Notice*, DA 98-1340 (rel. July 2, 1998) ("*Broadband PCS Public Notice*").

[25] *Id.*

[26] NextWave, the parent company, filed for bankruptcy on December 23, 1998. *See In re NextWave Personal Communications Inc.*, No. 98-B21529 (ASH) (Bankr. S.D.N.Y.); *In re NextWave Personal Communications, Inc.*, 98-B21529 (ASH), Chapter 11, Adv. Pro. 98-5178A (Bankr. S.D.N.Y.). Two other C block licensees subsequently have filed for bankruptcy. *See In re Urban Comm-North Carolina, Inc.*, No. 98-B10086 (Bankr. S.D.N.Y.); *In re Magnacomm Wireless, LLC*, No. 98-39048T (Bankr. W.D. Wash.).

III. DISCUSSION

6. Several factors temper our treatment of the petitions for reconsideration of the *First Reconsideration Order*. First, instead of addressing matters raised in the *First Reconsideration Order*, most of the petitions focus on the issues presented by the *GWI Decision* and the purported applicability of the bankruptcy court's decision to the *First Reconsideration Order*. Second, some of the issues raised in the petitions for reconsideration of the *First Reconsideration Order* have been mooted by implementation of the election and payment resumption deadlines, June 8, 1998 and July 31, 1998, respectively.

A. Election and Resumption Dates

7. Five petitions for reconsideration request a postponement of the election and resumption dates based primarily upon the *GWI Decision*.[27] The C-Block Alliance, C-Block Licensees, DiGiPH PCS, Inc., Vincent McBride, and NextWave all support an indefinite postponement, arguing that the time for elections should be delayed until the full impact of the *GWI Decision* is evaluated.[28] In addition, NextWave asserts that licensees lack essential information necessary for their decision-making process because the Commission has failed to resolve C block ownership issues or release a series of public notices outlining clear and unambiguous procedures for election.[29] Some petitioners indicate that they may file for bankruptcy if the Commission fails to grant a postponement.[30] Only three petitioners, Brookings, Georgia, and Omnipoint actively oppose postponement.[31] Nevertheless, Omnipoint requests that the Commission receive Department of Justice approval for the restructuring process prior to the election date, pursuant to the Federal Claims Collection Act and related regulations.[32]

8. The postponement issue has been mooted by the passage of time in this proceeding, coupled with the denial of the stay by the D.C. Circuit Court of Appeals.[33] The Commission received approval from the Department of Justice for implementing the restructuring options prior to June 8,

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[27] *See* C Block Alliance Petition at 2, C Block Licensees Petition at 5, DiGiPH Petition at 2,5, McBride Petition at 4, and NextWave Petition at 5.

[28] *Id.*

[29] *See* NextWave Petition at 5-7.

[30] DiGiPH Petition at 4; NextWave Petition at 3-5.

[31] Brookings Petition at 5, Georgia Petition at 5, and Omnipoint Petition at 4. Fortunet, Northcoast and Windkeeper do not comment on this issue. *See generally*, Fortunet Petition, Northcoast Petition and Windkeeper Petition.

[32] Omnipoint Petition at 4; *see also* 31 U.S.C. § 3711 and 4 C.F.R. §§ 101-105.

[33] *See* note 22, *supra* and accompanying text.

1998.[34] The procedures for election were released in a timely fashion and more than 90 percent of the licensees adhered to the Commission's rules and these procedures.[35] The Government's appeal of the *GWI Decision* could extend over a lengthy period of time and a postponement based upon the outcome of this case would delay C block licensing indefinitely. The Commission moved forward with this matter to ensure administrative finality and to protect the integrity of the auctions process.

9. We next consider the issues raised by licensees that made installment payments on time and request relief based on this. Fortunet Communications complains of paying the first installment payment prior to the suspension date while other licensees have been permitted a lengthy period of non-payment.[36] Fortunet believes that it should be credited with interest in the calculation of the prepayment credit, in order to put it in a comparable position to those licensees that made no payments.[37] DiGiPH makes a similar claim, and requests that those licensees that timely submitted their March 31, 1997 installment payment be permitted to suspend the payment of the next installment as it becomes due.[38] Then, after a deferral period equal to that afforded to C block licensees that missed their March 31, 1997 installment obligation, the amount of the missed installment would be paid in eight equal installments.[39]

10. We reiterate our decision not to provide compensation to entities making timely installment payments.[40] It would be inadvisable to compensate licensees for following the Commission's rules and making timely payments when required. Moreover, the Commission permits the refund of installment payments when the licensee has opted to return all of its licenses. If a licensee returned some licenses and retained others, the licensee is permitted to apply previously submitted installment payments toward the prepayment of retained licenses or toward the Suspension Interest[41] for retained licenses that the licensee does not prepay.[42] Since installment payments will

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[34] U.S. Department of Justice Approves Debt Forgiveness Personal Communications Service (PCS) C Block, *Public Notice*, DA 98-1051 (rel. June 3, 1998).

[35] *See Broadband PCS Public Notice,* note 24, *supra.*

[36] Fortunet Petition at 2.

[37] *Id.* at 3.

[38] DiGiPH Petition at 3.

[39] *Id.*

[40] *First Reconsideration Order,* 13 FCC Rcd at 8356-57, ¶ 30.

[41] "Suspension Interest" means the entire amount of the unpaid simple interest that was accrued at the rate set forth in each licensee's Note(s) during the period beginning with the date on which each license was conditionally granted through and including March 31, 1998. *C Block Second Report and Order,* 12 FCC Rcd at 16,448, ¶ 21.

either be refunded or credited under the *First Reconsideration Order*, we again reject additional compensation for timely payers.[43] Furthermore, as the Commission has previously stated, it lacks authority to pay interest to licensees, which remains one of DiGiPH's suggestions.[44] For example, unsuccessful bidders in Commission auctions do not earn interest on their upfront payments or down payments. Rather, the accrued interest on these funds is transferred to the Telecommunications Development Fund.[45]

11. As a corollary to the general argument for delay, some petitioners assert that any elections made on June 8, 1998 should be subject to an equitable, *post hoc* reassessment if the *GWI Decision* is later upheld.[46] Omnipoint argues that if GWI is upheld or if Pocket receives special consideration, then *post hoc* changes to other licensees' obligations should be permitted.[47] Omnipoint joins Brookings and Georgia in urging the Commission to announce prior to June 8, 1998 that all present C block licensees will be entitled retroactively to modify their June 8, 1998 election to claim relief equivalent to that ultimately received by Pocket or GWI.[48] We believe that GWI's case represents unique circumstances in that GWI filed for bankruptcy and the bankruptcy court made a judgment based upon GWI's individual financial circumstances. We also believe that, in view of the Commission's pending appeal of the *GWI Decision*, it would be premature to grant such a request. Accordingly, we decline to grant these requests.

B. GWI Decision

12. The *GWI Decision* gave rise to three basic arguments among the petitioners in this proceeding. First, some petitioners argue that the failure to apply the *GWI Decision* or Pocket to all C block licensees would constitute disparate treatment of similarly situated licensees.[49] Second, some petitioners urge that general application of the *GWI Decision* to all C block licensees would serve the

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[42] *Id.* at 16,451 n. 54, ¶ 24; *see also First Reconsideration Order*, 13 FCC Rcd at 8356, ¶ 30.

[43] *First Reconsideration Order*, 13 FCC Rcd at 8356-57, ¶ 30.

[44] *See id.*, 13 FCC Rcd at 8357, ¶ 30, n. 58. *See also* Communications Act, § 309(j)(8)(C), 47 U.S.C. § 309(j)(8)(C); 47 C.F.R. §§ 1.2106(a) and 1.2107(b).

[45] *Id.*

[46] *See* Brookings Petition at 5, Georgia Petition at 5, and Omnipoint Petition at 4-5.

[47] Omnipoint Petition at 4-5.

[48] *Id.*; Brookings Petition at 5 and Georgia Petition at 5.

[49] *See* Brookings Petition at 2-3; C Block Alliance Petition at 4-5; Georgia Petition at 3; and Omnipoint Petition at 3-4.

public interest by discouraging additional bankruptcies.[50] Third, some petitioners argue that the terms issued by the bankruptcy court are superior to the findings in the *First Reconsideration Order* and therefore should be adopted by the Commission in this docket.[51]

1. Equitable Argument

13. Several of the petitioners make the equitable argument that if GWI receives special payment options, similarly situated parties must receive the same treatment.[52] Some of these petitioners argue that in addition, any special relief granted Pocket requires similar treatment of other C block licensees.[53] The C Block Licensees fail to make an explicit equitable argument, but assert that the Commission should allow all C Block licensees the option to have the debt that they owe to the federal government reduced so that it equals the debt of GWI on a *pro rata* basis in line with the bankruptcy court's decision.[54]

14. Petitioners' equitable argument is inherently flawed. The D.C. Circuit cases cited in support of this argument involve the application of Commission decisions to similarly situated licensees, not the application of a bankruptcy court decision to pending Commission proceedings regarding other licensees. Therefore, *Melody Music* and *McElroy Electronics* can be distinguished. *Melody Music* involved a Commission decision to deny a renewal application to a licensee when another licensee had committed similar rule violations but received a license renewal.[55] Like *Melody Music*, *McElroy Electronics* involved the Commission's enforcement of its own rules with regard to similarly situated applicants and licensees.[56] In contrast, the bankruptcy courts do not review the Commission's policy determinations or the application of those determinations to individual, non-bankrupt licensees. Rather, a bankruptcy court's principal focus is on how best to rehabilitate a

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[50] DiGiPH Petition at 4 and Nextwave Petition at 3-5.

[51] C Block Alliance Petition at 4, C Block Licensees at 2-5, and McBride at 5. *See also* Letter from Cyber Sites, LLC to Magalie Roman Salas, Secretary of the Federal Communications Commission, dated May 7, 1998. Although Cyber Sites, LLC did not file a petition for reconsideration, it did urge the Commission to adopt the *GWI Decision.*

[52] Brookings Petition at 2-3, C Block Alliance Petition at 4-5, Georgia Petition at 3 and Omnipoint Petition at 3-4. Brookings and Georgia cite *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965), and *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993).

[53] Brookings Petition at 2-3; Georgia Petition at 2-3.

[54] C Block Licensees Petition at 4.

[55] *Melody Music*, 345 F.2d at 732.

[56] *McElroy Electronics*, 990 F.2d at 1366.

specific debtor and satisfy its creditors' claims pursuant to the Bankruptcy Code.[57] The Commission, however, in implementing its regulatory function, is charged with looking at the broader public interest to ensure that radio services are made available throughout the United States in a nondiscriminatory, rapid and efficient manner.[58] Since the holdings of the *GWI Decision* were based on different factors than those we are statutorily required to follow, and since the law recognizes that the rights and obligations of a party in bankruptcy (including other creditors) are different than those of a non-bankrupt Commission licensee, it is clear that we are not required to apply the results of the *GWI Decision* to this rulemaking proceeding.

2. Bankruptcy

15. We next address petitioners' bankruptcy concerns. In addition to claiming that a failure to postpone the election date will result in numerous bankruptcies, some petitioners indicate that it would be more to their advantage to file for bankruptcy than choose from the *First Reconsideration Order's* options.[59] NextWave adds that it would be irresponsible to its shareholders not to file for bankruptcy in light of the *GWI Decision*.[60] Further, NextWave, the C Block Licensees, and the C Block Alliance argue that applying the *GWI Decision* would be in the public interest because the failure to do so will cause bankruptcy declarations by a large number of licensees delaying the C block reauction and depressing spectrum values overall.[61]

16. The Commission will not reconsider its *C Block Restructuring Orders* because some licensees indicate that they may consider filing for bankruptcy. To do so would harm the integrity of the auctions process and encourage licensees to threaten litigation in the future. We continue to believe that the *C Block Restructuring Orders* represent a proper balance and provide adequate relief while preserving the integrity of the auctions process. Finally, we observe that more than 90 percent of the licensees have made timely elections using the offered options, which implies that the restructuring methods provided an adequate range of choices and relief.[62]

3. Misplaced Reliance on Bankruptcy Court

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[57] *LaRose v. Federal Communications Commission*, 494 F.2d 1145 (D.C. Circuit 1974).

[58] 47 U.S.C. §§ 307(b) and 309(j)(4)(C).

[59] *See* NextWave Petition at 3-5, C Block Alliance Petition at 5, and DiGiPH Petition at 4.

[60] NextWave Petition at 3-5.

[61] *Id.* at 4; C Block Licensees Petition at 4-5; C Block Alliance Petition at 4-5.

[62] *See* "Wireless Telecommunications Bureau Announces Broadband Personal Communications Services (PCS) C Block Unconditional Elections," *Public Notice*, DA 98-1340 (rel. July 2, 1998).

17. The petitioners are split over whether, as a policy matter, the Commission should follow the bankruptcy court's devaluation of GWI's licenses. Omnipoint, for example, supports the *First Reconsideration Order*,[63] while the C Block Alliance and the C Block Licensees join Brookings, DiGiPH, Georgia, NextWave and McBride in supporting the *GWI Decision*.[64] We disagree with the underpinnings of the *GWI Decision* and have filed an appeal in the United States District Court.[65] We have thus argued that the *GWI Decision* should be reversed because the bankruptcy court failed to apply properly the Commission's auction rules[66] and failed to defer to the Commission's determination of the public interest as expressed in the *First Reconsideration Order*.[67] Given that court's errors in interpreting FCC rules, coupled with our continued disagreement with the court over the appropriate balancing of the relevant public interest considerations, we decline to revise the *First Reconsideration Order*.

C. First Reconsideration Issues Raised

18. The *First Reconsideration Order* expanded the election options initially delineated in the *C Block Second Report and Order* to create a more flexible environment for C block licensees. We expanded the parameters of these options to include additional choices. First, the Commission

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[63] Omnipoint Petition at 2.

[64] Northcoast, Fortunet and Windkeeper make no arguments related to the *GWI Decision*. Omnipoint specifically stated that it supports the *First Reconsideration Order*. *See e.g.*, Brookings Petition at 2-4, C Block Alliance Petition at 4, C Block Licensees Petition at 2-5, DiGiPH Petition at 3, Georgia Petition at 2-4, McBride Petition at 5, NextWave Petition at 2-3, and Omnipoint Petition at 2.

[65] *United States v. GWI PCS 1, Inc.*, No. 3:98cv1704-L (N.D. Tex.).

[66] The bankruptcy court found that GWI did not become obligated to pay the winning bid amount unless and until it received the license, and that prior to the license grant GWI had no obligation at all to pay the winning bid amount (*GWI Decision* at 31). That conclusion is contradicted by the Commission's auction rules, which create a binding mutual obligation between the Commission and the winning bidder as of the close of the auction. At the time the Commission accepts the winning bid in its public notice closing the auction, the Commission becomes bound to issue a license to the winning bidder if it is determined to be qualified as a licensee pursuant to the Commission's rules and procedures, and concomitantly, the winning bidder becomes contractually bound at the close of the auction to pay the full winning bid. *See In re Applications for Assignment of Broadcast Personal Communications Services*, 1998 WL 889489 (rel. Dec. 23, 1998) ("licensee's binding obligations to repay the original bid price for the licenses [was] incurred upon acceptance of the high bid"). The winning bidder's contractual obligation to pay the winning bid thus becomes fixed and established at the close of the auction, and the winning bidder, not the Commission or the taxpayer, bears the risk of a change in the market between the acceptance of the winning bid and the grant of the license. Although the winning bidder's obligation is later memorialized in documentation that sets out the terms of an installment payment plan, the obligation itself pre-exists the license grant under the Commission's rules governing the auction and is incurred when the auction closes.

[67] *GWI Decision* at 39-43.

eliminated the requirement that a licensee must make the same election for all of its licenses. Instead, the Commission permitted the licensee to make different elections for the different Major Trading Areas (MTAs) in which it holds licenses. MTA elections would apply to every Basic Trading Area (BTA) license held by the licensee in that MTA. Second, the Commission decided to permit a combination of disaggregation and prepayment. Third, while resumption of payments for 30 MHz licenses remained essentially the same as in the *C Block Second Report and Order*, the Commission modified the amnesty and disaggregation options.

1. Holders of Single Licenses

19. McBride states that the procedures for relief in the *First Reconsideration Order* are favorable only for large licensees.[68] He contends that those individuals or corporations that hold only one or a few licenses will see no real benefit from the restructuring options because any combination of the provisions provided by the Commission would not alleviate their situations.[69] Windkeeper complains that if it elects amnesty, it stands to lose its entire down payment while larger bidders with multiple licenses will be entitled to apply 70 percent of their down payments for returned licenses to the prepayment of the licenses that they elect to keep.[70] The petitioner states that the Commission should alter its overall amnesty provisions to take into account the special status of small licensees.[71] Specifically, Windkeeper proposes that the Commission rectify inequities between small and large holders by providing that any C block licensee holding a single C block license receive a credit of 70 percent of its down payment for the returned license which can be used in future Commission auctions, other than the reauction of the returned license.[72] The C Block Licensees make a similar argument and propose that when credit for amnesty cannot be utilized by small C block licensees because they have few or no remaining PCS licenses against which to apply such credit, those licensees should be entitled to a credit for future auctions.[73]

20. The issues raised by petitioners have been resolved earlier in this proceeding, and we reject their arguments that we should revise the restructuring options to provide holders of single licenses with additional benefits under the amnesty option.[74] The amnesty option allows all C block licensees, including holders of single licenses, to surrender their licenses, have their remaining debt

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[68] McBride Petition at 4.

[69] *Id.*

[70] Windkeeper Petition at 2.

[71] *Id.*

[72] *Id.*

[73] C Block Licensees Petition at 7-8.

[74] *First Reconsideration Order*, 13 FCC Rcd at 8348-51, ¶¶ 7-15, 8357-60, ¶¶ 31-37, 8363, ¶ 45.

forgiven, and retain the right to rebid on the same and other licenses at another auction.[75] Given these significant benefits, we do not believe that the amnesty option should be revised to include a 70 percent credit for holders of single licenses simply because they lack the ability to combine amnesty with the prepayment option. First, the Commission offered C block licensees a menu of options because it recognized that not all of the options would be equally attractive to all licensees.

21. Second, it is important to remember that the trade-off for holders of multiple licenses that choose to receive a credit for their returned licenses is that such licensees must forgo the opportunity to rebid on those licenses.[76] In other words, the optional down payment credit comes at a price, and we reject petitioners' argument that it should be unconditionally awarded as a credit in future auctions only to those holders of single licenses.[77] We also disagree with Windkeeper's proposed solution to provide single-license holders with the credit on the condition that they may not use it to rebid on their surrendered license. Awarding single-license holders what in effect would amount to an additional bidding credit could give them an unfair advantage in future auctions. In addition, the Commission allowed licensees to use a credit from surrendered licenses to prepay retained licenses primarily to reduce its role as lender and to encourage licensees to remain in their market areas and build out their networks.[78] Providing select licensees with a credit at future auctions would not advance these objectives. Moreover, we expect that a licensee that opts to rebid on its surrendered license will factor into its valuation of the license, for purposes of its bidding strategy, the amount of the down payment retained by the Commission. In that sense, the licensee has the opportunity to recapture its down payment because it is not necessarily lost if the licensee is successful in regaining the license at a future auction.[79]

22. Finally, in recognizing that one size does not fit all, we have provided holders of single licenses with the disaggregation alternative should they decide against using the amnesty or resumption of payment options. Holders of single licenses benefit in the same fashion as multiple holders with regard to disaggregation, since this option has the same proportional effect regardless of the number of licenses held. While small-scale licensees may have different considerations in choosing options, the objective here was basic fairness to the most licensees while ensuring the overall integrity of the auctions process. We believe that the structure outlined in the *First Reconsideration Order* best achieves this goal.

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[75] *Id.* at 8360, ¶ 37.

[76] *Id.*

[77] *See First Reconsideration Order* at 8363, ¶ 45.

[78] *Id.* at 8361 ¶ 40 and 8368, ¶ 54.

[79] *Id.*

2. MTA-By-MTA Elections

23. Northcoast, which holds D, E, and F block licenses, believes that the special treatment afforded C block licensees undermines Commission policy and the competitive position of non-C block licensees.[80] Northcoast proposes eliminating two new restructuring components contained in the *First Reconsideration Order*: (1) allowing C block licensees to make different restructuring elections for different Major Trading Areas in which the C block licensee holds licenses; and (2) allowing C block licensees to use down payments on deposit with the Commission that would otherwise be forfeited to make installment payments on disaggregated licenses or pay suspension interest.[81] Fortunet takes the opposite tact, hoping to increase the number of C block options.[82] This petitioner asks that licensees be permitted to prepay the BTAs within an MTA that they can afford and either (1) resume installment payments on the remaining BTA licenses within an MTA; or (2) disaggregate and retain remaining BTAs within the MTA that it may be able to afford with the balance of the Prepayment Credit.[83]

24. The issues raised by Northcoast and Fortunet were raised and resolved in the *First Reconsideration Order*.[84] We decided against extending C block relief to F block licensees such as Northcoast.[85] Moreover, we believe the MTA is the appropriate unit for making an election. We will not permit elections on a BTA-by-BTA basis because it would threaten the interdependency of licenses and limit the potential for aggregation of licenses within an MTA.[86] Accordingly, we will not disturb the Commission's previous decision.

D. Amendment of Section 24.203(b)

25. We note on reconsideration that while the *C Block Restructuring Orders* provided a disaggregation option which will result in 15 MHz C block licenses, our current construction rules address only 10 MHz and 30 MHz blocks.[87] Accordingly, we will amend Section 24.203(b) to apply

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[80] *See* Northcoast Petition at 3.

[81] *Id.*

[82] Fortunet Petition at 5.

[83] *Id.* at 3.

[84] *First Reconsideration Order*, 13 FCC Rcd at 8351-52, ¶ 17-20.

[85] *Id.* at 8377-78, ¶¶ 74-76.

[86] *Id.* at 13 FCC Rcd 8351, ¶ 18; *see also Second Report and Order*, 12 FCC Rcd at 16,455, 16,458, 16,463-64, 16,469, ¶¶ 38, 44, 57, 67.

[87] 47 C.F.R. § 24.203(b).

to licensees of 15 MHz blocks resulting from the disaggregation option under the *C Block Restructuring Orders* the construction requirements for 10 MHz licensees.[88]

E. Requests for Ruling on Impact of Cross Default Policy on Certain Pre-existing PCS F Block Notes

26. *Background.* In the *Part I Third Report and Order,* we concluded that we would not pursue a policy of cross default (either within or across services) where licensees default on an installment payment.[89] We found that a majority of commenters in the Part 1 proceeding agreed with us on this point and we noted that our policy against cross defaults on installment payments would promote the goals discussed in Section 309(j) of the Communications Act by not terminating a license simply because an affiliate failed to make a payment with respect to another license.[90] We reached similar conclusions in the C block proceeding.[91] However, our decision on this point did not address the subject of cross defaults that might occur in our installment payment program as a result of an event of default other than a failure to make installment payments.

27. *Discussion.* Two parties submitted letters seeking clarification of this policy, particularly with regard to F block licensees. On May 29, 1998, NextWave filed a letter ("*NextWave Letter*") seeking clarification that we would not exercise remedies "based on the cross-bankruptcy default provisions" in notes that had been issued for installment payment financing of PCS F block licenses ("F block notes"). Alternatively, NextWave requested waiver of the cross default provisions contained in the F block notes. Additionally, on June 2, 1998, Hughes Network Systems, Inc. ("HNS") filed a "Request for Immediate Ruling on the Commission's Cross-Default Policy Concerning PCS F Block Notes" ("*HNS Request*"). HNS seeks a ruling on the effect of the Commission's *Part 1 Third Report and Order* on cross default provisions contained in the F block notes. It argues that certain of those provisions are inconsistent with the Commission's cross default ruling in the *Part 1 Third Report and Order*, the *C Block Second Report and Order*,[92] and the *First Reconsideration*

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[88] We note that 47 C.F.R. § 24.714 applies to construction requirements for disaggregation but this rule is not applicable to licensees choosing the disaggregation option under the *C Block Restructuring Orders.*

[89] Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 445 (1997) ("*Part 1 Third Report and Order*").

[90] *Id.* at 445-446, ¶¶ 121-122.

[91] *C Block Second Report and Order*, 12 FCC Rcd at 16472-73; *C Block Order on Reconsideration*, 13 FCC Rcd at 8377-78.

[92] While relying principally on the *Part 1 Third Report and Order* to support its argument, HNS also cited our statement in the *C Block Second Report and Order* that we would "not pursue cross default remedies against C block licensees who default on installment payments with regard to other licenses in the C or F blocks." *C Block Second Report and Order*, 12 FCC Rcd at 16472-73. HNS argues that it would be unfair to enforce a

Order.[93] HNS further maintains that the *Part 1 Third Report and Order* requires invalidation of the provisions of any notes we may already have executed where the insolvency of a note maker or its affiliate is defined as an event of default. We note that HNS made similar arguments in the C block proceeding.[94] Because the *NextWave Letter* and the *HNS Request* address similar issues, which also relate to the subject of this *Second Reconsideration Order*, we will address them here.

28. The F block notes cited by NextWave and HNS provide, *inter alia,* that an event of default includes a note maker or its affiliate either filing for, or being the subject of, a petition for bankruptcy, or being otherwise subjected to federal, state, local or foreign insolvency proceedings. In such event, the note maker's FCC installment loan is deemed to be in default, with the license forfeited. An "affiliate" is defined in the F block notes as any entity that: "(i) directly or indirectly controls or has the power to control the Maker, or (ii) is directly or indirectly controlled by the Maker, or (iii) is directly or indirectly controlled by a third party or parties that also controls or has the power to control the Maker."[95]

29. The underlying premise, and mistaken assumption, of the *NextWave Letter* and the *HNS Request* is that our cross default decision in the *Part 1 Third Report and Order* mandates that we no longer will consider the insolvency or bankruptcy of an affiliate as an event triggering cross default on a secured license for which timely installment payments are being made.[96] We disagree. The *Part 1 Third Report and Order* is not inconsistent with, and therefore does not invalidate, the cross default provisions contained in the F block notes. The *Part I Third Report and Order* and the F block notes set forth the Commission's policy toward licensees that default under different circumstances. The *Part 1 Third Report and Order* states that the Commission will not pursue a policy of cross default in cases where licensees default on installment payments. The F block notes provide that the Commission may pursue cross default when a note maker or its affiliate either file for, or are the subject of, a petition for bankruptcy or are otherwise subject to insolvency proceedings. That the Commission has determined not to pursue a policy of cross defaults in the limited circumstance of a licensee's default on its installment payments does not preclude the Commission from applying cross default in the very different circumstance of an affiliate's insolvency or bankruptcy. Bankruptcies and/or insolvency proceedings imply a greater degree of financial distress in an organization than a missed installment payment. Consequently, heightened Commission concern and evaluation would be justified to protect the FCC's interest in the licenses and its ability to fulfill the Congressional

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different cross default policy against F block licensees than was required of C block licensees. *HNS Request* at 4.

[93] *HNS Request* at 4-5.

[94] *C Block Second Report and Order*, 12 FCC Rcd at 16472.

[95] F block note at 3.

[96] *NextWave Letter* at 1; *HNS Request* at 4.

mandates of 309(j)[97] in the case of an affiliate bankruptcy and/or insolvency proceeding. There is no conflict when the Commission pursues different remedies for different circumstances of default. In the *Part 1 Third Report and Order*, we specifically stated that our determination not to pursue cross default remedies only addresses default in the context of installment payments, and did not affect our policy with regard to defaults on down payments.[98] We did not find that other types of cross default provisions are invalid and we decline to do so now. The F block note default provisions continue to have full force and effect as to all events enumerated therein. This approach is consistent with the *C Block Second Report and Order's* finding that installment payment cross defaults would not be enforced.

30. Likewise, there is no merit to HNS's argument that C block licensees were treated differently under the *C Block Second Report and Order* than F block licensees. The relief from cross default remedies provided to C block note makers in the *C Block Second Report and Order* was, as is true with the *Part 1 Third Report and Order*, limited in applicability to defaults on installment payments.

31. In light of our clarification that the cross default provisions in the F block note continue to have full force and effect, we will not grant NextWave and HNS's requests for clarification to the contrary. Further, to the extent they seek a waiver of the cross default provisions in the F block note, NextWave and HNS have not provided us with sufficient reasons to depart from our policy to continue to enforce the F block note default provisions.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Second Supplemental Final Regulatory Flexibility Analysis

32. The Supplemental Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is attached at Appendix C.

B. Paperwork Reduction Act Analysis

33. This Order contains a modified information collection that was submitted to the Office of Management and Budget requesting emergency clearance under the Paperwork Reduction Act of 1995.

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[97] Under Section 309(j)(3), the Commission shall, *inter alia,* seek to promote the development and rapid deployment of new technologies for the benefit of the public, promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American public, recover for the public a portion of the value of the public spectrum resource, and efficiently and intensively use the electromagnetic spectrum. 47 U.S.C. § 309(j)(3).

[98] *Part 1 Third Report and Order*, 13 FCC Rcd at 446, ¶ 122.

C. Ordering Clauses

34. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 303(r), and 309(j), the petitions for reconsideration filed in response to the Order on Reconsideration of the Second Report and Order are DENIED, as provided herein, and the amendment to Section 24.203 of the Commission's Rules is adopted as specified herein and at Appendix B.

35. IT IS FURTHER ORDERED THAT NextWave and HNS's requests for clarification of the cross default provisions in the F block note and their waiver requests are DENIED.

36. IT IS FURTHER ORDERED THAT the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Second Order on Reconsideration of the Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

Petitions for Reconsideration

1. Brookings Municipal Utilities ("Brookings")
2. C Block Alliance (21st Century Telesis Joint Venture; Communications Venture PCS Limited Partnership; Duluth PCS, Inc.; Enterprise Communications Partnership; Meretel Communications, LP; Mountain Solutions, Ltd.; Pine Belt PCS, Inc.; Poka Lambro PCS, Inc.; Polycell Communications, Inc.; RFW Inc.; Roberts-Roberts & Associates, LLC; SOWEGA Wireless Communications, LLC; St. Joseph PCS, Inc.; Third Kentucky Cellular Corp. d/b/a Wirless 2000 PCS; West Virginia PCS, Inc.; Wireless Ventures, Inc.)
3. C Block Licensees (Alpine PCS, LLC; Eldorado Communications, LLC; Mercury PCS, LLC; KMtel, LLC)
4. DiGiPH PCS, Inc. ("DiGiPH")
5 Fortunet Communications, L.P. ("Fortunet")
6. Georgia Independent PCS Corporation and Savanah Independent PCS Corporation ("Georgia")
7. McBride, Vincent ("McBride")
8. NextWave Telecom, Inc. ("NextWave")
9. Northcoast Communications, LLC ("Northcoast")
10. Omnipoint Corporation ("Omnipoint")
11. Windkeeper Communications ("Windkeeper")

Letters Requesting Clarification

1. Hughes Network Systems, Inc. ("HNS")
2. NextWave Telecom, Inc. ("NextWave")

APPENDIX B

Revised Rules

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24 – PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.203 (b) is amended by revising the first sentence to read as follows:

§ 24.203 Construction Requirements.

* * * * *

(b) Licensees of 10 MHz blocks and 15 MHz blocks resulting from the disaggregation option as provided in 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*, WT Docket 97-82, 12 FCC Rcd 16,436 (1997), *as modified by Order on Reconsideration of the Second Report and Order*, WT Docket 97-82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. * * *

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APPENDIX C

Second Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking ("Notice")* in WT Docket No. 97-82.[2] The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. A Final Regulatory Flexibility Analysis ("FRFA") was incorporated in the *Second Report and Order and Further Notice of Proposed Rule Making* ("*C Block Second Report and Order*").[3] A Supplemental FRFA appeared in the *Order on Reconsideration of the Second Report and Order* ("*First Reconsideration Order*").[4] The Commission received 11 Petitions for Reconsideration in response to the *First Reconsideration Order*. This Second Supplemental FRFA addresses modification of the construction requirements for broadband PCS licenses necessitated by the adoption of the *C Block Restructuring Orders*.[5]

A. Need for, and objectives of, new rule.

The *C Block Restructuring Orders* were designed to assist C block broadband personal communications services ("PCS") licensees to meet their financial obligations to the Commission while at the same time helping the Commission meet its goal of ensuring rapid provision of PCS service to the public. One of the financial restructuring options provided for in the *C Block Restructuring Orders* permitted disaggregation of a licensee's spectrum, resulting in the availability of 15 MHz C block licenses where only 10 MHz and 30 MHz blocks were available previously. The amendment of Section 24.203(b) in this *Order* sets necessary construction standards for licensees of 15 MHz blocks created through the disaggregation option available under the *C Block Restructuring Orders*. This amendment applies to licensees of 15 MHz blocks the same construction requirements as apply to 10 MHz blocks. In doing so,

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[1] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 97-60 (released February 28, 1997).

[3] 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).

[4] *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998) ("*First Reconsideration Order*"). We refer to this order together with the *C Block Second Report and Order* as the "*C Block Restructuring Orders.*" This *Second Order on Reconsideration of the Second Report and Order* is referred to as the "*Order*."

[5] 47 C.F.R § 24.203 (b).

this rule facilitates a process designed to increase effective use of the spectrum and ultimately provide licensees with the flexibility to introduce a wide variety of new and innovative telecommunications services to the public.

B. Summary of significant issues raised by public comments in response to the IRFA.

There were no comments filed in response to the IRFA in the *C Block Second Report and Order*; however, in this proceeding we have considered the economic impact on small businesses of the modification adopted in this *Order*. *See* Section E of this Second Supplemental FRFA, *infra*.

C. Description and estimate of the number of small entities to which rules will apply.

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[8] Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").[9]

The *Order* applies to broadband PCS C and F block licensees. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years.[10] This definition has been approved by the SBA.[11] On May 6, 1996, the Commission concluded the broadband PCS block auction. A second PCS C block auction closed on July 16, 1996. The broadband PCS D, E, and F block auction closed on Jan. 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our

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[6] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[7] 5 U.S.C. § 601(6).

[8] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

[9] 15 U.S.C. § 632.

[10] *See* 47 C.F.R. § 24.720(b)(1).

[11] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 (1995); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5581-84 (1995); 47 C.F.R. §§ 24.320(b), 24.720(b).

evaluations and conclusion in this FRFA, we assume that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *Order*, are small entities. The disaggregation option applies only to C Block licensees, so therefore the rules changes will affect no more than 90 entities prior to any re-auction of returned spectrum.

D. Description of the projected reporting, record-keeping, and other compliance requirements.

The modifications adopted by the *Order* include reporting and record-keeping requirements for licensees of newly created 15 MHz blocks to establish compliance with the construction requirement adopted for those blocks. These licensees must file maps and other supporting documents at the five and ten-year construction benchmarks.

E. Steps taken to minimize the significant economic impact on small entities, and significant alternatives considered.

As noted in the FRFA of the *C Block Second Report and Order*, the Commission analyzed the significant economic impact on small entities and considered significant alternatives.[12] The modifications adopted on reconsideration further reduced the burden on C block licensees, which are small businesses. These steps were detailed at length in the Supplemental FRFA. The amendment adopted in the *Order* similarly minimizes economic impact in that it applies the 10 MHz construction requirements to licensees of the newly created 15 MHz blocks. Thus, it applies the less onerous of the existing construction requirements.

F. Report to Congress.

The Commission shall send a copy of the *Order*, including this Second Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 801(a)(1)(A). A copy of the *Order* and this Second Supplemental FRFA (or summary thereof) will be published in the *Federal Register*. *See* 5 U.S.C. § 604(b). A copy of the *Order* and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

[12] *Id.*