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

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

OPPOSITION TO
PETITION FOR RECONSIDERATION

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), submits this Opposition to the captioned Petition for Reconsideration or Clarification filed by Leap Wireless International, Inc. ("Leap") on October 23, 1998.[1]

In its Petition, Leap asks the Commission to revise or clarify the Rules for the March 23, 1999 reauction of broadband personal communications service ("PCS") spectrum[2] so that the reauction "is governed by the same DE 'controlling interest' rule as govern other wireless services that are subject to licensing

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[1] Public notice of the Leap Petition was published in the Federal Register on November 25, 1998. 63 Fed. Reg. 65,209 (1998).

[2] See Public Notice: C Block PCS Spectrum Auction Scheduled for March 23, 1999, DA 98-2318 (Wir. Tel. Bur. rel. Nov. 12, 1998) ("Reauction Public Notice"); Public Notice: Additional Information Regarding Broadband PCS Spectrum Included in the Auction Scheduled for March 23, 1999, DA 98-2337 (Wir. Tel. Bur. rel. Nov. 19, 1998) ("Reauction Supplemental Public Notice").

via competitive bidding."[3] Leap submits its request in response to the Commission's Fourth Report and Order in the captioned proceeding, in which the Commission confirmed an earlier decision generally to permit (1) previous C block auction bidders and (2) entities qualifying as entrepreneurs under Section 24.709 of the Commission's Rules as of the reauction filing deadline to participate in the reauction of broadband PCS C block spectrum.[4] By its Petition, Leap would have the Commission replace these eligibility parameters with the "controlling interest" eligibility standard developed in other spectrum auction contexts[5] and proposed in the Commission's Part 1 rulemaking.[6] CIRI opposes Leap's Petition.

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[3] Leap Petition at 1.

[4] Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Fourth Report and Order, FCC 98-176, ¶ 13 (rel. Aug. 19, 1998) ("C Block Fourth Report and Order") citing Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436, 16448 (1997) ("C Block Second Report and Order").

[5] See, e.g., Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545, 12691-92 (1997).

[6] Amendment of Part 1 of the Commission's Rules - Competitive Bidding Proceeding, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 477-78 (1997) ("Part 1 Order") (seeking "further comment on the controlling interest standard").

CIRI has long supported the Commission's efforts to assist designated entities in attracting the capital necessary to participate meaningfully in the Commission's spectrum auctions. It is well established that a critical component of a successful designated entity program is certainty in the way the Commission's Rules are developed and applied. In the Balanced Budget Act of 1997, for example, Congress amended Section 309(j) of the Communications Act to require that:

> in the scheduling of any competitive bidding under this subsection, an adequate period is allowed (i) before the issuance of bidding rules, to permit notice and comment on proposed auction procedures; and (ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services.[7]

Indeed, the Commission noted in its Part 1 rulemaking that "providing a sufficient period of time for potential small business bidders to formulate their business plans is important. . . . and this is an issue to which we are sensitive."[8] On this basis, CIRI urges the Commission not to alter the eligibility parameters for the C block reauction now.

The Commission first announced the eligibility parameters for the C block reauction on October 16, 1997 in the C Block Second Report and Order,[9] and it expressly confirmed the application of those parameters on August 19, 1998 in the C Block

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[7] 47 U.S.C. § 309(j)(3)(E).

[8] Part 1 Order, 13 FCC Rcd at 401 n.107.

[9] C Block Second Report and Order, 12 FCC Rcd at 16448.

Fourth Report and Order.[10] Thereafter, the Commission made clear in the Reauction Public Notice that "the attribution rules set forth in Section 24.709 of the Commission's rules will apply to Auction No. 22"[11] and then reiterated that standard in the Reauction Supplemental Public Notice.[12] Thus, on at least four different occasions spanning more than one year, the Commission has publicly declared and confirmed what will be the eligibility parameters for the March 23, 1999 C block reauction.

Against this background, if the Commission were to adopt different eligibility parameters for the reauction in the coming months, parties that relied on the Commission's prior announcements effectively would be denied the benefits of any such new standards. Assuming that short form applications for the reauction will be due in late February, 1999, existing entities would not have sufficient time to develop new business plans or to restructure standing relationships under attribution rules announced as late as January or February, 1999. Even newly-formed entities might have prepared business plans and investment structures in reliance on the existing rules. To be certain, Congress directed the Commission to "to ensure that interested parties have a sufficient time to develop business plans" prior to an auction precisely to avoid last-minute changes such as this.

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[10] C Block Fourth Report and Order at ¶ 13.

[11] Reauction Public Notice at 5 (footnote omitted).

[12] Reauction Supplemental Public Notice at 3.

Avoiding such regulatory uncertainty is particularly important in the context of the Commission's entrepreneurs' blocks. The Commission has frequently undertaken to preserve settled regulatory expectations and existing business relationships as a way to promote investment in designated entity auction applicants,[13] and the reauction itself is part of the Commission's effort to "restore certainty to the marketplace" after some C block licensees asked for installment payment relief.[14] If the Commission were to change the eligibility parameters for the C block reauction just prior to the short form filing deadline, the Commission could "frustrate business plans and auction strategies made in reliance on [its] previous statements,"[15] undermining the very marketplace certainty that it now seeks to restore.[16] Such a last minute change is not the recipe for a successful reauction.

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[13] See, e.g., C Block Second Report and Order, 12 FCC Rcd at 16448 (applying existing C block eligibility rules to the C block reauction); Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 11 FCC Rcd 7824, 7837-39 (1996) ("D, E, and F Block Order") (applying existing C block eligibility rules to the F block auction). See also Omnipoint Corp. v. FCC, 78 F.3d 620, 629-30, 634 (D.C. Cir. 1996) (noting the Commission's efforts to preserve existing C block auction business relationships following the Supreme Court's decision in Adarand Constructors, Inc. v. Pena).

[14] C Block Second Report and Order, 12 FCC Rcd at 16448.

[15] D, E, and F Block Order, 11 FCC Rcd at 7838-39 (footnote omitted).

[16] This particularly the case since the Commission itself has asked for additional comment on the effectiveness of the "controlling interest" standard. Part 1 Order, 13 FCC Rcd at 477-78.

CONCLUSION

For these reasons, CIRI urges the Commission adhere to the reauction eligibility parameters that have long since been announced and to deny Leap's Petition for Reconsideration or Clarification.

Respectfully submitted,

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December 10, 1998

CERTIFICATE OF SERVICE

I, Daphane Satterwhite, certify that a true and correct copy of the foregoing Opposition to Petition for Reconsideration was delivered by United States mail, first class postage prepaid, on December 10, 1998 to the following:

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