

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

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WASHINGTON, D.C. 20554

In the matter of)
)
Amendment of the Commission's Rules)
Regarding Installment Payment Financing)
for Personal Communications Services)
(PCS) Licenses)

WT Docket 97-82

To: The Commission

**Comments of Alaska DigiTel, LLC, Poplar PCS, LLC
and Eldorado Communications, LLC**

On June 7, 2000, the Commission issued a *Further Notice of Proposed Rulemaking* in the captioned proceeding ("*Further Notice*").^{1/} Therein, it sought comment on several matters regarding the re-auction of certain Personal Communication Services ("PCS") licenses now scheduled for November 29, 2000. By this submission, Alaska DigiTel, LLC, Poplar PCS, LLC and Eldorado Communications, LLC (collectively, the "Commenters") submit comments in response to the *Further Notice*.

I. Summary Statement of Position

In the *Further Notice*, the Commission sought comment on numerous auction and licensing rules relating to the D and F Block spectrum subject to Auction No. 35. As provided herein, Commenters respond to several of the items the Commission seeks comments. Commenters strongly urge that the Commission maintain in place its existing eligibility rules. In the alternative,

^{1/} *Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC 00-197 (rel. June 7, 2000).

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Commenters support the Commission proposal set forth in the *Further Notice*. With respect to F Block eligibility, Commenters direct that the Commission maintain its existing eligibility limitations for F Block spectrum. Commenters also support the present rules regarding the transfer of C and F Block licenses held by entrepreneurs. Should an entrepreneur seek to assign a C or F Block license to a non-qualified licensee within the initial five years, it has available to it the Commission's waiver procedures. However, the Commission should only consider a waiver in this instance if the five year construction benchmark has been met. Finally, the Commenters support the Commission's proposal to substantially increase the bidding credits for any "open" auction but maintain the existing bidding credits for "closed" auctions.

II. Comments on Specific Commission Proposals

A. Redeployment of Spectrum

1. The C Block Reconfiguration

As Commenters have previously advised the Commission, no party has provided any justification for abandonment of the Commission's separate eligibility rules for the C and F Block spectrum subject to re-auction.^{2/} Both clear Congressional mandates and longstanding, well reasoned FCC auction rules that are dedicated to serving the public interest require that the Commission maintain its established separate eligibility rules for Entrepreneurs in all markets.^{3/} Accordingly, Commenters submit that the Commission should maintain in place its existing

^{2/} In contrast, Commenters and several other businesses have explained persuasively the major contributions of small business PCS operators. Rather than re-present those arguments here, the reader's attention is directed to the comments filed by Commenters in DA 00-191.

^{3/} The Commission's often-stated desire to maintain the integrity of its auction rules provides an additional, independent reason to do so.

eligibility rules. In the alternative, if the Commission determines that the record supports a change to the existing auction rules with respect to the spectrum to be auctioned in Auction No. 35, Commenters submit that the Commission adopt its proposal set forth in the *Further Notice*. The most fundamental, and necessary, component of that proposal is the continuation of Entrepreneurial eligibility limitations in all markets.

2. F Block Eligibility

One of the open issues in the *Further Notice* was the issue of eligibility for the F Block spectrum. *See Further Notice*, para. 4. Apparently, the Commission was of the view that there may be certain equitable differences between the F Block spectrum and the C Block spectrum that could somehow warrant different treatment. Notwithstanding this, the core fact of the matter is that, as was the case for C Block spectrum, the Commission entered into a covenant with Entrepreneurs wherein those Entrepreneurs were unequivocally advised that F Block spectrum would have restricted eligibility. These entities based business plans on those assurances from the Commission. Whereas argument could be made that the assurances fall short of contractual commitments, most certainly they were Commission pronouncements upon which applicants had both a right to rely and an obligation to adhere. In view of the Commission's repeated recent pronouncements of a need to maintain the integrity of its rules, the Commission cannot now legitimately abandon Entrepreneurs wholesale and open this F Block spectrum to the world at large. Were it to do so, its actions must be put in perspective: combined with what the Commission has proposed for the C Block reconfiguration, more than one-half of all unlicensed spectrum that was initially allocated solely for Entrepreneurs would now be available to the largest telecommunications companies in the country.

Commenters are cognizant of the fact that the prices at the initial C Block auction and F Block auction differed significantly, and that argument has been made that that price differential somehow warrants different treatment at this point and time. Although the price differential was significant, the F Block prices were, on balance, at least as high as those in the A/ Block auction. Thus, the F Block auction acquisitions were most certainly not at a discounted value. More significantly, it would be inappropriate to overlook the “big picture” surrounding the F Block auction. At the time the auction was conducted, the C Block auction had barely finished. There were a handful of big winners at the C Block auction who, by virtue of their wins at that auction, were uniquely positioned to obtain financing to acquire the F Block spectrum. It is for that reason that those parties did obtain a considerable portion of the F Block spectrum. In fact, virtually all of the F Block spectrum subject to re-auction was acquired by this handful of large C Block winners who subsequently defaulted on their obligations to the government. When viewed in this context, the meaningful differences between the F Block and C Block spectrum erode significantly, and the overriding consideration should be the need to maintain the integrity of the Commission’s rules. Such consideration argues for maintaining existing eligibility limitations for F Block spectrum.

B. The Commission Should Not Modify its Entrepreneurial Requirements that Apply to Licensees.

Commenters understand that proposals have been presented urging that the Commission permit Entrepreneurs to evade its rules associated with such status, not at the end of the currently prescribed five-year period, but based upon completion of initial construction of their licensees. Commenters do not seek such relief, and remains committed to comply with the covenant into which it entered into with the government when it received its licenses. Notwithstanding this, Commenters

have no interest in impeding other Entrepreneurs who may elect to change course at this time. At the same time, Commenters submit that there is no need for the Commission to promulgate special rules to accommodate such request (or possibly requests). Rather, the Commission's existing waiver rules appear more than adequate to provide the relief sought if there truly are public interest reasons supporting such a change.^{4/}

In order to obviate confusion with respect to what needs to be demonstrated in order to obtain relief from Entrepreneurial rules, Commenters suggest that the Commission promulgate guidelines on this matter. Those guidelines, which can be straightforward, should include the following: (a) requests for relief from Entrepreneurial restrictions should be made not by the applicant as a whole, but rather by the qualified persons in the control group of the applicant; and (b) if licensees have met their five-year build out requirement, there should be a presumption in favor of grant of a waiver.

As the Commission is well aware, the Entrepreneurial rules were designed in large part to assure that the benefits associated with licensing to Entrepreneurs are enjoyed by those who qualify as Entrepreneurs and are not grabbed entirely by non-qualified partners of Entrepreneurs, which partners were permitted to participate only in order to enhance the capabilities of Entrepreneurs themselves. It is in this context that the Entrepreneurs, and not the larger controlling parties, should be the ones who determine whether or not a waiver is appropriate. Only in this way can the parties whom rules were designed to protect, and whom the Commission has specifically mandated to control the applicants, be sufficiently protected.

^{4/}Commenters takes this position vis-a-vis spectrum for which eligibility restrictions remain in place. For all other spectrum, Commenters takes no position.

C. For Spectrum No Longer Reserved for Entrepreneurs, Bidding Credits Must be Increased Substantially.

In the *Further Notice*, the Commission sought comment on whether it should change the level of bidding credits available to Entrepreneurs, both for spectrum reserved for Entrepreneurs and for spectrum available for all parties. *Further Notice*, paras. 39-42. With respect to bidding credits for spectrum open to bid by all parties, Commenters submit that, should this spectrum be removed from that which has been reserved solely for Entrepreneurs, and if Entrepreneurs are intended to have any genuine opportunity to participate in this spectrum, a substantial increase in bidding credits is necessary. Commenters submit that the Commission was correct in 1994 when it explained that bidding credits in the range of sixty to seventy percent would be necessary in the event that the spectrum at issue is open to bidding by all parties.^{5/} At the very least, an increase up to the forty percent level contemplated in the *Further Notice* would appear to be necessary.

With respect to spectrum reserved for qualified designated entities, the Commission must maintain the *status quo* that provides bidding credits to small and very small businesses. The Commission set the threshold for determining a designated entity as entities with attributable gross revenues of less than \$125 million in each of the previous two years. Although all entities with average gross revenues of less than \$125 million are considered entrepreneurial entities, there is a substantial difference in size between those entities with yearly gross revenues in the \$125 million range and those entities with yearly gross revenues of less than \$15 million. Thus, bidding credits

^{5/} *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5675 (1994).

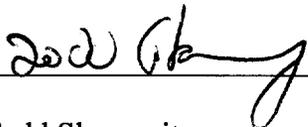
is necessary for the truly small businesses to be able to compete with the "larger" of the entrepreneurial businesses in the competitive bidding context.

III. Conclusion

There is no need for the Commission to make any changes in its rules. Should it promulgate any changes, however, they should be minimal and should be designed to protect Entrepreneurs as set forth herein. Only in this manner can the Commission maintain the integrity of its rules.

Respectfully submitted,

ALASKA DIGITEL, LLC
POPLAR PCS, LLC
ELDORADO COMMUNICATIONS, LLC

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June 22, 2000

CERTIFICATE OF SERVICE

I, Jennifer McCord, do hereby certify that on this 22nd day of June, 2000, I caused copies of the foregoing "*Comments of Alaska DigiTel, LLC, Poplar PCS, LLC and Eldorado Communications, LLC*" to be served via hand delivery upon the following:

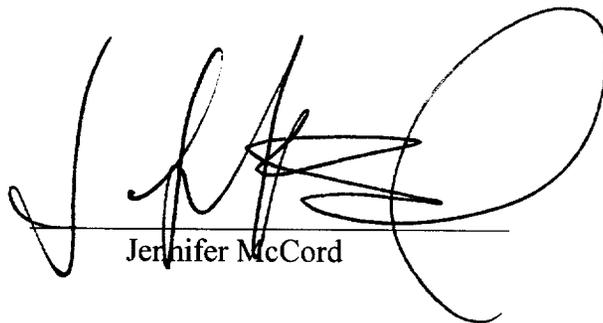
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