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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 Service (PCS) )  
Licenses )

WT Docket No. 97-82

To: The Commission

**COMMENTS**

**DOBSON COMMUNICATIONS CORPORATION**

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## SUMMARY

As a successful business entrepreneur that participated in the initial licensing of the C and F Blocks of PCS spectrum (the “Entrepreneurs’ Blocks”), Dobson understands the difficult task the Commission faces in reconciling the sometimes-conflicting objectives set forth for competitive bidding by Congress in Section 309(j) of the Communications Act of 1934, as amended (the “Act”). Given the troublesome history of the C Block, the Commission has tentatively concluded that the public interest requires revision of certain of the rules applicable to the C and F Blocks. Through this process, Dobson strongly urges the Commission to ensure that smaller businesses continue to have opportunities to participate in the provision of spectrum-based services in all available markets by allowing companies like Dobson to compete fairly and effectively and on a level playing field in any future re-auctions of the C and F Block licenses.

As a qualified entity eligible to participate in this re-auction pursuant to Commission rules, Dobson can accept the Commission’s tentative determination to reconfigure each 30 MHz C block license into three 10 MHz C block licenses, divide the BTAs into two tiers according to population size, and allow “open eligibility” on some of the resulting 10 MHz C Block licenses. Though Dobson would prefer that no changes be made to the C Block band plan, it understands that the Commission must balance competing interests in this proceeding. Dobson therefore supports the Commission’s proposal. The key to Dobson’s support is the fact that most of the 10 MHz licenses will be offered on a restricted eligibility basis, *and* that at least one 10 MHz license will be offered on a restricted basis in all of the available markets.

Additionally, Dobson urges the Commission to retain its longstanding “grandfather” exception to the entrepreneur eligibility requirement for participation in the C Block auctions and

deny any proposal to limit eligibility to those Auction #5 and #10 participants that *won* licenses in the auction and then returned spectrum pursuant to the FCC's C block restructuring options. The plain meaning of Section 24.709(b)(9)(I) and Commission precedent are clear as to the "grandfathering" of original C block participants in C block re-auctions for a limited time. There is simply no basis for changing that policy at this time.

Further, Dobson urges the Commission to clarify its proposal regarding the application of the "grandfather" exception in cases of complex mergers or other transactions. Dobson believes a simple resolution to this issue is that a qualified designated entity that engages in a merger should retain its eligibility status as long as it retains *de facto* and *de jure* control of the merged entity.

Lastly, Dobson urges the Commission to eliminate bidding credits from the auction rules for the restricted eligibility licenses. Though bidding credits may be effective in enabling smaller businesses to compete for "open eligibility" licenses, they would not serve their intended purpose in the auction for restricted eligibility licenses because they would unfairly favor newly- or recently-created entities that have no operating history or revenues and are specially structured to shield deep-pocketed investors from attribution. The only way this result can be avoided is to level the playing field among all entrepreneurs by simply eliminating the bidding credits in these restricted eligibility bands.

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**COMMENTS OF  
DOBSON COMMUNICATIONS CORPORATION**

Dobson Communications Corporation ("Dobson"), on behalf of its subsidiaries and affiliates, hereby submits its comments on the Commission's *Further Notice of Proposed Rule Making* ("FNPRM") in the above-captioned proceeding regarding modifications to broadband Personal Communications Services ("PCS") C and F Block auction and service rules. As a successful business entrepreneur that participated in the initial licensing of the C and F Blocks of PCS spectrum (the "Entrepreneurs' Blocks"), Dobson understands the difficult task the Commission faces in reconciling the sometimes-conflicting objectives set forth for competitive bidding by Congress in Section 309(j) of the Communications Act of 1934, as amended (the "Act"). Given the troublesome history of the C Block, the Commission has tentatively concluded that the public interest requires revision of certain of the rules applicable to the C and F Blocks. If the record in this proceeding will support the Commission's conclusion and the public will be best served by revisiting these rules, Dobson strongly urges the Commission to ensure that smaller businesses continue to

have opportunities to participate in the provision of spectrum-based services in all available markets by allowing companies like Dobson to compete fairly and effectively and on a level playing field in any future re-auctions of the C and F Block licenses.

## **BACKGROUND**

Dobson is a leading provider of rural and suburban cellular services throughout the country. The initial elements of Dobson were created in 1939 with the provision of telephone service in a single wireline telephone exchange in western Oklahoma. The business was expanded with the addition of rural exchanges and private line fiber networks and in 1990, Dobson began providing cellular service in Oklahoma and the Texas Panhandle. From that modest inception, Dobson has rapidly expanded its cellular operations with a primary focus on rural and suburban areas with substantial needs for cellular communications.

In 1995, having followed the rule making proceedings that created the PCS industry and the initial auctions for the MTA licenses, Dobson made a strategic decision to expand its wireless capabilities through the acquisition, at auction, of PCS licenses primarily serving its core areas in the Midwest and expanding into other suburban/rural BTAs in other areas of the country. Dobson spent substantial resources developing business plans and auction strategies for the initial C Block auctions, and obtained commitments for venture financing needed to compete in the auction and to develop wireless telecommunications networks. Dobson qualified as a “small business entrepreneur” in the original C Block PCS auction (Auction #5). Unlike many of the initial applicants in that (and subsequent) auctions, however, Dobson was not “structured” to meet any control group or other tests needed to avoid attribution of “deep pocket” investors. Rather, as an

operating small business entity, Dobson qualified in its own right and based on its own financial attributes.

Like many other entrepreneurs, Dobson withdrew from the C Block auction when the bidding became economically irrational. Unlike many of the other unsuccessful bidders, however, Dobson chose to pursue an alternative approach to the development of a wireless telecommunications business and in 1996 began a course of strategic acquisitions of rural cellular properties. Dobson currently has wireless networks in operation in 18 states. Earlier this year, Dobson successfully completed an initial public offering of equity in the company and has a market capitalization of over \$2 billion, with gross revenues over the last three years averaging approximately \$175 million. In sum, Dobson is an entrepreneur that has achieved the type of internally-generated growth in both assets and revenues that the Commission hoped its rules for the C and F block auctions would produce.<sup>1</sup> Because of the irrational bidding in the original C Block auction, however, Dobson has achieved its primarily through rational acquisitions and development of existing cellular properties.

The prospect of adding spectrum capacity through the upcoming re-auction of Entrepreneurs' Block spectrum is extremely exciting for Dobson. Dobson is working to bring digital wireless capabilities to its rural and suburban markets and at this point Dobson's most critical need is additional spectrum. Obtaining C and F Block PCS licenses at the November 2000 re-auction would allow Dobson to provide additional digital services to its rural subscribers.

Through its *FNPRM*, the Commission is seeking comment on how best to award the C and F Block PCS licenses that are available so as to ensure the rapid deployment of service to the public

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<sup>1</sup> Dobson was successful in obtaining several F Block PCS licenses in the initial F Block auction (Auction #11).

while meeting its Congressional mandate of promoting economic opportunity and competition by the dissemination of licenses among a wide variety of providers.<sup>2</sup> As a qualified entity eligible to participate in this re-auction pursuant to Commission rules,<sup>3</sup> Dobson can accept the Commission's tentative determination to reconfigure each 30 MHz C block license into three 10 MHz C block licenses, divide the BTAs into two tiers according to population size, and allow "open eligibility" on some of the resulting 10 MHz C Block licenses. Dobson believes strongly, however, that the Commission must keep the eligibility restrictions in place for some of the 10 MHz licenses in all of the C Block markets. Dobson supports the Commission's proposal in this regard.

Additionally, Dobson urges the Commission to retain its longstanding "grandfather" exception to the entrepreneur eligibility requirement for participation in the C Block auctions and deny any proposal to limit eligibility to those Auction #5 and #10 participants that *won* licenses in the auction and then returned spectrum pursuant to the FCC's C block restructuring options. From the Commission's *Second Report* in 1997, to its *Order on Reconsideration of the Second Report and Order* and *Fourth Report*, both released in 1998, to its *Order on Reconsideration* released two months ago, the Commission has consistently reaffirmed this rule section and maintained its applicability to original C Block participants *despite any subsequent growth or ownership changes that cause that entity to exceed the designated entity revenue limits.*<sup>4</sup>

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<sup>2</sup> See 47 U.S.C. § 309(j)(3)(B).

<sup>3</sup> See 47 C.F.R. § 24.709(b)(9)(I).

<sup>4</sup> Dobson notes that it uses the terms "designated entity" and "entrepreneur" interchangeably throughout these comments.

Lastly, Dobson urges the Commission to ensure that bidders on “restricted eligibility” licenses have a level playing field by eliminating bidding credits from the auction rules for these licenses. Though bidding credits may be effective in enabling smaller businesses to compete for “open eligibility” licenses, they would not serve their intended purpose in the auction for restricted eligibility licenses because they would unfairly favor newly- or recently-created entities that have no operating history or revenues and are specially structured to shield deep-pocketed investors from attribution. These entities — some of them public companies with market capitalizations in the billions of dollars — are not the kind of “small businesses” that bidding credits were designed to help. The Commission has recognized the potential inequity of using bidding credits in restricted eligibility auctions and thus should eliminate them for licenses subject to eligibility restrictions in the upcoming re-auction.

## DISCUSSION

### **I. IN AN ERA OF CONSOLIDATION, THE COMMISSION MUST CONTINUE TO AFFORD OPPORTUNITIES TO SMALLER BUSINESSES TO PARTICIPATE IN THE PROVISION OF SPECTRUM-BASED SERVICES**

Through the Omnibus Budget Reconciliation Act of 1993,<sup>5</sup> Congress charged the Commission with the development and rapid deployment of new technologies for the benefit of the public, including those residing in rural areas, through the use of competitive bidding. Among the goals explicitly stated in this legislation were “avoiding excessive concentration of licenses” and “disseminating licenses among a wide variety of applicants.”<sup>6</sup> To achieve these goal, the law

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<sup>5</sup> Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993).

<sup>6</sup> See 47 U.S.C. § 309(j)(3)(B).

requires the Commission, in prescribing regulations, to ensure that small businesses and others “are given the opportunity to participate in the provision of spectrum-based services.”<sup>7</sup> To fulfill this mandate, the Commission created the Entrepreneurs’ Blocks of PCS spectrum. Though the Commission has tentatively concluded that it should now revise its rules for awarding C block licenses, it must not forsake its Congressional mandate entirely. This is especially true in an era of accelerating consolidation, when instead of licenses being “widely disseminated,” they are becoming increasingly concentrated in the hands of a few mammoth companies.

In the *FNPRM*, the Commission tentatively concludes that it will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses; that it will separate the available BTAs into two tiers with a 2.5 million population demarcation between them; and that some of the licenses should be made available to all interested bidders.<sup>8</sup> The Commission proposes to eliminate the eligibility restrictions for two of the three 10 MHz C block licenses in the upper tier markets and one of the three 10 MHz C block licenses in the lower tier markets.<sup>9</sup> Though Dobson would prefer that no changes be made to the C Block band plan, it understands that the Commission must balance competing interests in this proceeding. Dobson therefore supports the Commission’s proposal. The key to Dobson’s support is the fact that most of the 10 MHz licenses will be offered on a restricted eligibility basis, *and* that at least one 10 MHz license will be offered on a restricted basis in all of the available markets.

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<sup>7</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>8</sup> *FNPRM*, at paras.16, 27, 30.

<sup>9</sup> *FNPRM*, at para.28.

Dobson withdrew from Auction #5 when the prices became economically irrational. The companies who acquired the C Block licenses included in the upcoming re-auction have been unable to sustain their businesses and these licenses have lain fallow. It would be manifestly unfair for auction participants like Dobson now to be effectively excluded from competing for at least some of that spectrum in these markets by opening eligibility on the entire spectrum block.

Dobson firmly believes that entities qualifying for restricted eligibility licenses can successfully operate even in the largest markets if their business plans are well thought out and they have sufficient financial resources to effectuate those plans. Such entities will be unable to acquire large market licenses, however, if they must compete with the giants of the telecommunications industry, whose marginal operating expenses, cost of capital and depth of resources simply cannot be matched even by established smaller companies like Dobson, who enjoy access to public and private equity, much less by newly established entrepreneurs who must will be relying primarily on private equity and debt funding.

In enacting Section 309(j)(3) of the Act, the House Budget Committee stated that “unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industry.”<sup>10</sup> The Commission does not need to look any further than the various petitions filed in this proceeding to notice that the large wireless carriers see an opportunity to knock down the door, move the

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<sup>10</sup> HOUSE COMMITTEE ON THE BUDGET, OMNIBUS BUDGET RECONCILIATION ACT OF 1993, H.R. REP. NO. 103-111, at 254 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 581.

entrepreneurs out of the way, and compete for as much C block spectrum as they possibly can.<sup>11</sup>

While ensuring the rapid deployment of new service to the public is a laudable goal, the Commission must not lose sight of the objectives of Section 309(j)(3)(B) and its obligations under Section 309(j)(4)(D). Dobson believes that the balance struck in the Commission's proposal will serve the public interest on both fronts.

## **II. ELIGIBILITY IN THE C BLOCK RE-AUCTION MUST BE EXTENDED TO ALL PARTICIPANTS IN THE ORIGINAL C BLOCK AUCTION**

### **A. The Plain Meaning of Section 24.709(b)(9)(I) and Commission Precedent Are Clear As To The "Grandfathering" of Original C Block Participants In C Block Re-auctions for a Limited Time**

Section 24.709(b)(9)(I) states that, in addition to applicants that meet the eligibility criteria as of the date of short-form filing:

any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the re-auction for frequency block C, which began on July 3, 1996, will be eligible to bid in any re-auction of block C spectrum that begins within two years of the start date of the first re-auction of C block spectrum following the effective date of this rule.<sup>12</sup>

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<sup>11</sup> See Petition of SBC Communications, Inc.; Petition of Nextel Communications, Inc.; Petition of US West Wireless, LLC; Petition of Sprint Spectrum L.P., and; Petition of Verizon Wireless.

<sup>12</sup> 47 C.F.R. § 24.709(b)(9)(I). The first re-auction of C block spectrum following the effective date of the revised rule was the C, E, and F Block broadband PCS license auction (Auction #22) which began on March 23, 1999. Accordingly, the 2 year grandfathering period ends on March 23, 2001. In supporting the current two-year sunset provision, Dobson assumes (a) that the re-auction of C and F Block licenses (Auction #35) will take place as scheduled on November 29, 2000 and (b) that all C Block licenses for which there are currently payment defaults, including those not currently scheduled for auction in Auction #35 but that *are* currently subject to bankruptcy proceedings, e.g., the remaining GWI licenses, will be auctioned before the end of that two year period. If Auction #35 is delayed for any reason, *or* if the Commission has not exercised its right to automatically cancel those other defaulted licenses and promptly subject them to auction before March 23, 2001, then Dobson strongly believes that the grandfathering period should be extended

Despite the Commission's repeated reaffirmation of this "grandfathering" rule, the Commission has been asked to limit future eligibility for C block reactions to those participants in Auctions #5 and #10 that actually won licenses and then returned spectrum.<sup>13</sup> The Commission should reject this request and instead reaffirm its current grandfathering provisions.

The Commission's four orders spanning a three-year time frame in WT Docket No. 97-82, speak for themselves, and there is no policy reason to change course now. In the Commission's *Second Report and Order*, the Commission decided that it "also will allow all entities that were eligible for and participated in the original C Block auction to bid in the reaction."<sup>14</sup>

In response to petitions for reconsideration seeking, in part, review of issues relating to bidder eligibility, the Commission affirming that there was no rationale for deviating from the bidder eligibility policy and rules of its *Second Report and Order*. The Commission reiterated that "all entities that had been eligible for and participated in the original C block auction . . . would be eligible to bid in the reaction."<sup>15</sup>

Moreover, in its *Fourth Report and Order*, the Commission tried to strike a balance between fairness to future bidders in C block reactions and former entities that qualified to bid in the initial  

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until all of the licenses initially included in Auction #5 but for which payment defaults have occurred are available in an auction.

<sup>13</sup> See Verizon Wireless, Petition for Clarification or Reconsideration (April 17, 2000) ("Verizon Petition").

<sup>14</sup> *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*, 12 FCC Rcd. 16436, 16448 (1997).

<sup>15</sup> *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998) ("*Reconsideration of the Second Report and Order*").

C block auction. The Commission again determined that entities that were eligible for and participated in the original C Block auctions would remain eligible for future C block reactions, regardless of whether they still qualify as entrepreneurs, until two years after the start date of the next C block reaction. After that point, an applicant must qualify as an entrepreneur under the Commission's rules at the time of filing its short-form application.<sup>16</sup>

Finally, earlier this year, the Commission again chose to retain its reaction eligibility rules and reaffirm the two-year limit, clearly stating that grandfathered entities would be eligible "*even if [they] have become too large to qualify as entrepreneurs.*"<sup>17</sup>

Put simply, section 24.709(b)(9)(I) leaves no room for interpretation: "[A]ny entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, . . . will be eligible to bid in any reaction of block C spectrum that begins within two years of the start date of the first reaction of C block spectrum following the effective date of this rule."<sup>18</sup>

At least one party has argued that grandfathered entities who did not win licenses in Auction #5 or #10 did not have to maintain entrepreneur status, and that they therefore should not be

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<sup>16</sup> *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Fourth Report and Order*, 13 FCC Rcd 15743, 15752 (1998) ("*Fourth Report and Order*"). As noted above, however, Dobson believes that the two-year period only makes sense if *all* C block licenses on which there have been payment defaults are reacted during that time. If the Commission chooses to delay automatically canceling certain of those licenses, e.g. the licenses initially won by GWI and its subsidiaries, then the two-year sunset period must be extended until all initial C Block auction participants can participate in the re-auction of those licenses as well.

<sup>17</sup> *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, *Order on Reconsideration of the Fourth Report and Order*, 15 FCC Rcd 4740, 4742 (2000) (emphasis added).

<sup>18</sup> 47 C.F.R. § 24.709(b)(9)(I).

permitted to qualify for restricted licenses in the reauction.<sup>19</sup> This argument simply cannot be sustained. It would penalize Dobson for the irrational bidding of others; but for such irrationality Dobson likely *would* have acquired licenses in Auction #5. Now that the very same licenses are back on the auction block, companies like Dobson should not be excluded from again being able to participate in the same competitive arena simply because they have not stood still in the intervening four years, but rather, at least in Dobson's case, develop a business through the acquisition of rural cellular properties rather than through construction of PCS properties.

Section 24.709(a)(3) makes clear that "a licensee's . . . increased gross revenues or increased total assets due to nonattributable equity . . . , debt financing, revenue from operations or other investments, business development or expanded service shall not be considered" in determining whether a licensee has retained its eligibility for the required five-year period. There is simply no basis for changing that policy at this time.

**B. A Qualified Designated Entities That Engages In A Merger Should Retain Its Eligibility Status As Long As It Retains *De Facto* and *De Jure* Control of the Merged Entity.**

Separately, the Commission seeks comment on how to determine eligibility for the "grandfather" exception in cases of complex mergers or other transactions, and tentatively concludes that the exception should apply to the resulting entity when two eligible entities merge but that it should not apply to the resulting entity upon the merger of two entities only one of which is eligible for the exception.<sup>20</sup>

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<sup>19</sup> Verizon Petition, at 8-9.

<sup>20</sup> *FNPRM*, at para.38.

The types of transactions that the Commission may be called upon to interpret in this context are many. Therefore, a rule that is easily understood and easily enforceable is called for. The Commission's proposal is generally on the right track but it requires some refinement. Clearly, qualifying entities that are acquired by large non-qualifying entities should not continue to enjoy eligibility for restricted licenses under the grandfather exception. However, it may not be fair to disqualify an otherwise qualifying entity because of other types of transactions it may enter into with non-qualifying entities.

Dobson proposes that the Commission employ a simple control analysis in these circumstances to determine eligibility for the grandfather exception. If *de facto* or *de jure* control of a qualifying entity has passed to a non-qualifying entity as a result of a transaction, eligibility for the grandfather exception would be lost. If, however, a qualifying entity has retained control over the resulting entity, the eligibility status would be retained. This rule would capture the simple example of two qualifying entities merging; but it also would work consistent with the provisions and intent of Section 24.709(a)(3) in a case in which despite the merger of a qualifying entity with a non-qualifying entity, the qualifying entity retains control of the resulting company.

With a clarification along these lines, the Commission would preserve the basic rationale for the grandfather exception and reaffirm that its rules are designed to promote growth by successful entrepreneurs in their development as effective competitors in the wireless industry. Without such a clarification, however, entrepreneurs may be penalized for their growth and will be handicapped in entering into future business arrangements in advance of the C Block reauction.

### **III. THE COMMISSION MUST REVISE ITS BIDDING CREDIT RULES TO LEVEL THE PLAYING FIELD.**

The Commission's current rules provide a winning C or F block bidder that qualifies as a small business<sup>21</sup> or a small business consortium with a bidding credit of 15 percent.<sup>22</sup> A winning bidder that qualifies as a very small business<sup>23</sup> or a very small business consortium may use a bidding credit of 25 percent.<sup>24</sup> The Commission first established bidding credits as an incentive to encourage large companies to invest in designated entities and to assist designated entities without large investors to overcome the additional hurdles presented by auctions.<sup>25</sup> By establishing bidding credits, the Commission sought to address the difficulty that small businesses faced in gaining access to capital. Unless these rules are revised for the upcoming reauction, however, the bidding credit rules will serve to skew the auction.

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<sup>21</sup> A small business is a business that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has had average annual gross revenues that are not more than \$40 million for the preceding three years. *See* 47 C.F.R. § 24.720(b)(1), (3).

<sup>22</sup> 47 C.F.R. §§ 24.712(a); 24.717(a); 1.2110 (e)(2)(iii).

<sup>23</sup> A very small business is a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than \$15 million for the preceding three years. 47 C.F.R. § 24.720(b)(2), (3).

<sup>24</sup> 47 C.F.R. §§ 24.712(b); 24.717(b); 1.2110 (e)(2)(ii). The bidding credit functions as a discount off the bid price an entity will actually pay to obtain a license.

<sup>25</sup> *Fifth Report and Order*, 9 FCC Rcd at 5539.

As the Commission noted, among those that would be eligible to bid on licenses restricted to entrepreneurs are some extremely well-capitalized, relatively new entities.<sup>26</sup> Because these entities have little or no history of generating revenues, they would qualify for bidding credits as “very small businesses.” Some of these entities are public companies with market capitalizations in the billions of dollars.<sup>27</sup> Clearly, these are not the kind of businesses on which the Commission intended to confer the advantage of a bidding credit. The Commission’s purpose in enacting the bidding credit regime was to assist small businesses in obtaining access to capital in order to win licenses and compete in the marketplace. Public companies with billions in market capitalization are by definition able to attract capital, and they should not be given an unfair bidding advantage over companies like Dobson who, while still eligible for Entrepreneurs’ Block licenses, have a proven history of building businesses and generating revenues that disqualify them for bidding credits.<sup>28</sup> The inherent inequity of such a situation is patently clear. The auction playing field will

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<sup>26</sup> *Id.* at para. 42.

<sup>27</sup> For example, as of June 21, 1999, Telecorp PCS had a market capitalization of over \$3.3 billion, Tritel had a market capitalization of over \$3 billion and Triton PCS had a market capitalization of over \$2.85 billion. There are several other publicly traded entities, e.g., Alamosa PCS, Airgate PCS, and Nextel Partners, which, while somewhat smaller than these three companies, are equally able to attract substantial capital; yet, because they have no long-term history of revenue generation, they would qualify for “small business” credits to bid even against entities who are truly “small”, e.g., some of the rural telephone companies and true entrepreneurs with virtually no balance sheet to speak of.

<sup>28</sup> In its *Fourth Report and Order*, the Commission determined that eligibility for bidding credits in any C and F block reactions will be determined at the deadline for filing short-form applications. Thus, Dobson would not be eligible for bidding credits though it is eligible to participate in the next C block reaction due to its previous eligibility for and participation in the original C block auction. See *Fourth Report and Order*, 13 FCC Rcd at 15768 (1998).

certainly not be level if two companies with roughly the same financial capabilities receive disparate treatment vis-a-vis bidding credit eligibility.

Bidding credits in restricted auctions do not serve their intended purpose. Instead, they simply skew these auctions in favor of well-capitalized applicants that are carefully structured to shield deep-pocketed investors from attribution. Accordingly, Dobson urges the Commission to eliminate the use of bidding credits altogether in restricted auctions. Taking this step will avoid unfairly benefitting entities designed solely to capture these bidding credits, while affording a fair bidding opportunity to pre-existing qualified entrepreneurs who have previously demonstrated a real ability to develop and operate a successful business.

If bidding credits are available to these new, well capitalized entrants or to clearly “structured” entities, created solely to meet the small business criteria in order to get those credits, then a long-standing entrepreneurial enterprise like Dobson, which has spent the last four years developing a successful, revenue creating enterprise that serves the public, will be significantly disadvantaged; it will have to grossly overpay for licenses simply to compensate for the bidding credits in the restricted eligibility bands, or it will be forced to match the resources of the telecommunications giants in order to win licenses in the open eligibility bands. That is a Hobson’s choice that can lead to no advantageous result, and Dobson will truly have been penalized for its active business development over the last four years. That clearly is not the result that the Commission has tried to achieve in allowing companies like Dobson to compete for these C block licenses. The only way this result can be avoided is to level the playing field among all entrepreneurs, by simply eliminating the bidding credits in these restricted eligibility bands.

In its *FNPRM*, the Commission noted that small businesses using bidding credits in open auctions in the past have been able to compete effectively.<sup>29</sup> Particularly, the Commission noted that in Auction #11 (the D, E, and F Block PCS auction), small and very small business bid against larger applicants for D and E block licenses even though the D and E block licenses were not set aside for entrepreneurs and installment financing was not available for those licenses. In fact, small and very small businesses using bidding credits of 15 percent and 25 percent respectively were the high bidders on 141 (14.3 percent) of the D and E block licenses won in that auction.<sup>30</sup>

Assuming that the Commission eliminates eligibility restrictions on some C and F Block licenses, Dobson believes that allowing the use of bidding credits by entities that qualify to bid on restricted eligibility licenses will make the bidding on those open licenses more competitive. Dobson therefore supports adoption of a rule allowing bidding credits in the open eligibility portion of the auction. It is, however, important that all entities qualifying to bid on restricted eligibility license be treated equally in the opportunity to use bidding credits. As discussed above, the gross revenue requirements contained in the current rules for eligibility for bidding credits do not effectively apportion the bidding credit advantage to those most in need. Therefore, Dobson urges that any bidding credit should be available equally to any party who is eligible to bid in the restricted eligibility channels, if they also bid in the open channels.

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<sup>29</sup> *FNPRM*, at para.40.

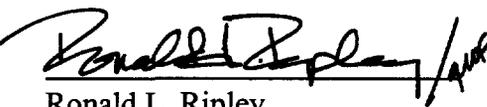
<sup>30</sup> *FNPRM* at para.40. The Commission goes on to note the success of small businesses using bidding credits in an open auction environment in the MDS, LMDS, SMR, 900 MHz and 39 GHz auctions.

## CONCLUSION

Based on the foregoing, Dobson supports the Commission's proposal to reconfigure the 30 MHz C block licenses but urges the Commission to maintain its commitment to entrepreneurs and retain its eligibility restrictions for bidding on the majority of the licenses available for reauction. In this same regard, Dobson believes that the Commission must retain its existing grandfather rule, which provides that all entities that were eligible for and participated in Auctions #5 or #10 are eligible to acquire reaucted licenses until March of 2001. Lastly, Dobson urges the Commission to discontinue the use of bidding credits for restricted eligibility licenses, though such credits may still have some usefulness in open eligibility auctions.

Respectfully submitted,

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June 22, 2000

**CERTIFICATE OF SERVICE**

I, Ernestine Screven hereby certify that copies of the foregoing Comments have been served this 22nd day of June 2000, by hand delivery to the persons on the attached service list.

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