

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

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

**REPLY COMMENTS OF COOK INLET REGION, INC.**

Cook Inlet Region, Inc. ("CIRI"),<sup>1</sup> having reviewed the comments in this proceeding, believes that the PCS marketplace changes identified by many commenters argue strongly for changing not only auction rules but also transfer restriction rules that affect the ability of incumbent C and F block licensees to respond to those changes. In many cases, the original C and F block rules worked to help qualified small businesses gain entry to and offer competition in the PCS marketplace. Now, however, the marketplace is changing and consolidating so that the old rules no longer are necessary and actually are hindering small businesses as they attempt to adapt. The comments in this proceeding demonstrate that there is a wide variety of approaches regarding the proper scope of proposed changes to the C and F block rules. Some commenters aver that the Commission's proposals do not go far enough to make spectrum available to more PCS providers, and other commenters contend that the proposals do

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<sup>1</sup> CIRI is an Alaska Native Regional Corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* CIRI PCS entities qualify as "entrepreneurs" under the Commission's rules and provide service in many areas of the United States. A CIRI entity was the first C block licensee in the United States to launch commercial service.

not do enough to promote and protect the interests of small businesses and rural telephone companies.

CIRI finds that the Commission's compromise of creating three 10 MHz C block licenses and permitting open bidding on some of the resulting licenses in each of two population-based tiers is an appropriate response to current market conditions and, generally speaking, fairly balances the competing interests. Also, CIRI recognizes that open bidding may be warranted for F block, 15 MHz C block, and previously unsold C and F block licenses. CIRI suggests, however, that as the Commission implements new rules that fundamentally alter the C and F block licensing scheme, it also must remove restrictions on incumbent C and F block licensees to allow them to fairly compete in the new PCS marketplace.

**I. TRANSFER RESTRICTIONS ON INCUMBENT C AND F BLOCK LICENSEES WOULD BE UNFAIR IF OPEN BIDDING WINNERS ARE NOT SO ENCUMBERED.**

**A. The Commission Should Lift Transfer Restrictions Entirely.**

The Commission rationally proposes not to encumber C and F block licenses won in open bidding with transfer restrictions.<sup>2</sup> As one commenter states, "[t]here is little justification for restricting the transfer of licenses to DEs if non-DEs were eligible to bid on the spectrum at auction."<sup>3</sup> However, once unrestricted C and F block licenses covering a large percentage of the country are in the marketplace, it would be manifestly unfair to maintain transfer restrictions on incumbent licensees that are attempting to compete with the holders of those unrestricted C and F block licenses.

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<sup>2</sup> See Further Notice of Proposed Rulemaking, *In re Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, FCC 00-197 at ¶ 44 (rel. June 7, 2000) ("*Notice*").

<sup>3</sup> Comments of OPM Auction Co. at 13 ("*OPM Comments*").

In its initial comments, CIRC explains that terminating transfer restrictions would allow incumbent licensees to rationalize their holdings by exchanging licenses with other providers and by selling non-complementary licenses to raise capital for future bidding, secondary market license purchases, and financing build-out in other areas.<sup>4</sup> SBC Communications, Inc. agrees and states that "[g]iven the need for carriers to acquire more spectrum, the public interest in the creation of an effective secondary market, and the long delay that has already occurred in making this spectrum available, [C and F block] licenses should be freely transferable."<sup>5</sup> Transfer restrictions have served their purpose.<sup>6</sup> Today, however, they serve only to prevent incumbent licensees from adequately responding to a rapidly changing PCS marketplace – one that will change even more quickly with the introduction of unrestricted C and F block licenses. The same arguments that support opening C and F block auctions in the first place support eliminating transfer restrictions on incumbent licensees. Consequently, CIRC believes that the Commission should remove transfer restrictions on incumbent C and F block licensees. Moreover, CIRC believes that the need for such action is urgent, as small providers need the ability to respond in real time – and in the manner they deem best – to a rapidly consolidating PCS industry.

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<sup>4</sup> See Comments of Cook Inlet Region, Inc. at 3 ("*CIRC Comments*").

<sup>5</sup> Comments of SBC Communications Inc. at 12; see Comments of STPCS Joint Venture, LLC at 3 ("A holding period and early sale penalties can limit financial flexibility.") ("*STPCS Comments*"); Comments of VoiceStream Wireless Corp. at 11 ("*VoiceStream Comments*").

<sup>6</sup> See *STPCS Comments* at 2-3; *VoiceStream Comments* at 6-7. To the extent that the Commission is concerned about speculation in licenses obtained in Auction No. 35's closed auctions, CIRC proposes a modest one-year holding period on these newly acquired licenses. See *CIRC Comments* at 6.

**B. Any Build-Out Required As A Condition Of Transfer Should Be Measured System-Wide.**

Several commenters support allowing early transfer of C and F block licenses once the licensee meets the first construction benchmark, regardless of whether that occurs before five years.<sup>7</sup> The underlying assumption is that the public interest will be served because licensees will have an incentive to build out more quickly. However, as CIRI explained in its initial comments, requiring buildout on each license before transfer is not economically rational and may actually disrupt or slow provision of service to the public.<sup>8</sup>

If the Commission does require build-out before permitting an incumbent licensee to transfer a license, then it should measure build-out on a system-side basis. That is, the Commission should look at the service provided across all the licenses ultimately controlled by an entity. Once an entity has initiated service across a broad range of its licenses, the Commission should have sufficient confidence that the entity does not exist simply to speculate in licenses.

**C. Coverage Of One Third Of A System's POPs Should Be Considered "Substantial Service."**

As for the system-wide standard that a licensee should have to meet, only one commenter proposed a definition of "substantial service."<sup>9</sup> CIRI suggests that if it becomes necessary to gauge "substantial service" at all, the Commission should determine "substantial service" on a case-by-case basis. Also, the Commission should presume that an entity is

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<sup>7</sup> See, e.g., Comments of AT&T Wireless Services, Inc. at 9; Comments of BellSouth at 12-13 ("*BellSouth Comments*"); *OPM Comments* at 13; *STPCS Comments* at 4.

<sup>8</sup> See *CIRI Comments* at 4-5; see also *VoiceStream Comments* at 8-9.

<sup>9</sup> See *VoiceStream Comments* at 11-12 (proposing that "substantial service" be defined as "service to 25 percent or more of a DE's combined POPs").

providing "substantial service" if it provides coverage to one third of the total potential customers (POPs) for all the licensed POPs that the entity ultimately controls. A one third benchmark accords with the five-year construction requirement for 30 MHz broadband PCS licenses.<sup>10</sup> Applying that standard in the case of a "system-wide" inquiry permits licensees to focus their build-out efforts in the most efficient manner and ensures that licenses in the aggregate are being used to bring service to a meaningful portion of the populations that the ultimate controlling entity serves.

## **II. THERE IS NO GOOD REASON TO RETAIN THE LICENSE CAP.**

As CIRI states in its initial comments, the Commission should lift the license cap that currently limits an auction applicant from winning more than 98 C and F block licenses.<sup>11</sup> Of those that commented on the license cap, many supported the Commission's proposal to lift the cap.<sup>12</sup> Those that favor maintaining the license cap merely speculate that if the cap were eliminated, licenses would end up concentrated in the hands of too few.<sup>13</sup>

The initial objective of instituting a license cap was to achieve a fair distribution of C and F block licenses, and CIRI and many others agree that the Commission has achieved this end. There is now sufficient competition for spectrum to ensure that there is diversity among the licensees. Further, the license cap prevents C and F block licensees from growing

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<sup>10</sup> See 47 C.F.R. § 24.203.

<sup>11</sup> See 47 C.F.R. § 24.710.

<sup>12</sup> See Comments of Airgate Wireless at 9 ("*Airgate Comments*"); *BellSouth Comments* at 13-14; Comments of Burst Wireless, Inc. at 8-9; Comments of the Cellular Telecommunications Industry Association at 5; Comments of Carolina PCS I Limited Partnership at 9; *VoiceStream Comments* at 12-13.

<sup>13</sup> See Comments of Alpine PCS, Inc. at 17; *OPM Comments* at 14-15; Comments of RK Communications at 4; Comments of the Rural Cellular Association at 2.

large enough systems to remain competitive in this era of consolidation. Accordingly, CIRI reiterates its position that the license cap should be lifted.

### **III. THE COMMISSION SHOULD ELIMINATE BIDDING CREDITS IN CLOSED AUCTIONS.**

As in its initial comments, CIRI agrees with the Commission's suggestion to eliminate bidding credits in closed auctions because they are "unnecessary and perhaps even counterproductive in ensuring opportunities for small business in the set-aside auctions."<sup>14</sup> Several commenters agree with CIRI that bidding credits are meaningless in that context.<sup>15</sup> When most, if not all, participants in an auction are entitled to bidding credits, bids become equally inflated and winning bidders end up paying the same net prices as if there had been no credits. Consequently, CIRI suggests that the Commission eliminate bidding credits in closed auctions.

### **IV. CONCLUSION.**

The C and F block rules have achieved the goal of helping small businesses participate in the PCS industry. Now, the Commission's proposals to modify these rules are justified in light of changed circumstances, and they strike a reasonable balance among the many competing interests expressed in this proceeding. The Commission also should be mindful that changes to the C and F block auction rules affect incumbent licensees. Opening auctions and creating unrestricted C and F block licenses are warranted by changes in the PCS marketplace, but the Commission should not leave incumbent licensees tethered to outdated and unfair transfer restrictions that will not apply to winning bidders in open auctions. Accordingly, CIRI

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<sup>14</sup> *Notice* at ¶ 42.

<sup>15</sup> *See Airgate Comments* at 7; *Comments of America Connect, Inc.* at 4; *Comments of TeleCorp PCS, Inc. and Tritel Communications, Inc.* at 15-16.

urges the Commission to promptly lift transfer restrictions on incumbent C and F block licenses. Additionally, CIRI supports eliminating the license cap and doing away with bidding credits in closed auctions.

Respectfully submitted,

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