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June 30, 2000

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**BY HAND**

Magalie Roman Salas, Esquire  
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The Portals  
445 12<sup>th</sup> Street, SW, Room TWB204  
Washington, D.C. 20554

Attention: Chief, Common Carrier Bureau

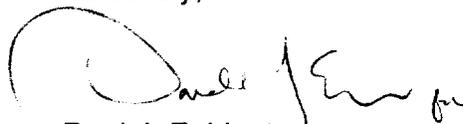
**Re: Reply Comments of Roseville PCS, Inc.  
WT Docket No. 97-82.**

Dear Ms. Salas:

Enclosed, on behalf of Roseville PCS, Inc. please find an original and four copies of its Reply Comments in WT Docket No. 97-82.

Please contact me if there are any questions regarding this matter.

Sincerely,



Paul J. Feldman  
Counsel for  
Roseville Telephone Company

PJF:jpg

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

WT Docket No. 97-82

**REPLY COMMENTS OF ROSEVILLE PCS, INC.**

Roseville PCS, Inc. ("RPCS"), by its attorneys, hereby files these reply comments in response to the Commission's Further Notice of Proposed Rulemaking released June 7, 2000 in the above-captioned proceeding (hereinafter, "*Further Notice*"). The record demonstrates that the proposals in the RPCS Comments regarding the F Block constitute an appealing compromise between the position of large companies that seek to broadly remove eligibility restrictions in Auction 35, and the position of small companies that seek to retain all current eligibility restrictions.

In its Comments in this proceeding, RPCS suggested that the Commission provide an opportunity for companies such as RPCS, who were eligible to participate in the original C and F Block auctions but have subsequently grown over the revenue limitations for "entrepreneurs", to be eligible to bid on F Block spectrum in Auction 35. RPCS suggested that this could be accomplished in one of the three following ways:

- revise the revenue limit in Section 24.709 of the Commission's rules to account for inflation subsequent to the adoption of the \$125 million figure in June of 1994. As shown in the RPCS Comments, the figure of \$145 million would be a rational and fair revision, based on the Bureau of Labor Statistics' Consumer Price Index-Urban ("CPI-U") for the years 1994-2000; or

-expand the spectrum on which “grandfathered” participants from the original C and F Block auctions (Auctions 5 and 11) may bid to include both C and F Block licenses. Application of the grandfathering to F Block licenses could be limited to entities that previously bid on F Block spectrum in Auction 11; or

-if the Commission decides not to revise the revenue limits for bidders, or not to expand grandfathering to F Block spectrum, then it should open up the F Block to all bidders. However, in such a case, RPCS suggested that the use of bidding credits for “entrepreneurs” in this block is unnecessary for such entities to have a fair chance at obtaining F Block spectrum, and that use of bidding credits is contrary to the objectives set forth in Section 309(j) of the Communications Act.

As was shown in RPCS’ Comments, adoption of one of the above proposals would serve the public interest by furthering the goals of Section 309(j) of the Communications Act, and would remedy the unfairness to original bidders who would have obtained certain F Block licenses, but for the fact that the “winner” of those licenses bid irresponsibly, and then declared bankruptcy.

**I. The RPCS Proposals on Expanding F Block Eligibility Are a Sensible and Defendable Compromise.**

RPCS stated in its Comments that while the Commission had received extensive input on these issues from the giants of the telecommunications industry on the one hand (*e.g.* US WEST Wireless LLC, AT&T Wireless Services, Inc., etc.), and representatives of the small designated entity community on the other (*e.g.*, Personal Communications Industry Association), the Commission could benefit from a viewpoint largely not heard in the current debate. RPCS is an entity small enough to have participated in the original C Block and F Block auctions, yet which has subsequently and recently grown above the current \$125 million annual revenue limit for C Block/F Block bidding eligibility, as set forth in Section 24.709 of the Commission’s rules. In

reviewing the Comments filed in response to the *Further Notice*, the value of RPCS' approach quickly becomes apparent, as there is otherwise very little "middle ground" between the position of the large companies and that of the so-called designated entity community, on the issue of eligibility for bidding on C and F Block spectrum in Auction 35.

The Comments of companies such as AT&T (pages 6-8) and US WEST (page 4) strongly support the Commission's proposals to open up eligibility to bid on C and F Block spectrum, and argue that doing so furthers the Section 309(j) goal of rapid introduction of advanced wireless services to the public. On the other hand, the Comments of the National Telephone Cooperative Association (pages 3-6), the Rural Telecommunications Group/OPASTCO (pages 3-4) and PCIA (pages 4-8, 15-17) argue that any alteration to the eligibility criteria would be directly contrary to the requirements of Section 309(j), and an arbitrary and capricious reversal of recent Commission decisions not to alter the eligibility criteria. The RPCS proposals for moderately adjusting the "entrepreneur" revenue limits, and for expanding the use of "grandfathering" to the F Block, are not only a good compromise, but they are defensible against arguments from both extremes.

A. Adjustment of Entrepreneur Revenue Limit to \$145 Million

As demonstrated in RPCS' Comments, the \$125 million revenue figure was adopted as the definition of "entrepreneur" for the purposes of broadband PCS auctions in June of 1994. By the time Auction 35 occurs, at least six years will have passed since that time. As the Commission well knows, inflation has occurred during that time, undercutting the propriety of that figure. A review of the growth of the Bureau of Labor

Statistics' Urban Consumer Price Index ("CPI-U") shows that \$125 million in July of 1994 is equivalent to approximately \$145 million in April of 2000 (the latest month for which figures are available). This \$145 million figure provides a rational adjustment of the maximum annual revenue figure for companies eligible to bid on C and F Block licenses, if the Commission is going to continue to limit eligibility based on financial resources.

Adjustment of the revenue limit as so proposed has numerous advantages. First, it allows a limited number of additional companies to participate in the auctions, and parties that are similar in size to the companies that are already qualified to participate. This contrasts with the extreme proposals to either 1) do away with most or all eligibility restrictions, and allow the giants of the industry to bid against truly small companies; or 2) retain all current eligibility restrictions, and let no additional parties in. Second, a moderate increase in the definition of "entrepreneur" is clearly defensible from legal challenges, in that it is clearly consistent with the Section 309(j)(3) goals of encouraging rapid and efficient use of the spectrum, while not increasing the pool of bidders in a manner that is likely to significantly decrease the opportunity for designated entities to bid for spectrum, pursuant to Section 309(j)(3)(B). Furthermore, in addition to being consistent with the Act, such an adjustment is also consistent with the recognition in the Commission's rules that "entrepreneurs" will grow, and that their revenues will also grow. See Section 24.709(a)(3) (increases in gross revenues due to business development or expanded services does not negate an entity's on-going qualification as an entrepreneur). This sort of internal growth is precisely the reason why RPCS and

similarly situated companies have subsequently gone over the \$125 million revenue level.

B. Expansion of Grandfathering to F Block Spectrum

In its Comments, RPCS suggested that if the Commission decides not to adjust the revenue limit for entrepreneurs to account for inflation, then it should modify Section 24.709(a)(9)(I) to expand the spectrum on which “grandfathered” participants in Auctions 5 and 11 may bid, to include both C Block and F Block licenses. Application of the grandfathering to F Block licenses could be limited to entities that previously bid on F Block spectrum in Auction 11. Such an approach would be one way of remedying the unfairness to original bidders who would have obtained certain F Block licenses, but for the fact that the “winner” of those licenses bid irresponsibly, and then declared bankruptcy. Similarly, expansion of the grandfathering to bidding on F Block licenses would remedy the fact that certain entrepreneurs have subsequently grown over the revenue limit in part due to the extensive delays in reauction of F Block licenses caused by bankruptcy litigation initiated by the previous “winners” of the licenses.

Like the proposal to moderately increase the revenue limits for “entrepreneurs”, this grandfathering proposal is moderate and defensible. Again, it expands participation in the auction in a limited manner, with companies similar in size to those currently eligible. In addition, it furthers Section 309(j) goals without impacting the ability of small businesses to bid competitively.

C. If Previously Eligible Entities Are Not Otherwise Allowed to Participate, the F Block Should Be Opened to All on a Non-Discriminatory Basis.

In adopting its original rules "grandfathering" bidders previously eligible in the first C Block auction, the Commission recognized two complementary objectives. First, it wanted to comply with the mandate of Section 309(j) of the Act to foster small business participation in the PCS industry. Maintaining eligibility restrictions based on "designated entity" status served that goal. Secondly, the Commission recognized an important equitable consideration: entities which had qualified as eligible designated entities in the original auction for certain frequencies should not be frozen out of the re-auction simply because of their growth in the intervening years. There was a sense that a re-auction is a continuation of the original auction, and therefore the eligibility of original participating entities should not be adversely affected by intervening events. RPCS believes that the two proposals advanced above strike a reasonable balance between these twin objectives.

However, should the Commission reject these two alternatives, equitable considerations to previously eligible entities require that the F Block be opened to all bidders. The Commission's rules and policies in previous auction proceedings have consistently adhered to the bedrock principle that eligibility for continued status as a designated entity should not be affected by post-auction growth in revenues of the auction participants; their eligibility status is frozen as of the deadline for filing the short form. This was the principle underlying Section 24.709(a)(3) and similar provisions applicable to other services. It is the principle that underlies the grandfathering of eligibility to bid for C Block spectrum when those licenses were previously re-

auctioned. Indeed, the only case in which the Commission will not have followed this principle would be with respect to the re-auction of F Block licenses in Auction 35.

This exclusion of previously eligible entities for the re-auction of the same F Block frequencies on which they previously bid would represent a very stark deviation from the Commission's past practices. However, assuming there is some sound basis to distinguish F block grandfathering from C block grandfathering, the resulting alternative should not be to exclude the previous eligibles altogether. That course would seriously exacerbate an already inequitable situation. Rather, RPCS suggests that in such a case, at least the re-auctioned F blocks should be open to all bidders, so that previously eligible entities may participate. Furthermore, no bidders in the F Block auction should receive bidding credits.

Under this alternative, previous eligibles would not be accorded the preferred status which similarly situated applicants have enjoyed under all previous re-auction plans, but at least they would (a) be able to participate and (b) not be disadvantaged *vis a vis* other applicants who might qualify for a small business discount. This is an appropriate action on behalf of previous eligibles who would otherwise be precluded from participation, merely because they had continued to succeed and grow, as the Commission originally intended.

## **II. Conclusion**

Allowing companies such as RPCS to bid on F Block spectrum would further the goals of Section 309(j)(3) of the Communications Act, and help remedy the situation of companies who were unfairly denied such spectrum as a result of other bidders'

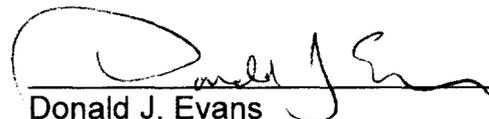
irresponsible actions. This goal could be achieved by revising the \$125 million revenue limit up to \$145 million to account for inflation, or by expanding the "grandfathering" of participants in Auctions 5 and 11 who have grown over the \$125 revenue limit, from eligibility merely to bid on C Block licenses, to eligibility to bid on C Block and F Block licenses. Application of the grandfathering to F Block licenses could be limited to entities that previously bid on F Block spectrum in Auction 11.

The record demonstrates that the RPCS proposals for a moderate expansion of the criteria for eligibility to bid on F Block spectrum constitute a sensible and defensible compromise between the position of large companies that seek to broadly remove eligibility restrictions in Auction 35, and the position of small companies that seek to retain all current eligibility restrictions. RPCS urges the Commission to adopt one or more of RPCS' proposals.

Respectfully submitted,

ROSEVILLE PCS, INC.

  
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June 30, 2000

## CERTIFICATE OF SERVICE

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the foregoing *Reply Comments of Roseville PCS, Inc.* sent this 30<sup>th</sup> day of June, 2000, by hand where indicated and via United States First Class Mail, postage prepaid, on the following:

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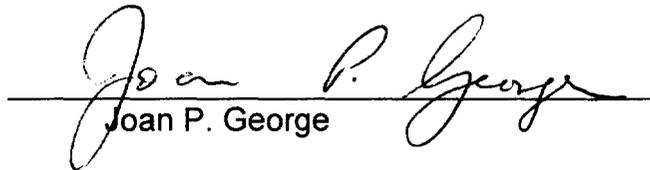
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