

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

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WT Docket No. 97-82

To: The Commission

**PETITION FOR RECONSIDERATION OF ALPINE PCS, INC.**

Alpine, PCS, Inc. ("Alpine") pursuant to Section 1.429 of the FCC's rules, petitions the Commission to reconsider its Sixth Report and Order on Reconsideration in the above-captioned proceeding.<sup>1</sup> The Commission made numerous material errors of fact and law in the Sixth Report that require the reinstatement of the 30MHz C block program for qualified designated entities ("DE's").

Alpine is a DE with PCS licenses in California, Michigan and Massachusetts. Service has been initiated in Michigan and will soon begin in California. Alpine participated in the captioned rulemaking and plans to participate in the reauction of C block spectrum this December.

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List A B C D E

<sup>1</sup> *In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Service (PCS) Licensees*, Sixth Report and Order and Order on Reconsideration in WT Docket No. 97-82, FCC 00-313 (rel. August 29, 2000), 65 F.R. 53624 (September 5, 2000) (hereafter "Sixth Report").

## I. Introduction

FCC Rule Section 1.429 provides that the FCC must reconsider a decision where it has made material errors or omissions of fact or law.<sup>2</sup>

In this case, the Commission has made errors and omissions of both fact and law. It has misapplied Section 309(j)(3) of the Communications Act by ignoring completely the fundamental policy against excessive concentration of licenses, and has not balanced the other applicable statutory standards as claimed. In addition, the Commission either ignores or misconstrues material record evidence concerning (1) the inadequacy of 10 MHz spectrum blocks; (2) the large carriers' baseless claims that they are spectrum constrained; (3) the need to maintain bidding credits in a closed C block auction to provide small businesses (like Alpine) a meaningful opportunity to compete for licenses against corporate giants like Telecorp/Tritel; and (4) the unjustifiable decision to open the F block reauction to non-DE's.

## II. The Decision Violates 309 (j)(3)(B)

### A. *The Decision Exacerbates the Concentration of Licenses.*

Section 309(j)(3)(B) directs the Commission to “seek to promote”

economic opportunity and competition and [to ensure] that new and innovative technologies are readily accessible **by avoiding excessive concentration of licenses** and by disseminating licenses among a wide variety of applicants, including small businesses...<sup>3</sup>

Although Section 309(j)(3) indicates that the FCC must balance various objectives, the Commission has very clearly failed to do so. The decision never once addresses the issue of

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<sup>2</sup> *In re Applications of D.W.S., Inc.*, 11 FCC Rcd 2933, at ¶4 (1996); *800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services*, 12 FCC Rcd 5188, at n. 84 (1997). See, e.g., *Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations*, 10 FCC Rcd 7727, at ¶4 (1995).

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

excessive concentration of licenses despite the obvious impact of the decision on such consolidation.

The past 10 months has seen the most dramatic concentration of cellular and PCS licenses in history. During this period a series of corporate mergers have reduced a once competitive industry to a handful of giant corporate conglomerates holding the vast majority of cellular and PCS licenses in the United States. For example, the recent merger of VoiceStream Wireless, Omnipoint Corp. and Aerial Communications created a footprint covering 200 million people.<sup>4</sup> Subsequently, Deutsche Telecom AG agreed to purchase the combined VoiceStream<sup>5</sup> and to add Powertel “one of the last major U.S. regional carriers,” in a \$5.89 billion transaction.<sup>6</sup> Coincident with this, SBC and BellSouth announced the combination of their wireless assets creating the nation’s second largest wireless company with 16.2 million subscribers and \$10.2 billion in revenue, which the FCC recently approved.<sup>7</sup> These mergers followed the combinations that formed the nation’s largest wireless carrier Verizon, with over 25 million subscribers.<sup>8</sup> Verizon was created through the combination of four formerly independent wireless operators Bell Atlantic Mobile, GTE Wireless, PrimeCo Personal Communications and Vodafone’s AirTouch.<sup>9</sup> In today’s world, AT&T wireless will be only the nation’s *third* largest wireless carrier. As noted in a recent SEC filing by Verizon, “the wireless communications industry has been experiencing significant consolidation, and we expect that this trend will continue.”<sup>10</sup>

This proceeding presents the Commission with the opportunity to mitigate this excessive concentration of licenses and thereby promote competition, economic opportunity and

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<sup>4</sup> “Shareholders Approve VoiceStream, Omnipoint, Aerial Merger,” Radio Communications Reports (“RCR”) p. 65 (February 28, 2000).

<sup>5</sup> “DT Adds Powertel to Wireless Bounty,” RCR p. 3 (September 3, 2000).

<sup>6</sup> *Id.*

<sup>7</sup> “Ameritech Owner Announces Partnership With Atlanta Based BellSouth,” Detroit Free Press, (April 6, 2000).

<sup>8</sup> Verizon Wireless Plans IPO,” Washington Post p. E9 (August 25, 2000).

<sup>9</sup> *Id.*

technological innovation as intended by Congress. However, the Sixth Report fails to address, even once, the issue of how the rule revisions will further exacerbate the concentration of licenses, although the issue was raised in the comments.<sup>11</sup> In fact, despite claiming that it has balanced the applicable statutory factors the Commission notably omits any reference to the concentration of license issue thereby undermining its claim:

Section 309(j) directs the Commission to seek to promote a variety of sometimes competing objectives, including economic opportunity, competition, and the rapid deployment of new technologies and services by, inter alia, disseminating licenses among a wide variety of applicants including small businesses... We believe that by implementing our tentative conclusion we give effect to, and reasonably balance, as many of the various and partially conflicting Section 309(j) objectives as possible.<sup>12</sup>

The statute specifically directs the Commission to take excessive concentration of license into account in attempting to promote opportunity, competition and innovative technology. The Commission cannot simply ignore this congressional mandate. At a minimum, the Commission has an obligation to explain how this decision, which will only contribute to existing license concentration, squares with its statutory duty to promote Section 309(j) objectives. Simply ignoring this obligation is not an option. How can the public or a reviewing court determine whether the balancing was properly conducted if the Commission declines to explain how this critical consideration at this pivotal time was made. The Commission's utter failure to consider this factor, and the record addressing it, is a material error of law.

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<sup>10</sup> *Id.*

<sup>11</sup> *See, e.g.,* Alpine Comments at 3, 10-13.

<sup>12</sup> Sixth Report at ¶¶22-23. *See also* Final Regulatory Flexibility Analysis at 9-10 ("Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses... Section 309(j) also requires that the Commission ensures the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that these revisions... promote these goals....")

*B. The Commission Failed to Properly Balance Other 309(j)(3) Objectives.*

As discussed, 309(j)(3) requires a balancing of interests. The Commission claims to have accomplished this, but the record speaks otherwise. Most egregiously, the Commission ignores the plain language of the statute when it found that it had provided adequate opportunity to small businesses by simply offering the option to participate in auctions. Providing opportunities to small business in auctions (together with avoiding excessive license concentration) are the statutorily directed means of ensuring the promotion of competition and making innovative technologies readily accessible to the public, by the plain language in Section 309(j)(3)(B). Yet the Commission incorrectly frames the issue in a way that states that opportunities to participate for small business are “potentially conflicting” objectives with respect to competition and innovation. The Commission can neither rewrite the statute in this rulemaking nor ignore the will of Congress as it has done.

In addition, the Commission’s reliance on *Melcher* for the proposition that it need only give small business the “opportunity to participate” in auctions is misplaced.<sup>13</sup> *Melcher* had nothing to do with promoting opportunity, competition and innovation by the award of PCS licenses to small business. The case involved the cross-ownership prohibition between rural telephone companies and certain Local Multipoint Distribution Licenses. The Commission determined that Section 309(j)(3) did not prohibit this specific rural telephone cross-ownership policy. The only FCC rulemaking that has been conducted properly considering the necessity of

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<sup>13</sup> Sixth Report at ¶22; *Melcher v. FCC*, 134 F.3d 1143, 1154-55 (D.C. Cir. 1998).

providing 30 MHz to small businesses in the C Block is the Commission's 1994 rulemaking.<sup>14</sup>

No legally sufficient rationale has been provided to reverse its findings.

### **III. The Commission Ignored and Misconstrued the Record in Finding that 10 MHz is Sufficient**

Although claiming to consider the extensive record on this issue, the Sixth Order makes it apparent that numerous comments inconsistent with the Commission's decision were simply disregarded or misconstrued. For example, the Commission contends that "the majority of commenters support our proposal to divide each available 30 Mhz C block license into three 10 MHz C block licenses." A review of the footnote supporting this assertion shows numerous commenters that in fact disagreed with the Commission, or may have grudgingly supported the 10 MHz proposal conditioned upon other rule revisions that the Sixth Report does not deliver.<sup>15</sup> It is far more accurate to state that under the adopted rules, the majority of commenters opposed the 10 MHz plan.<sup>16</sup>

Similarly, the Commission ignores the record with respect to the fact that 10 MHz is insufficient to establish a viable PCS enterprise that includes 3G services. On this point the Commission cites only Alpine's Comments and Reply Comments. In fact numerous other

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<sup>14</sup> See, e.g., *Fifth Memorandum Opinion and Order*, 10 FCC Rcd. 403, ¶ 3 (1994) ("[w]e generally conclude that the "entrepreneur" block" concept and the special provisions for designated entities...are the most efficient and effective means to fulfill our statutory mandate to provide for a diverse and competitive broadband marketplace."); *Fifth Report and Order*, 9 FCC Rcd. 5532, ¶127 ("We believe that designating frequency blocks C and F as entrepreneurs' blocks meets the concerns of most designated entity commenters. Frequency block C provides 30 MHz of spectrum and, thus, satisfies the concerns of those parties who believe they must have this amount of spectrum to compete effectively...Bidders ineligible for the entrepreneurs' blocks will have the opportunity to bid on 99 30 MHz MTA licenses throughout the country, as well as 986 10 MHz BTA licenses nationwide.") See also *Fourth Report and Order*, 13 FCC Rcd. 15743, ¶16 (1998); *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd. 8345, 8375 (1998).

<sup>15</sup> Sixth Report n. 35

<sup>16</sup> See, e.g., the following comments filed on or about June 22, 2000 in this proceeding: Alpine PCS; Twenty First Wireless; Rural Telecom Group; Rural Cellular Association; Ascent; Comscape; Leap Wireless International; Personal Communications Industry Ass'n; Powertel; Small Business Administration; NTCA; Alaska Digital; Telecorp/Tritel; Choice Wireless; OPM Auction; NextWave; Burst Wireless; Northcoast; Carolina PCS; and Advanced Telecommunications.

parties supported Alpine's position, but were apparently disregarded.<sup>17</sup> The Commission's reference to the DEF 10 MHz allocations as support that 10 MHz is sufficient for DE's trying to establish competitive services, including 3G, today is disingenuous. The entire premise of the current proceeding, in the Commission's words, is that:

...[C]ircumstances in the PCS industry have changed dramatically, and continue to change, since the implementation of our rules in 1994. The introduction of wireless Internet, advanced data, and 3G services, and global competition within these services, has created a shortage of suitable available spectrum.

It is unreasonable for the Commission in one breath to take spectrum away from DE's based on world changes that require more spectrum, while in the next trying to justify reducing DE spectrum based on the DEF allocation made over six years ago and auctioned some four years ago. Similarly, the Commission's rationale that 10 MHz allocations benefit DE's because they are more affordable is attributed to such "DE sensitive" parties as BellSouth, CTIA, Sprint, US WEST, ALLTEL, AT&T and Verizon. This is obviously not a "benefit" acknowledged by DE's themselves, who understand their own needs and the true motives of these "advocates."<sup>18</sup>

#### **IV. The Record Does not Support Large Carriers' Claims of Spectrum Shortages**

A central element of the Sixth Report's decision to reallocate C block spectrum to large carriers was the unsubstantiated and self serving claims by these carriers that they were spectrum constrained. Despite mountainous evidence in the record submitted by DE's contradicting these claims, the Commission bought into the large carriers' unsupported stories. In addition, the Commission simply failed to even consider far less intrusive options such as

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<sup>17</sup> See Attachment 1 (List, with citations, of 23 commenters explaining to the FCC why 10 MHz is insufficient spectrum). This list was initially submitted by Alpine as an ex parte on or about July 12, 2000.

<sup>18</sup> The fact that the Commission made two 10 MHz allocations available in Tier 2 markets does not resolve this spectrum problem. Bidders have no assurance that they can assemble at least two 10 MHz licenses, the minimum for a possible competitive enterprise today. The prospect of bidding on two licenses but being stranded with only one insufficient 10 MHz license, will place DE's in an untenable bidding position in the December auction.

allowing the market to work through partitioning, disaggregation and other business relationships that could be forged by DE's with large carriers.

Alpine and other DE's provided evidence of inefficient, analog use of spectrum by many of the large carriers complaining that they were constrained.<sup>19</sup> Yet these carriers continue to market analog phones while complaining that they need more spectrum. While it is inexplicable that the Commission should promote inefficient spectrum use while shutting out the most efficient licensees (DE's rolling out new digital services), now it appears that some of the largest proponents of the reallocation have publicly admitted that they are not spectrum constrained at all, despite contrary representations to the Commission in this proceeding.

For example on July 19, 2000, following the July 17, 2000 close of the ex parte period, the Washington Post reported that Nextel's Treasurer admitted that Nextel is not spectrum constrained:

For now, though [Nextel] has enough spectrum to serve nearly five times its current customer base... The wireless industry will begin implementing "third-generation" technology in 2003 or 2004 at the earliest.<sup>20</sup>

Similarly, Sprint has admitted it has sufficient spectrum and that other large carriers should not be in any different condition.<sup>21</sup> The Commission's apparent reliance on news media reports to support its decision is an entirely arbitrary and untested substitute for reasoned decisionmaking.<sup>22</sup> Finally the Commission's general reference to its annual wireless competition report provides no

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<sup>19</sup> See Northcoast Reply Comments at 5 .

<sup>20</sup> Comments of Nextel Treasurer John Brittain, as reported by Sarah Schafer, Nextel's Loss Narrows, Subscriber List Grows, Wash. Post, at E1-E2 (July 19, 2000). See also "Spectrum Woes: Real or Feigned?" Wireless Week (July 31, 2000) ("Nextel spokeswoman Kara Palamaras told Wireless Week that Nextel has enough spectrum for its 10 year business plan."). Section 1.429 of the Commission's Rules provides for reconsideration based upon newly available facts such as these.

<sup>21</sup> "No Spectrum Worries For Sprint," Wireless Review, at 9 (September 15, 2000). Wireless industry analyst Herschel Shosteck commented with respect to large carrier interest in C block spectrum for the largest markets "they might be buying the spectrum because they want to warehouse it... very few need it' for the integrity of day to day operations." Communications Daily, "FCC Delays C- and F- Block Re-Auction By Four Months Until Nov.," at p. 4 (June 8, 2000).

basis for the unsupported individual claims of the large carriers of spectrum scarcity. Nor does the report evaluate the reasons that might explain such scarcity (i.e. large carrier inefficiencies, assuming scarcity exists) or explore other less intrusive marketplace solutions (partitioning, disaggregation, roaming etc.) for resolving individual cases of true scarcity.<sup>23</sup>

## **V. The Record Does Not Support the Elimination of Bidding Credits in Closed Auctions**

To the extent that an agency seeks to change its rules, it may only make this reversal if it has engaged in reasoned analysis giving the record a “hard look.”<sup>24</sup> The Commission’s decision to do away entirely with bidding credits in a closed reauction is not based on such reasoned analysis of the record.

Despite abundant record comment in support of retaining bidding credits, in order to allow small businesses (like Alpine) a realistic chance of competing for licenses against giant DEs (assuming they actually qualify) such as Telecorp, Tritel and Dobson, the Commission summarily disposed of them. Ironically, the proponents of doing away with the credits (now that they are ineligible for them) are Telecorp, Tritel and Dobson, each of which formerly took advantage of such credits under precisely the carefully structured applicant forms that they now criticize. Now the FCC has pitted true small businesses like Alpine against giant corporations like the merged Telecorp/Tritel that have billions of dollars in assets yet may qualify for the DE auction through the accident of an extended eligibility grandfathering date.<sup>25</sup> Moreover, in the

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<sup>22</sup> Sixth Report at ¶23 n. 71 (citing articles in the Wall Street Journal and Washington Post).

<sup>23</sup> *Id.*

<sup>24</sup> *Greater Boston Television Corp v. FCC*, 444 F.2d 841, 850, 852 (D.C. 1970)(stating that the reviewing court will look at the agency’s record to penetrate the underlying decision of the agency to satisfy that the agency has exercised a reasoned discretion “with reasons that do not deviate from or ignore the ascertainable legislative intent”).

<sup>25</sup> Dobson, a publicly traded company on the NASDAQ, has over \$359 million in annual revenues and total assets of over \$2.23 billion. Telecorp’s annual revenues and total assets are over \$288 million and \$966 million respectively. Tritel’s annual revenues and total assets are over \$100 million and \$1.1 billion respectively. Even

Sixth Report the Commission incorrectly refers to Cook Inlet as supporting the elimination of the bidding credits.<sup>26</sup> In fact, Cook Inlet states that bidding credits should be eliminated in auctions in which “only small businesses are bidding.”<sup>27</sup> Of course, that precondition does not apply here where giant grandfathered DE’s will likely participate. In another spectrum auction proceeding, the Commission recently adopted bidding credits for small and very small businesses. “We believe that bidding credits help achieve our statutory objective under Section 309(j)(3)(B) of the Communications Act by providing varying sizes of small businesses with the opportunity to participate in the auction of MAS spectrum.” The same policy should apply here.

This only makes common sense and bidding credits should be retained for the closed C block reauction. Should the Commission be concerned about sham arrangements, it should revise the rules to exclude such arrangements. The record clearly does not support penalizing true small businesses trying to compete against giant, grandfathered DE’s as the revised rules now do. Such an approach also violates Congress’ policy to provide a meaningful opportunity to small businesses in spectrum auctions.

## **VI. The Record Does Not Support Opening of the F Block to Non-DEs**

The Sixth Report’s rationale for opening the F block reauction to non-DEs makes little sense. After basing its decision to break up the C block in part upon purported business and bankruptcy problems by DEs, the Commission now uses the lack of such problems in the F block to support taking these frequencies back.<sup>28</sup> This “heads I win, tails you lose” rationale, evident throughout the Sixth Report, does not amount to reasoned decisionmaking. In addition, the

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without the planned combination of Telecorp and Tritel, it makes no sense to pit Alpine and other real DEs against these giants in bidding situations without a bidding credit to help equalize for the massive financial mismatch.

<sup>26</sup> Sixth Report at n. 141.

<sup>27</sup> Comments of Cook Inlet at 10.

<sup>28</sup> Sixth Report at ¶26, n. 85 (“there has been a lack of historical controversy regarding the F block licenses. *Id.* Moreover, we note that except for licenses won by licensees with substantial C block holdings, very few F block licenses have been reclaimed by the Commission as a result of default or bankruptcy”).

Commission relies upon the purported spectrum constraints of large carriers to justify this abrupt frequency reallocation. Alpine demonstrated above that the record does not support these large carrier claims, that the claims have been subsequently contradicted, and that other far less intrusive marketplace solutions exist to deal with isolated cases of true constraint.<sup>29</sup> The Commission should retain DE eligibility requirements for the F block.

## **VI. The DE Transfer Restrictions Should Be Eliminated**

The Sixth Report relaxes the existing transfer restrictions to permit the sale of DE licenses to non-DEs prior to five years, if the five year construction benchmark has been met.<sup>30</sup> In addition, the FCC eliminated unjust enrichment payments for licenses won in auctions 5 and 10, but retained the penalty for licenses sold that were acquired in auctions 11 and 22.<sup>31</sup>

On August 9, 2000 Congress adopted Public Law 106-259 which provides more favorable relief to Cook Inlet with respect to the DE transfer restrictions and unjust enrichment penalty requirements. Section 8149 of the new law provides:

Licenses Held By Alaska Native Regional Corporations—An Alaska Native regional corporation organized pursuant to the Alaska Native Claims Settlement Act, or an affiliate thereof, that holds a Federal Communications Commission license in the personal communications service as of the date of enactment of this section and has either paid for such license in full or has complied with the payment schedules for such license shall be permitted to transfer and assign without penalty such license to any transferee or assignee. No economic penalties shall apply to any transfer or assignment authorized under this section. Any amounts owed to the United States for the initial grant of such licenses shall become immediately due and payable upon the consummation of any such transfer or assignment. Any application for such a transfer or assignment shall be deemed granted if not denied by the Commission within 90 of the date on which it was initially filed. Any provision of law or regulation to the contrary is hereby amended.<sup>32</sup>

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<sup>29</sup> See *supra* at 7-8.

<sup>30</sup> Sixth Report at ¶49.

<sup>31</sup> *Id.* ¶51.

<sup>32</sup> Department of Defense Appropriations of 2001, Public Law 106-259, §8149, 114 Stat. 656 (Aug. 9, 2000).

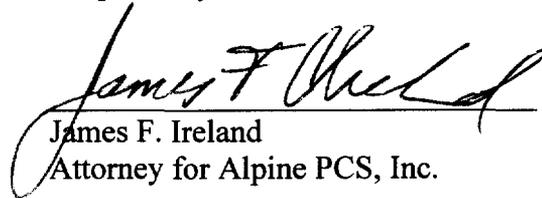
The Commission should revise its transfer rules to apply the same rule in a uniform manner to all DEs. The current situation will result in discriminatory application of Commission rules to similarly situated entities without legal justification. This discrimination is amplified because the legislation provides Cook Inlet the ability to sell its existing licenses at windfall prices without penalty at any time. Revenues received from such sales could then be funneled into the upcoming December auction, where Cook Inlet will undoubtedly claim DE status. Alpine and other true small companies will be irreparably harmed by such a result.

To the extent that the FCC determines that all DEs cannot be accorded similar equitable treatment, Alpine asks that the Commission amend its rules to exclude Cook Inlet from the December 2000 auction as a DE. Nothing in the legislation guarantees Cook Inlet the right to participate as a DE and the unfair legislative advantage that it has sought and gained should not be allowed to be leveraged in this fashion by the Commission.

### CONCLUSION

For the reasons explained above, the Commission should reconsider its Sixth Report and reinstate the C and F block program for DE's.

Respectfully submitted,

  
James F. Ireland  
Attorney for Alpine PCS, Inc.

October 5, 2000

**Attachment 1**

# **FNPRM & Other Comments That 10 MHz is Not Enough**

Compiled by Arthur L. Prest  
Alpine PCS  
July 10, 2000

- **US West**
  - FNPRM Comments page 5: *“As a relatively new entrant in the wireless market, and with only 10 MHz of spectrum in any of its service areas, USWW could face substantial challenges without access to additional spectrum. If the Commission were to adopt the proposed 2.5 million threshold for Tier 1 BTAs and open up eligibility for only one 10 MHz C block license in these markets, USWW might not be able to meet its spectrum needs in large cities such as Portland, Oregon or even USWW’s home market of Denver, Colorado.”*
- **SBC**
  - FNPRM Comments page 2: *“could result...in the addition only of a spectrum-constrained entrant that will be unable to compete as effectively with incumbents”.*
  - FNPRM Comments page 9: *“As SBC has argued before –and as the Commission has stated in the past - 30 MHz of PCS spectrum is needed to offer a full complement of both voice and data wireless services. Indeed, while the FNPRM tentatively concluded that a wireless system could function with less spectrum, it is carefully worded to state only that ‘a 10 MHz C block license is a viable minimum size for voice and some data services. The public interest, however, is not served by creating new competitors that are restricted to the ‘minimum’ amount of spectrum needed to be ‘viable’ for voice service, with only ‘some’ capability to provide data services. In particular, there is no reason to place such restrictions on large carriers seeking to fill in the gaps in their service areas and to become new competitors against other major incumbent carriers who have far more than 10 MHz of spectrum. Accordingly, new entrants should be allowed to bid on and obtain all three 10 MHz licenses to ensure that they can compete on a level playing field with incumbents who already have 25, 30, 45 more MHz.”*
- **Sprint PCS**
  - April 7, 2000 filing to the FCC in support of Sprint’s request regarding Reciprocal Compensation. On pages 24-25 of a document dated April 4, 2000 titled “Cost-Based Terminating Compensation for CMRS Providers” that was submitted by Sprint: *“In some densely populated markets where Sprint PCS has 10 MHz licenses, it currently uses its entire licensed spectrum and is seeking more spectrum to serve increases in demand. If additional spectrum becomes available, the least-cost design of the network may be based on the use of more than 10 MHz of spectrum. However, without a well-organized post-auction market for spectrum, spectrum license transactions are rare and idiosyncratic. A PCS operator cannot safely assume that its need for additional spectrum can be satisfied by purchases. Indeed, in markets where Sprint PCS experiences high demand for PCS services, it is likely that other licensees will also face high demand, and no suitable spectrum will be available. Increase in demand may have to be met through cell splitting, and the theoretical long-run, low-cost solution using more spectrum may be infeasible.”*
- **Nextel**
  - Nextel Petition for Waiver of Commission’s DE Rules page 3: *“[w]hile it has sufficient spectrum for its current operations, Nextel seeks to offer a wider array of advanced data and other innovative wireless communications systems” and therefore needs additional spectrum.”*
- **BellSouth**
  - FNPRM page 3: *“That [wireless data] need for additional spectrum will be, if it is not already, extant in markets of all sizes: it will increase, as third generation wireless equipment becomes available”. And “Thus the demand for spectrum is not limited to larger markets; it is and will be pervasive”.*

- **AT&T**
  - FNPRM Comments page 7: *“demand for spectrum to satisfy congestion, new technology needs” requires it [i.e., the FCC] to make some licenses in this auction available to all interested parties. Opening only one 10 MHz block license in all but the largest markets, however, would not sufficiently serve these needs.”*
- **CTIA**
  - CTIA February 22 Comments on the Nextel Petition for Waiver of Commission’s DE Rules page 3: *“...Nextel also has proposed to divide the reclaimed 30 MHz C Block license into separate 20 MHz and 10 MHz authorizations. This proposal would disadvantage any carrier to expand into new markets in order to compete with incumbent carriers who will have at least 25 MHz of cellular spectrum or 30 MHz of PCS spectrum. This would place a new entrant at a competitive disadvantage since it would not acquire enough spectrum (i.e., capacity) to provide the advanced services offered by its competitors and demanded by its potential customers. The Nextel petition makes this very point when it states that “[w]hile it has sufficient spectrum for its current operations, Nextel seeks to offer a wider array of advanced data and other innovative wireless communications systems” and therefore needs additional spectrum. (Nextel petition at 3)*
- **America Connect**
  - FNPRM Comments page 3: *“America Connect believes that 10 MHz of spectrum is insufficient for upcoming broadband offerings that might employ significant data rates as part of the service offerings. Moreover, as mobility based systems transition to 3G wireless offerings, 10 MHz will be insufficient to facilitate that transition.”*
- **Twenty First Wireless**
  - FNPRM Comments page 4: *“A 10 MHz C Block bandwidth would have compounded the auction fiasco by raising, not lowering the barriers to investment capital for the small business, minority or female winners because of the likelihood that the daily revolutionary innovations in wireless services would have made their bandwidth offerings instant museum pieces.”*
  - FNPRM Comments page 11: *“to fractionate the 30 MHz C Block bandwidth would be to insure quick market failure by small entrepreneurs in blatant violation of section 309 (j).”*
- **RTG**
  - FNPRM Comments page 4: *“A 10 MHz set-aside for designated entities is insufficiently robust to deliver new wireless Internet technologies and other 3G services to rural consumers.”*
- **Leap**
  - FNPRM Comments page 12: *“Leap expects that, with a minimum of 20 MHz, it will be able to expand upon the momentum created by the innovative Cricket voice offering to offer data services in a fashion that the large mobile wireless carriers cannot or will not chose to replicate.”*
- **Powertel**
  - FNPRM Comments page 7: *“Powertel opposes the Commission’s plan to break the remaining licenses into three 10 MH blocks. The Commission should respect the expectation of carriers and their investors that eligibility in these auctions would be limited to DEs. At a minimum, DEs should have the first opportunity to bid on these licenses. Any licenses that are not purchased by DEs could then be distributed in an open auction. Should the Commission decide that some participation by non-DEs is warranted, it should limit that participation by reserving at least 20 MHz of licenses for DEs.”*
- **US SBA**
  - FNPRM Comments page 6: *“20 MHz, rather than 10 MHz, is a more appropriate amount of spectrum with which to start a new business, as it permits a full range of wireless voice and data services. 10 MHz is suitable for providing more limited services and is an adequate amount for spectrum relief.”*

- NCTA
  - FNPRM Comments page 8: *“A small carrier that is able to obtain 10 MHz of spectrum stands little chance of competing in a market against a large carrier with far more spectrum.”*
  - FNPRM Comments page 9: *“Further, there is evidence that 10 MHz of PCS spectrum, by itself, is insufficient to create a viable business plan. 10 MHz of spectrum is not enough for a company to offer the full range of services. 10 MHz may be used to offer voice or data service. Barring the development of a revolutionary spectrum technology however, 10 MHz of spectrum is not enough to provide both voice and data service. Offering a small company 10 MHz of spectrum with virtually no prospects for additional set aside spectrum is worthless. Any company that provides service using just 10 MHz of spectrum is condemned to soon becoming obsolete, especially when faced with competitors in the same market with a least 30 MHz of spectrum. The fact that there may be two qualified entrepreneurs in a market with just 10 MHz of spectrum each further ensures the failure of this auction.”*
- OPM Auction Company
  - FNPRM Comments page 2: *“OPM believes that 20 MHz is the minimum amount of spectrum that a DE must have in order to compete with established carriers and prepare itself for 3G services.”*
  - FNPRM Comments page 6: *“OPM strongly opposes the Commission’ proposal to reconfigure each available 30 MHz C block license into three 10 MHz licenses. Due to technical and economic considerations, 10 MHz is insufficient for any PCS carrier that wishes to be competitive in the market place.”* Note: a signed Declaration is attached to this filing that provides technical reasons as to why 10 MHz is insufficient.
  - FNPRM Comments page 7: *“OPM believes that small business would be uninterested as 10 MHz is unsuitable to provide voice and data services. Instead, to compete with incumbent wireless operators, small business would be forced to attempt to win two or more blocks of 10 MHz within a market in order to acquire enough spectrum.”*
- Burst
  - FNPRM Comments page 2: *“20 MHz of spectrum is essential to enable small businesses to compete on a more equal footing with the large incumbents.”*
- Northcoast
  - FNPRM Comments page 6: *“10 MHz is sufficient to initiate voice and data service provision; however, it is not sufficient to support deployments of 3G technologies and services.”*
- Carolina PCS
  - FNPRM Comments page 6: *“Because DEs will need to offer these new technologies in order to compete with their non-DE rivals, DEs will also need more than 25 or 30 MHz in an individual BTA and must be ensured a corresponding realistic opportunity to acquire additional spectrum to remain competitive.”*
- Advanced Telecommunications Technology
  - FNPRM Comments page 3: *“licensees with a single 10 MHz license may have difficulty competing with cellular and A and B block PCS carriers with much more spectrum, particularly in markets that have a number of entrenched interconnected wireless service providers. The first problem would be the lack of ability to expand. The Commission is already receiving complaints of congestion from carriers with 30, 40, and 45 MHz of spectrum in a market. Small businesses will encounter the same problems as they add customers, only more quickly because they will have a small amount of spectrum. Given the fact that wireless data is projected to grow faster than the wireless voice market, the problem may be more significant for 10 MHz licensees, who will require a large amount of spectrum in order to provide internet capability and other data services.”*
- US Airwaves
  - FNPRM Comments page 5: *“for example, in order for a new entrant to provide Third Generation (“3G”) wireless services, at least 20 MHz of spectrum is required.”*
  - FNPRM Comments footnote #5 regarding letter from Tom Wheeler to Chairman Kennard: *“it is not technically possible to offer 3G in 10 MHz of spectrum.”*

- **Rainbow/Push Coalition**
  - FNPRM Reply Comments page 8: *“The Commission tentatively concludes that ‘a 10 MHz C Block license is a viable minimum size for voice and some data services, including Internet access...The very fact that these carriers are attempting this eleventh hour spectrum grab must give the Commission pause as to the long term viability of 10 MHz operators. These carriers already have 10, 25, 30, or 40 MHz in these markets and are seeking more. While the Commission should make every effort to bring more mobile spectrum to market and to promote secondary market transactions that can relieve spectrum congestion, it should not condone the efforts of these huge carriers to expand at the expense of new entrepreneurs who would be irreparably handicapped with 10 MHz licenses and little prospect for future bandwidth.”*
- **PCIA**
  - FNPRM Reply Comments page 17-19: *“Based on the first-hand experience of its members, PCIA believes that the 30 MHz block cannot be broken up into 10 MHz and support viable DE operators. Even the Commission implicitly recognizes this in the Notice when it states that large incumbent carriers that already possess 30 MHz or more require additional spectrum to be competitive. In fact, 10 MHz is simply not enough. A 10 MHz license size dooms that licensee to inevitable failure. PCIA members, trying to put the Commission’s predictions into practical application in concrete business plans, have found that these numbers simply do not add up. Although it is theoretically possible to begin providing pared down, basic service with 10 MHz, a business plan premised on the availability of only 10 MHz of spectrum is doomed to failure in the long run. Once a system begins operation with 10 MHz, and subscribers begin to sign on in large numbers, capacity constraints quickly become apparent, even with the more efficient access schemes. If a carrier provides so-called “all you can eat” service using CDMA technology, 10 MHz of spectrum, that is, 5 MHz in each direction, soon becomes inadequate. A carrier seeking to provide such service would need to use both Enhanced Variable Rate Coders, as well as all of the available 1.25 MHz CDMA carriers (i.e., 3 carriers within 5 MHz), and significantly increase the density of cell sites to provide sufficient network capacity to support the traffic loads that have been witnessed with such plans. This, of course, is both technically challenging and prohibitively expensive. In the experience of PCIA members, because of the large number of cell sites required to create such a system, a business plan premised on the availability of a mere 10 MHz of spectrum is not economically viable. Thus, splitting the licenses into 10 MHz blocks will not provide DEs with a meaningful opportunity to participate. Instead, by subdividing the licenses, the Commission will be setting DEs up for failure. PCIA believes that 30 MHz is necessary to truly compete for the voice and data services that comprise the wireless market. Moreover, DEs seeking to expand into new markets with only a 10 MHz toehold cannot generate the economies of scale and scope that will enable them to recover the cost of purchasing the spectrum, and to be able to compete on price for customers. As the Commission is well aware, many of the costs of wireless operations, e.g. transmitters, site rent, and the like, are fixed and need to be recovered over the largest possible number of subscribers. If the entrepreneur is capacity-constrained at 10 MHz but its competitor has 30 MHz (or more), and the concomitant number of subscribers that 30 MHz (or 40 MHz) can accommodate, the entrepreneur will never be able to achieve the same economies of scale and thus never be able to vigorously compete on pricing. At best, adopting the 10 MHz license proposal will merely serve to isolate entrepreneurs in the small markets where they already exist. Such marginalization of entrepreneurs does not comport with Congress’ command that entrepreneurs be given a meaningful opportunity to participate in spectrum auctions.”*
- **Alpine PCS**
  - FNPRM Comments page 7: *“The cost of adding capacity for a PCS operator with only 10 MHz system, or provisioning next generation services, by adding cell sites will be significantly higher than such costs for a PCS operator with 30 MHz of spectrum. Figures 1 and 2 developed by Lucent Technologies show how a carrier would evolve cdmaOne networks to cdma2000 3G networks in a 30 MHz scenario versus a spectrum*

*constrained scenario. The operator with 30 MHz of spectrum can simply add additional 1.25 MHz or 5 MHz “carriers” in the case of cdmaONE or cdma2000 Phase 2 respectively without having to double or quadruple the number of cell sites and ripping out the existing cdmaONE network infrastructure.”*

- FNPRM Comments page 9: *“The unintended consequence of the proposed 10 MHz split will be to create one or two handicapped entrepreneurs in a market with only 10MHz each – companies with limited service offerings who will never be able to offer next generation services. A future result will be that eventually the smaller companies will not be able to remain competitive and will have to sell out to the larger ones. The original Congressional and Commission vision of viable, ubiquitous entrepreneur-based competition will not be accomplished.”*

## CERTIFICATE OF SERVICE

I, Racine Gooding, an employee at the Law Offices of Cole Raywid & Braverman, LLC, hereby certify that the foregoing Comments have been served via hand delivery on the following, this 5th day of October, 2000:

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Washington, DC 20554

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Federal Communications Commission  
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Washington, DC 20554

Commission Harold Furchgott-Roth  
Federal Communications Commission  
445 Twelfth Street, SW, Room 8-A302  
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Commissioner Gloria Tristani  
Federal Communications Commission  
445 Twelfth Street, SW, Room 8-C302  
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Thomas Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
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Michael K. Powell,  
Commissioner  
Federal Communications Commission  
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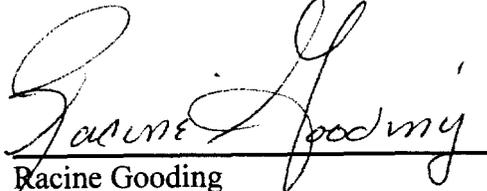
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