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September 20, 2002

VIA COURIER

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Secretary
Federal Communications Commission
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Re: Petition for Waiver and to Extend Divestiture Deadline
respecting the **MICHELMAN DIVESTITURE TRUST** and
Licenses held pursuant to:

Client No. 310397-00001

315

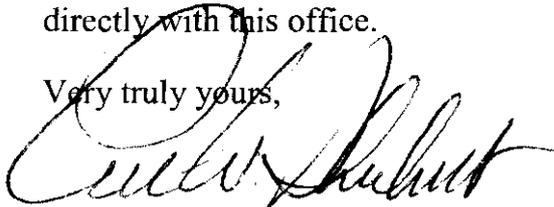
WT Docket No. 01-35

Dear Mrs. Dortch:

Transmitted herewith, on behalf of **DAVID MICHELMAN, TRUSTEE**, ("*Michelman*"), is an original and four (4) copies of an **PETITION FOR WAIVER AND TO EXTEND DIVESTITURE DEADLINE** respecting the **MICHELMAN DIVESTITURE TRUST** and Licenses held pursuant to WT Docket No. 01-35.

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Very truly yours,



Lee W. Shubert

Enclosures (5)

cc(w/1 enc.): Russel H. Fox, Esq. — *VIA E-MAIL*
Mr. David Michelman — *Ditto*
Lauren Kravetz Patrich, Esq. — *Ditto*
Mr. Kevin T. Reidy — *Ditto*

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

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SEP 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

DAVID MICHELMAN, TRUSTEE)

WT Docket No. 01-~~25~~ 315)

To: Wireless Telecommunications Bureau)

**PETITION FOR WAIVER AND TO
EXTEND DIVESTITURE DEADLINE**

David Michelman, trustee ("*Trustee*") of the above-captioned wireless assets divestiture trust (the "*Trust*"), by his attorneys hereby requests that the Federal Communications Commission ("*FCC*" or "*Commission*") extend the duration of the Trust. The Trustee has diligently attempted to divest the FCC licenses held by the Trustee (the "*Licenses*") to a third party. Due to the depressed current market for communications assets, however, the Trustee has experienced substantial difficulties in attempting to sell the Licenses. Accordingly, the Trustee respectfully requests that the Commission extend the current October 8, 2002, divestiture deadline for an additional one-hundred eighty (180) days. Such an extension will serve the public interest by providing additional time for the Trustee to identify an appropriate third party and to divest the Licenses in a prudent and orderly manner.

I. BACKGROUND

On October 24, 2001, Telecorp PCS, Inc. ("*Telecorp*") and AT&T Wireless ("*AWS*," collectively "*Applicants*") submitted a series of applications seeking FCC ap-

proval of the assignment or transfer of control of certain FCC licenses held by TeleCorp and its affiliates to AWS. Among those applications was a request that AWS be permitted to assign, in whole or in part, certain licenses held by AWS or its affiliates to the Trustee to resolve commercial mobile radio service (“CMRS”) spectrum aggregation matters.^{1/} On February 12, 2002, the Commission approved the formation of the Trust.^{2/} The Trustee and AT&T Wireless entered into an agreement (the “Trust Agreement”) through which the Licenses were transferred to the Trust. The Trustee took control of the Licenses on April 11, 2002, creating an original deadline of October 8, 2002, for divestiture.

II. REQUEST FOR WAIVER TO EXTEND DIVESTITURE TRUST

The Commission’s February 12, 2002, *Public Notice* approving the transfer of the Licenses to the Trustee required “that any PCS license that is transferred to the trust and that is not further transferred from the trust to the ultimate buyer with 180 days thereafter will automatically cancel.”^{3/} This directive was in accord with the Commission’s decision in its 1998 biennial review proceeding “that a licensee may use a trust for divestiture

^{1/} These licenses that were subsequently transferred to the divestiture trust include: AT&T Wireless PCS, LLC Call Sign KNLF221 (File No. 0000634714); AT&T Wireless PCS, LLC Call Sign KNLF256 (File No. 0000634728); and AT&T Wireless PCS, LLC Call Sign KNLF251 (File No. 0000634722).

^{2/} See *Public Notice*, “Wireless Telecommunications Bureau and International Bureau Grant Consent for Transfer of Control or Assignment of Licenses from Telecorp, PCS, Inc. to AT&T Wireless Services, Inc.,” DA 02-331, 17 FCC Rcd 2383 (2002)(“*Public Notice*”).

^{3/} *Public Notice* at 4.

purposes if the trust is of limited duration (six months or less).”^{4/} As noted above, the Trustee was initially required to divest the Licenses by October 8, 2002. The Trust Agreement, however, permits an extension of the trust upon approval of the Commission. In order to avoid any uncertainty regarding the Licenses, the Trustee respectfully requests that the Commission act on the instant request on or before October 8, 2002.

As set forth in detail in previously filed Trustee Reports,^{5/} the Trustee has diligently worked to divest the Licenses. The Trustee retained a broker, Daniels & Co. (“*Daniels*”), to represent the Trust in the sale of the Licenses. Daniels has marketed the licenses to more than thirty five (35) prospective purchasers and continues to engage in further discussions with interested parties. Thus far, Daniels has received a half dozen proposals, deemed legitimate by Daniels, for various spectrum blocks held by the Trustee. Notwithstanding these consistent efforts, the Trustee has been unable to finalize the sale of the Licenses. Shortly, Daniels expects to present transactional documents to the Trustee regarding at least one market covered by the Licenses. The February 12 *Public Notice*, however, requires that the Licensees be assigned to the ultimate buyer by October 8, 2002. Even if transactional documents presently were executed and applications seeking FCC consent to the assignment of the Licenses were promptly submitted there-

^{4/} See *In the Matter of 1998 Biennial Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket Nos. 98-205 and 96-59, GN Docket No. 93-252, *Report and Order*, 13 FCC Rcd 25132 ¶ 117 & n.263 (1999).

^{5/} See, Letter from David Michelman, Trustee of the Michelman Trust, to Marlene H. Dortch, Secretary, Federal Communications Commission, June 10, 2002; Letter from David Michelman, Trustee of the Michelman Trust, to Marlene H. Dortch, Secretary, Federal Communications Commission, August 18, 2002.

after, the requirements of Section 309(b) of the Communications Act of 1934, as amended, would forestall the assignment of the Licenses, assuming a grant of the applications, until after October 8, 2002. Considering the time continuum, complete liquidation of the Licenses by the Trustee by October 8, 2002, is not reasonably feasible.

The fundamental reason for the delay in the sale of the Licenses by the Trustee is the well-documented decline in U.S. capital markets. Specifically, the deteriorating health of the telecommunications sector^{6/} and the general unwillingness of investors to purchase wireless assets have had a significant negative impact upon the Trustee's ability to divest the Licenses. The technology sector further has been undermined by accounting scandals and corporate self-dealing.^{7/} Wall Street continues to downgrade wireless stocks, which

^{6/} See, e.g., Scott Moris, "Worldcom's False Profits," *The Street.com* (August 12, 2002) (describing the fall of the telecommunications sector), available at <http://www.thestreet.com>; Scott Moris, "Telecom Players Seeing Little Upside in Optical," *The Street.com* (August 15, 2002) (reporting that investors no longer want to invest in "phone companies locked in a downward debt spiral with their creditors"), available at <http://www.thestreet.com>; "Telecoms Tumble in Market Stumble," *TR Daily* (September 3, 2002) (reporting severe share price loss in the telecommunication sector), available at <http://www.tr.com>.

^{7/} See "WorldCom Admits to \$3.3B More in Errors," *Computerworld*, August 12, 2002 ("WorldCom Inc. said it had discovered \$3.33 billion in accounting errors dating to 1999 in addition to the \$3.85 billion worth of errors that it already acknowledged for last year and this year's first quarter."); see also, "Senator Dorgan Asks Attorney General Why Enron Executives Avoid Indictment," *Knight Ridder Business News*, August 17, 2002 (discussing the recent "public corporate arrests ... including those of executives at telecommunications giant WorldCom and cable company Adelphia Communications.")

has led to plummeting stock prices for wireless companies and has impaired their ability to acquire new cellular interests.^{8/}

The Commission, itself, has recognized and taken official notice of the financial distress in the telecommunications market. In a recent Public Notice regarding Auction Event No. 35, the Commission observed as follows:

Since the Commission issued its *Partial Refund Order* several months ago, the state of the capital markets for entities, including the applicants, engaged in the provision of wireless telecommunications services, as well as other telecommunications services, has continued to decline rapidly. Specifically, since March, the Commission has received submissions asserting that unique and troubling financial circumstances have led to difficulties in accessing capital and other problems for companies of all sizes, which in turn has affected the customers they serve. For instance, these commenters suggest that the impact of continuing contingent liabilities on credit ratings in the midst of a severe downturn in capital markets could potentially frustrate other policy objectives as well as quality of service. Moreover, as we have seen in the past, market downturns affect the value of spectrum licenses won at auction and licensees' (or applicants') ability to meet auction payment obligations. (Footnotes omitted.)^{9/}

The dramatic and broad disintegration of the wireless telecommunications market is a factor that plainly is beyond the Trustee's control but one that indisputably has contributed to the delay in the liquidation of the Licenses. Hence, the Trustee now is compelled to request additional time in which to dispose of the Licenses in an orderly fashion.

^{8/} "Wireless Wreck on Wall Street," *RCR Wireless News*, June 17, 2002 at 1 (reporting record low stock prices for wireless companies and noting that a number of investment firms cut their investor recommendations on several wireless companies).

^{9/} See, Commission Seeks Comment on Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35 for Spectrum Formerly Licensed to Nextwave Personal Communications Inc., Nextwave Power Partners, Inc., and Urban Comm — North Carolina, Inc., FCC 02-248, WT Docket No. 02-276, p. 3, Released September 12, 2002.

The Trustee requests that the Commission extend the duration of the Trust for an additional one hundred eighty (180) days. The Commission has the authority to grant a waiver of its rules if it finds that the underlying purpose of the rule would not be served and that grant of the waiver would be in the public interest.^{10/} The Commission has previously found that the transfer of licenses to a divestiture trust is in the public interest.^{11/} In the instant case, the extension of time would serve the public interest by ensuring sufficient time for prospective buyers to complete further discussions with Daniels, secure regulatory approval, and for the parties to consummate the proposed divestiture of the trust property. The Commission has granted extensions in similar situations when the extension will result in the transfer of assets to a qualified buyer.^{12/}

The Commission may also grant a waiver if the Commission finds that the applicant has no reasonable alternative.^{13/} Although the Trustee continues to identify potential buyers for the Licenses, circumstances beyond his reasonable control have prevented him

^{10/} 47 C.F.R. § 1.925(b)(3)(i).

^{11/} See, e.g., *In re Applications of GTE Corporation, Vodafone AirTouch PLC and Bell Atlantic Corporation*, 15 FCC Rcd 11608 (2000); *In re Applications for Vanguard Cellular Systems, Inc., Transferor, and Winston, Inc., Transferee, for Consent to Transfer Control of Licenses and Authorizations*, 14 FCC Rcd 3844 (1999); *Shareholders of Jacor Communications, Inc.*, 14 FCC Rcd 6867 (1999); *Tele-Communications, Inc.*, 14 FCC Rcd 3160 (1999).

^{12/} See, e.g., *Public Notice*, "Wireless Telecommunications Bureau Grants Request of Michael deLeon Hawthorne, Trustee, to Extend Divestiture Trust," DA 02-2117, released September 3, 2002); *Public Notice*, "Wireless Telecommunications Bureau Grants Request of Michael deLeon Hawthorne, Trustee, to Extend Divestiture Trust," DA 02-525, released March 4, 2002); *Public Notice*, "FCC Grants Request of Joseph J. Simmons, Esq., Trustee to Extend Divestiture Trust," DA 01-1963, 16 FCC Rcd 15681 (2001).

^{13/} 47 C.F.R. § 1.925(b)(3)(ii).

from selling the Licenses. The Trustee requests that the Commission grant the waiver and acknowledge that the nation's tumultuous economic times have limited any reasonable alternatives that would otherwise be available when selling the Trust's assets.

III. REQUESTED RELIEF

For the foregoing reasons, the Trustee requests a waiver of the Commission's requirements governing the duration of divestiture trusts and an extension of the current October 8, 2002, expiration date for the Trust.

In particular, the Trustee requests that the expiration date for this Trust be extended one-hundred eighty (180) days to allow the trustee to identify a prospective purchaser and to facilitate the disposal of the Licenses by the Trustee in an orderly fashion. In the interim, the Trustee will continue his efforts to identify a qualified purchaser. An extension of the divestiture expiration date will serve the public interest and will be consistent with the Commission's previous actions, which granted extensions to similarly situated divestiture trustees.

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Fax Cover Sheet

DATE: September 24, 2002

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WHEREFORE, the premises considered, David Michelman, Trustee, respectfully requests that the Trust be extended until April 6, 2003.

Respectfully submitted
DAVID MICHELMAN, TRUSTEE

By: 

Howard J. Braun, Esq.
Lee W. Shubert, Esq.
His Attorneys

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September 20, 2002