

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

Disposition of Down Payments and	)	
Pending Applications for Licenses	)	
Won During Auction No. 35 for	)	
Spectrum Formerly Licensed to	)	WT Docket No. 02-276
NextWave Personal Communications, Inc.	)	
NextWave Power Partners, Inc. and	)	
Urban Comm – North Carolina, Inc.	)	

**REPLY COMMENTS OF SUMMIT WIRELESS, LLC**

Summit Wireless, LLC (“Summit”) by its attorneys, and pursuant to the Commission’s Public Notice, hereby submits its reply comments in response to the Commission request for comments with respect to the proposals set out in the September 12, 2002 Public Notice (the “Notice”).<sup>1</sup>

As set forth below, Summit supports those commenters that urge the Commission to provide relief to those Auction 35 high bidders who’s applications are pending. But Summit also urges that the same opportunity for relief be provided to all Auction 35 winners, including those high bidders who have already been awarded their licenses. Thus, all auction winners should have the opportunity to void their Auction No. 35 obligations.

Summit is a Broadband PCS licensee, holding several PCS licenses. Summit acquired thirteen (13) of those licenses pursuant to Auction No. 35, after participating in that auction as a Designated Entity. Unlike many Auction No. 35 entities who are participating in this proceeding, Summit has already been awarded the licenses for which it was the high bidder.

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<sup>1</sup> Public Notice, FCC 02-248, WT Docket No. 02-276, September 12, 2002.

But, as is set forth below, the timing of action on its applications is the only matter that separates Summit from other Auction No. 35 high bidders.

Summit agrees with those commenters that urge the Commission to provide Auction No. 35 high bidders the option to “pick and choose” which of the licenses that they won in Auction No. 35 they wish to acquire. The record in this proceeding reflects clearly that since the start of the auction, the value of the licenses “won” in that auction has declined precipitously. The Chairman has recognized it<sup>2</sup>; the foremost wireless trade association has acknowledged it<sup>3</sup>; a multitude of financial institutions have voiced this<sup>4</sup>; Congressional and Administration voices have echoed it<sup>5</sup> and valuations of wireless carriers reflect it.

This dramatic change in wireless valuation is the most significant change that has occurred since the start of the auction, and is the most unforeseeable event. The fact that long pending litigation has permitted only some of the licenses “won” in the auction to have been granted, while others have remained pending, pales in comparison. For both groups of auction winners, financial obligations remain in effect regarding those licenses. For those who’s Auction No. 35 licenses have been granted, it is existing debt or eroded equity, for those with pending applications, it is contingent liabilities. For both groups, the value now is far less than that at the

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<sup>2</sup> See Comments of Black Crow Wireless, L.P. quoting remarks of the Chairman.

<sup>3</sup> See Comments of the Cellular Telecommunications and Internet Association (“CTIA Comments”).

<sup>4</sup> See Salmon Comments, Exhibit 1 (the “BIA Financial Study”); Verizon Wireless Comments, Attachment B (the “Sidak Study”).

<sup>5</sup> See Letter to FCC Chairman Powell from Cosponsors of H.R. 3748, dated October 4, 2002 (“Congressional Letter”). See Letter to FCC Chairman Powell from Donald L. Evans, Secretary, U.S. Department of Commerce (“Commerce Letter”).

conclusion of the Auction and the licenses are far “under water” via a vis obligations that remain in effect regarding them.

The various licenses won in Auction No. 35, were auctioned as discrete components of a single group of licenses. That is the essence of a simultaneous multiple round auction. Their values were, and remain, connected. If the Commission acts (as it should and permits high bidders to opt out of their bids for licenses that remain “pending”), it will explain why. The driving consideration will no doubt be the significant deterioration in license values. That decline in values is equally relevant for licenses not yet won and for those that have been granted. The relief should also be the same. As a result, if the Commission provides relief to some, but not all, Auction No. 35 high bidders, that very act would have the effect of eroding the already low values of those Auction No. 35 licenses granted to date. In today’s economic climate, that would be ruinous for those licensees.

There is another reason to provide the same options to all high bidders: to maintain the integrity of the auction. Summit submits that it is both proper and permissible for the FCC to adjust auction rules in response to unprecedented economic changes such as is here the case. But it would be both wrong, and impermissible,<sup>6</sup> were the Commission to provide such relief to the nation’s largest carriers, then deny it to small businesses such as Summit.

For all the foregoing reasons, Summit submits that all Auction No. 35 high bidders have suffered as a result of the unprecedented deterioration in wireless valuations, and urges the Commission permit all Auction No. 35 high bidders that option of voiding their Auction No. 35 obligations.

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<sup>6</sup> Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965).

