

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

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

Reply Comments of Alaska Native Wireless, L.L.C.

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Alaska Native Wireless, L.L.C. (“Alaska Native Wireless”), by its attorneys, hereby submits its reply comments 1/ in response to the September 12, 2002 *Public Notice* released by the Federal Communications Commission (“Commission”) seeking input on the disposition of down payments and pending applications for certain licenses won in Auction No. 35. 2/ As Alaska Native Wireless indicates in its comments, the current conditions provide a sufficient basis

1/ Comments of Alaska Native Wireless, L.L.C., 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., WT Docket No. 02-276 (filed Oct. 11, 2001) (“Alaska Native Wireless Comments”).

2/ 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., *Public Notice*, ____ FCC Rcd ____, FCC 02-248 (rel. Sept. 12, 2002) (“*Public Notice*”).

for the Commission to provide relief to the Auction No. 35 winning bidders. ^{3/} For the reasons set forth below, should the Commission make relief available to affected Auction No. 35 winning bidders, Alaska Native Wireless urges the Commission to provide those winning bidders with a flexible opt out solution that includes a fair and commercially reasonable election period, and to do so without imposing penalties on those winning bidders that elect to avail themselves of this relief and without the delay that the simultaneous investigation of unrelated requests for relief would produce.

I. Introduction and Summary

Alaska Native Wireless believes that all affected parties will benefit from the regulatory certainty associated with a fair and legally sustainable solution that provides an opportunity to clear the Auction No. 35 contingent liabilities that overhang the wireless industry. Accordingly, should the Commission make relief available to affected winning bidders, we urge the Commission to develop and implement a solution that would be equitable to the diverse group, accommodating the needs of some winning bidders for additional time to make an election. In addition, given the unique circumstances, the Commission must find that penalizing affected winning bidders, either monetarily or otherwise, would frustrate the goals of the auction process. Finally, as part of its effort to bring this matter to a close, the Commission should make clear that, notwithstanding the comments of

^{3/} The Auction No. 35 winning bidders (“winning bidders”) are those entities listed in Appendix A to the Commission’s February 27, 2001 Public Notice DA 01-520, issued on Feb. 27, 2001.

some parties, the instant proceeding is not the appropriate vehicle for addressing whether it can or should fashion relief for non-Auction No. 35 entities.

II. The Commission Should Provide A Flexible Opt Out Solution

The overwhelming majority of commenters favor the proposals set forth in the *Public Notice*. Of the 22 individual comments submitted to the Commission, 21 parties support or do not oppose providing the winning bidders with the ability to opt out. ^{4/} It is also significant that the Commission received comments from a broad cross-section of winning bidders – including individual bidders Scott Reiter and Vincent McBride (“Reiter and McBride”); designated entities Salmon PCS, LLC (“Salmon”), Leap Wireless International (“Leap”), and Cook Inlet/VS GSM V PCS, LLC (“Cook Inlet”); and “Tier I” wireless carriers Cellco Partnership d/b/a Verizon Wireless (“Verizon”) and T-Mobile USA, Inc. (“T-Mobile”). Just as important, the commenters support their positions with empirical ^{5/} and

^{4/} Only Joseph Friedman of Brooklyn, New York (“Friedman”) opposes “any of the proposals” as not being in the public interest. However, Friedman’s comment does not offer any legal or policy analysis and does not provide any information as to his background or particular interest in the auction process. Friedman Comments at 1.

^{5/} See, e.g., J. Gregory Sidak, *The Economic Benefits of Permitting Winning Bidders to Opt Out of Auction 35*, Criterion Economics, L.L.C. (Aug. 26, 2002) (Verizon Comments at Attachment B) (“Sidak Study”) (among other things, concluding that “the frozen \$16 billion, if released, would increase [the nation’s Gross Domestic Product] between \$19 billion and \$52 billion, between \$12 billion and \$38 billion of which would occur before the end of 2005”); BIA Financial Network, *The State of the Telecommunications Industry from Mar. 31, 2002 With Emphasis on the Wireless Voice Industry* (Oct. 11, 2002) (“BIA Financial Study”) (Salmon Comments at Exhibit 1) (demonstrating that the economic crisis has worsened dramatically since the Commission released its *Partial Refund Order* in March 2002).

anecdotal 6/ evidence regarding the faltering economy and the severe adverse impact of the contingent liabilities as well as the unusually lengthy licensing delays associated with Auction No. 35. All in all, the Commission has received thoughtful, strong endorsements of the proposals outlined in the *Public Notice*.

A diverse group of commenters support the selective opt out proposal. It is telling that *none* of the commenters in favor of a general opt out solution have indicated any opposition to the Commission’s selective opt out proposal, whereby a winning bidder would make elections on a license-by-license basis. In fact, in addition to Alaska Native Wireless, 7/ nine commenters expressly indicate their support for the selective opt out proposal: Alpine PCS, Inc. (“Alpine”); 8/ Black Crow Wireless, L.P. (“Black Crow”); 9/ Cellular Telecommunications & Internet Association (“CTIA”); 10/ DCC PCS, Inc.

6/ See, e.g., Leap Comments at 3 (explaining that its remaining down payment of \$10.7 million represents an amount more than twice the company’s current market capitalization of approximately \$5 million); Cingular Wireless LLC (“Cingular”) Comments at 7 (highlighting the current and ongoing harms to the industry as a result of the Auction No. 35 contingent liabilities, including the downstream business and job losses suffered by equipment manufacturers, tower companies, and small and midsize carriers because their equipment demands alone are insufficient to cause equipment vendors to produce low-cost devices); QUALCOMM, Incorporated (“QUALCOMM”) Comments at 1 (stating that many of the winning bidders are simultaneously devoting substantial resources to meeting other Commission mandates, such as E911, CALEA, and Local Number Portability, and deserve to have the option of freeing up their balance sheets immediately).

7/ Alaska Native Wireless Comments at 13-14.

8/ Alpine Comments at 3.

9/ Black Crow Comments at 1.

10/ CTIA Comments at 1.

(“DCC”); [11/](#) Greater Boston Chamber of Commerce (“Boston Chamber”); [12/](#) Lafayette Communications Company, L.L.C. (“Lafayette”); [13/](#) Leap; [14/](#) Salmon; [15/](#) and QUALCOMM Incorporated (“QUALCOMM”). [16/](#)

This group includes a wide cross section of winning bidders, as well as a wireless equipment manufacturer (QUALCOMM), the national wireless trade association (CTIA), and a broad-based association representing the business interests of a very large American city (Boston Chamber). Each of these entities recognizes that “[a] ‘one size fits all’ approach ... where wireless service providers are forced to either keep or cancel all pending applications as a package, does not fit the new economic climate.” [17/](#)

A number of winning bidders join Alaska Native Wireless’s call for a flexible election process. In its initial comments, Alaska Native Wireless urges the Commission to fashion a flexible election process for affected winning bidders, should the Commission choose to offer relief here. [18/](#) Specifically, Alaska Native Wireless proposes that the Commission provide a period of at least 180 days

[11/](#) DCC Comments at 1.

[12/](#) Boston Chamber Comments at 1.

[13/](#) Lafayette Comments at 1.

[14/](#) Leap Comments at 1.

[15/](#) Salmon Comments at iii.

[16/](#) QUALCOMM Comments at 1.

[17/](#) CTIA Comments at 3-4.

[18/](#) Alaska Native Wireless Comments at 9-14.

in which to make elections. [19/](#) Notably, at least three other winning bidders have also indicated support for a flexible election period.

First, Black Crow states that “it is critical that the Commission provide ample time in which applicants can make its election.” [20/](#) Black Crow seeks a time frame for making its election that is “equivalent to the time frame within which the Commission could reactivate the licenses[.]” [21/](#) Black Crow explains that “winning bidders should have that length of time in which to determine which of their Licenses they want to acquire...” [22/](#) and that “[t]his would facilitate a reasoned decision making process without delaying in any way the use of the spectrum.” [23/](#)

Second, Lafayette urges the Commission to allow winning bidders “to selectively opt out of their winning bids at any time while the title to the spectrum remains in doubt.” [24/](#) Lafayette explains that this “will allow bidders to determine for themselves the best use of their capital resources and provide bidders relief from the uncertainty of a perpetual bidding obligation.” [25/](#)

[19/](#) *Id.* at 10-13.

[20/](#) Black Crow Comments at 4.

[21/](#) *Id.* at 1.

[22/](#) *Id.* at 5.

[23/](#) *Id.*

[24/](#) Lafayette Comments at 4.

[25/](#) *Id.*

Third, Salmon argues that “the opt out mechanism should accord applicants maximum flexibility” [26/](#) and explains that “[t]here is no reason to force applicants to make the choices sooner rather than later.” [27/](#) Salmon also states that “[n]o useful purpose would be served by forcing applicants to abandon particular licenses early in the process only to have them lie fallow pending reauction.” [28/](#)

Alaska Native Wireless, Black Crow, Lafayette, and Salmon provide the Commission with compelling rationales for implementing a flexible and commercially reasonable election period. Moreover, Alaska Native Wireless [29/](#) and Salmon, [30/](#) the two most successful designated entities and the second and third highest winning bidders in Auction No. 35, [31/](#) present specific proposals on how the

[26/](#) Salmon Comments at 21.

[27/](#) *Id.*

[28/](#) *Id.*

[29/](#) “The Commission should permit Auction No. 35 winning bidders to exercise their election rights at any time after the Commission opens the [180-day] election period. A winning bidder that wishes to make elections early in the election period would be free to do so.” Alaska Native Wireless Comments at 11.

[30/](#) Salmon recommends a “two-window” election process under which the Commission would first issue an order announcing the opt out program and providing about 10 days during which winning bidders may identify licenses that they will no longer pursue. Winning bidders would be permitted to so notify the Commission within that first window, and those initial elections would be irrevocable. Then, under Salmon’s recommendation, “as soon as the Commission is willing and able to proceed to issue new licenses[,]” the agency would provide a second period of about five days during which to make additional, irrevocable elections. Salmon Comments at 21-22.

[31/](#) We note the two companies have almost \$5 billion in net bids outstanding.

Commission could implement a flexible election period that meets the needs of affected designated entities. Indeed, all affected parties will benefit from the regulatory certainty associated with a fair and legally sustainable solution that provides an opportunity to clear the contingent liabilities that overhang the wireless industry. As Alaska Native Wireless observes in its comments, the fact that post-Auction No. 35 licensing delays have continued into a period of material economic decline in the nation generally and the wireless industry in particular provides a basis for the Commission to consider fashioning relief in this case. [32/](#) For such relief to be effective, however, it must be reliable. For this reason, Alaska Native Wireless urges the Commission to develop and administer a solution that would be equitable to the diverse group of winning bidders, [33/](#) accommodating the needs of some winning bidders for additional time to make an election. [34/](#) Failure to do so could expose the Commission – and affected Auction No. 35 winning bidders

[32/](#) Alaska Native Wireless Comments at 3.

[33/](#) In the Phase II Enhanced 911 (“E911”) context, the Commission has gone to great lengths to fashion relief that is meaningful to individual carriers, as well as similarly-situated carriers. For example, the Commission provided separate waivers to each of the six nationwide (“Tier I”) wireless carriers based on their technology choices and individual business needs. *See, e.g.*, Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Calling Systems; Request for Waiver by Verizon Wireless, *Order*, 16 FCC Rcd 18364 (2001). In addition, the Commission granted E911 waivers to “Tier II” and “Tier III” wireless carriers and created separate obligations based on the distinct needs of each group. *See* Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, FCC 02-210, ___ FCC Rcd ___ (rel. July 26, 2002).

[34/](#) Alaska Native Wireless Comments at 10-12.

– to prolonged court challenges to any relief offered here, which would seriously undermine the effectiveness of the Commission’s effort to address part of the uncertainty that currently affects the industry. ^{35/} That would not be in the public interest.

III. The Commission Should Not Penalize Those Winning Bidders That Elect To Opt Out

The Commission should not penalize those winning bidders that elect to avail themselves of any solution offered here. First, the Commission has the authority to allow the winning bidders an opportunity to opt out of affected Auction No. 35 winning bids without imposing any penalty for doing so. Second, given the unique circumstances, the Commission must find that penalizing affected winning bidders, either monetarily or otherwise, would frustrate the goals of the auction process. Finally, the Commission should deny the Nextel Communications, Inc. (“Nextel”) proposal to penalize winning bidders that elect to opt out of affected Auction No. 35 winning bids.

The Commission has the authority to allow the affected Auction No. 35 winning bidders to opt out of the subject winning bids without penalty. Verizon presents the Commission with three analytical paths for allowing the winning bidders to withdraw their applications without penalty

^{35/} For example, in the waiver context, the U.S. Court of Appeals for the District of Columbia has been disposed to remand cases to the Commission when it concludes that the agency has not properly considered the interests of the parties in obtaining special relief. *See, e.g., KCST-TV, Inc. v. FCC*, 699 F.2d 1185 (D.C. Cir. 1983) (Commission’s denial of petition for special relief is remanded because the FCC acted arbitrarily in not giving waiver application “hard look”).

pursuant to Section 309(j) of the Act and its rules. ^{36/} In connection therewith, Verizon demonstrates that, because the winning bidders have violated no rules, defaulted on no obligations, and received no use of the Auction 35 licenses, withdrawal penalties are not appropriate. Similarly, Cook Inlet explains that resort to the default rules is not appropriate here because “[the] winning bidders are all in compliance with the Commission’s rules[.]” ^{37/} Likewise, Salmon asserts that no default has occurred: “Since no present ‘debt’ or ‘claim’ exists, it follows, *a fortiori*, that there is no debt to forgive.” ^{38/} Alaska Native Wireless agrees that an exercise of the Commission’s discretion would be justified in this case and, given the circumstances, would not undermine the Commission’s efforts to ensure the commitment of auction participants to the auction process and results.

Given the unique circumstances, the Commission must find that penalizing affected winning bidders, either monetarily or otherwise, would frustrate the goals of the auction process. The goals of the auction process would not be served by penalizing otherwise qualified entities that, through no fault of their own, have been prevented from paying for – and providing wireless

^{36/} According to Verizon, the Commission could dismiss the applications without prejudice by recourse to its statutory public interest authority. Verizon Comments at 16-18. Second, Verizon notes that, because the contested licenses are unavailable, dismissal without prejudice is authorized under the Commission’s rules. *Id.* at 18-19. Third, due to the public interest balance in the unique circumstances of this case, Verizon argues that the Commission could elect to exercise its waiver authority. *Id.* at 20-22.

^{37/} Cook Inlet Comments at 8.

^{38/} Salmon Comments at 15.

services under authority of – the licenses they bid for and won in a good faith auction. The affected winning bidders have continuously demonstrated their commitment to the auction process and have been actively engaged with the Commission to resolve competing claims to the subject spectrum and to secure the licenses for which they applied after the auction. ^{39/} While penalties may be appropriate in certain cases where parties unilaterally default on their license obligations and do not bring service to the public, such mechanisms are unsuited to the goals of the auction process where winning bidders have been *prevented* from deploying services for a lengthy period at the very same time that the national and industry economies are in material decline. The Commission’s policies should consistently provide all types of entities with incentives to expedite deployment of wireless services for the benefit of the public rather than create penalties that would preclude or limit future opportunities for spectrum ownership.

In addition, Salmon shows that penalizing winning bidders that elect to withdraw license applications would have a “particularly devastating impact on the FCC’s effort to encourage the participation of DEs in the provision of spectrum-based service.” ^{40/} Cook Inlet also explains that “[i]mposing a financial penalty on small businesses or preventing small businesses from acquiring this spectrum in the future would ... undermine the Commission’s congressional mandate to promote small business participation. An equitable resolution here would send a signal to

^{39/} See, e.g., Alaska Native Wireless Comments at 16-17; Cook Inlet Comments at 9; T-Mobile Comments at 2; Verizon Comments at 23.

^{40/} Salmon Comments at 18-19.

potential future small business participants that the Commission’s auction process is fair and reliable.” [41/](#) Given the unique circumstances, the Commission must find that penalizing affected winning bidders, either monetarily or otherwise, would frustrate the goals of the auction process.

Nextel’s proposal would thwart the public interest. Although it recognizes the unique factual circumstances that could merit Commission action in this case, Nextel nonetheless urges the Commission to penalize winning bidders that elect to avail themselves of any forthcoming solution, as well as those “entities with a substantial financial interest in” the winning bidders. [42/](#) Nextel asks the Commission to “respond to extraordinary economic conditions by permitting applicants to opt out of their Auction No. 35 commitments, *with prejudice*.” [43/](#) Specifically, Nextel states that “[t]he Commission should bar the acquisition of such spectrum either through re-auction or by any other means for at least three years from the adoption date of a final order resolving the issues raised in the [*Public Notice*].” [44/](#) According to Nextel, implementation of its proposal would “prevent future gaming of the Commission’s auctions and the unjust enrichment of parties that renege on their bids.” [45/](#)

[41/](#) Cook Inlet Comments at 8.

[42/](#) Nextel Comments at 9.

[43/](#) *Id.* at i (emphasis in original).

[44/](#) *Id.* at 9.

[45/](#) *Id.*

Nextel's argument fails because it systematically overlooks the stark fact that affected winning bidders have never received the licenses at issue. *With respect to the licenses at issue, the Auction No. 35 participants are not licensees, but are 20-month old winning bidders facing materially changed economic circumstances without Commission authority to provide services to consumers.* The Commission has acknowledged not only this reality, but also that it may not be in a position to grant the licenses in the near term, or ever. [46/](#) Congress, too, has characterized this as an “increasingly convoluted” situation. [47/](#)

For this reason, Nextel's reliance on Commission precedent with respect to the previous C Block PCS licensees [48/](#) is wholly misplaced. When the Commission has made post-auction installment payment relief available to *licensees* in the past, it has conditioned that relief on the forfeiture of all or part of the licensee's associated down payment or the right to reacquire the subject spectrum for a defined period of time. [49/](#) In those cases, the Commission undertook to avoid unjustly enriching licensees who obtained their licenses through competitive

[46/](#) *Public Notice* at 4.

[47/](#) Letter from The Honorable Cliff Stearns, Member, U.S. House of Representatives, *et al.*, to Michael K. Powell, Chairman, Federal Communications Commission 1 (Oct. 4, 2002) (“House Co-Sponsors Letter”).

[48/](#) Nextel Comments 9-11.

[49/](#) Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report & Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 16436 (1997); Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report & Order*, 15 FCC Rcd 1497 (1999).

bidding but later surrendered the licenses without having paid amounts owed for their net winning bids or provided authorized service to the public. [50/](#) Nothing of the sort is before the Commission in this case. [51/](#)

In reality, Nextel's proposal and associated analysis is grounded in its own self-interest, rather than on the public benefits that would result from permitting the affected winning bidders to opt out without penalty. For example, imposing penalties and/or disqualifying withdrawing winning bidders would most likely reduce the government's auction proceeds at a future reauction of this spectrum. [52/](#) In addition, restricting participation in future auctions and market transactions involving this spectrum would skew the wireless market, imposing an

[50/](#) Commenting parties at that time logically focused on the Commission's application of its competitive bidding rules with respect to *licensees*. In support of its argument here, Nextel cites comments favoring imposition of unjust enrichment penalties that were filed with the Commission by various wireless carriers in 1997. Nextel Comments at 5-8. Without exception, these comments refer to possible penalties for *licensees*, not winning bidders.

[51/](#) Nextel urges the Commission to "restrict any winning, but withdrawing, bidders in Auction No. 35 from reacquiring the same spectrum[.]" explaining that this penalty would prevent the winning bidders from obtaining the "very spectrum that they bid on" at much lower prices. Nextel Comments at 10. In making this argument, however, Nextel misses the point of the Commission's proposal. On the one hand, if the Commission ultimately does not have the ability to award the spectrum at issue to the winning bidders, whether a winning bidder has (or has not) opted out becomes irrelevant. On the other hand, if the Commission ultimately has the ability to award the spectrum at issue to the winning bidders, the basis for providing an extraordinary solution here does not change. It is the post-Auction No. 35 licensing delays coupled with the material decline in the national economy that serve as the reason for the Commission's action to resolve this matter. Winning bidders should not be penalized for participating in a legitimate government effort to reinvigorate the national economy and the wireless industry.

[52/](#) See Salmon Comments at 18.

artificial (*i.e.*, non-economic) competitive disadvantage for some industry participants as the need for new or expanded services grows. As a result of that disadvantage, choices of wireless service providers and service offerings available to consumers would be limited, and the costs of services that are available would likely rise.

It appears, therefore, that Nextel seeks to use the Commission's processes to position itself as the only nationwide wireless carrier that would be permitted to acquire these licenses when and if they become available, either through reauction or market transactions. The Commission, however, should not undertake to address uncertainty in the wireless industry by sacrificing the benefits of future wireless competition. For this reason alone, the Commission must reject Nextel's request.

IV. The Commission Should Evaluate Requests For Relief Unrelated To Auction No. 35 In Separate Proceedings

Now that the Commission has recognized the importance of this unique situation, the agency should undertake to conclude this proceeding without unnecessary delay. As part of its effort to bring this matter to a close, the Commission should make clear that, notwithstanding the comments of some parties, the instant proceeding is not the appropriate vehicle for addressing whether it can or should fashion relief for non-Auction No. 35 entities.

In particular, Eldorado Communications, LLC ("Eldorado"), Alpine, and PCS Partners, L.P. ("PCS Partners") urge the Commission to expand the scope of its inquiry to include an examination of whether to provide them and others with

relief that is unrelated to the unique circumstances at issue here. According to Eldorado, if the Commission wants to provide relief to the Auction No. 35 winning bidders, “it must do so in a manner that is fair and equitable to the Auction No. 5 winners, who also were caught up in a declining market for the licenses that they acquired in the auction.” [53/](#) Likewise, Alpine argues that “relief provided to Auction No. 35 applicants should extend to all other broadband PCS licensees having outstanding financial obligations to the Commission.” [54/](#) Finally, PCS Partners states that “to the extent that the Commission permits winning bidders in Auction 35 the flexibility to reclaim the funds they have previously committed in that auction, the Commission should extend the same flexibility to any entity that is a high bidder in any other Commission auction and that has not received its license in a timely manner.” [55/](#)

Should the Commission determine to evaluate these claims, however, it should initiate separate proceedings through which to develop a record that meets

[53/](#) Eldorado Comments at 5. Eldorado asks the Commission to return forfeited monies and a “substantial credit” to Auction No. 5 licensees. *Id.* at 6. Moreover, Eldorado asks the Commission to include “restoration of business opportunities denied to the Auction No. 5 designated entities, whose goal remains participation in the PCS business.” *Id.*

[54/](#) Alpine Comments at 2. Alpine reasons that “granting relief to some but not all licensees could well have a negative impact on the license values of those who obtain no assistance.” *Id.* at 3.

[55/](#) PCS Partners Comments at 2. This company, an Auction No. 35 winning bidder for one license, which it received on September 21, 2001 (WPTF727), and an applicant for a Location and Monitoring Service license as a result of Auction No. 39, takes “no substantive opinion” with respect to either of the proposals described in the *Public Notice*. PCS Partners Comments at 1.

the requirements necessary for agency action. In their comments here, neither Eldorado, Alpine, nor PCS Partners provide any specific proposals as to how the Commission could satisfy their requests. Moreover, none of these commenters draw any similarities, meaningful or otherwise, between their respective cases and the unique matter at hand. For there to be any basis on which the Commission could consider fashioning relief for these parties, therefore, the Commission will be required to develop and release actual proposals, and then to dedicate the time and resources to establishing and reviewing a case-specific record. The Commission has not yet taken any of these steps with respect to these claims.

Meanwhile, affected winning bidders have responded to the *Public Notice* with broad consensus on the basis for and shape of possible Commission action in this case. As reflected in the comments already filed here, there is much at stake and many affected parties are watching. The \$16 billion contingent liability is harming consumers, stifling investment, and slowing the potential for wireless industry recovery. [56/](#) By issuing the *Public Notice*, the Commission has taken a step toward resolving this matter. The Commission should now see this matter through without the delay that the simultaneous investigation of these unrelated requests would produce.

V. Conclusion

For the foregoing reasons, should the Commission make relief available to affected Auction No. 35 winning bidders, Alaska Native Wireless urges

[56/](#) House Co-Sponsors Letter at 1.

