

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

WT Docket No.02-276

In the Matter of

Disposition of Down Payments and
Pending Applications for Licenses
Won During Auction No. 35 for
Spectrum Formerly Licensed to
NextWave Persona
Communications Inc., NextWave
Power Partners, Inc., and Urban
Comm – North Carolina, Inc.

Reply Comments of Vincent D. McBride

Vincent D.McBride, respectfully submits his reply comments 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. 35¹.

Summary

As a true small business that participated in the Federal Communications Commission first entrepreneurs C block auction (Auction No.5) as well as, being

¹ **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 (rel. Sept. 12, 2002) (the “Notice”); see also 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 (rel. Sept. 12, 2002) (correcting comment date and reply comment date in the Notice**

a successful high bidder in auction No. 22 and auction No.35², I would like to agree in part with the comments of Eldorado Communications, LLC (“Eldorado”), because there are a number of valid points that the Commission must also consider in fairly supporting the granting of relief to the winning high bidders of NextWave licenses in auction No.35. I am also in absolute agreement with the comments of Verizon Wireless and the other comments that favor refunding our deposits. (*“Under well-established principles of contract and auction law the Commission should act expeditiously to allow Auction 35 winners to withdraw their applications without prejudice and without the assessment of any monetary or other penalties.”*)

Auction No.5 Deposits

As a winning bidder in both auction No. 5 and auction No. 35 I have two matters of interest, my deposit of \$46,000 on deposit with the Commission as a high bidder in auction No. 35 and my second deposit of \$46,000 that was unfairly held by the Commission after being forced to return my license and forfeiting 100% my deposit via the June 8, 1998 Election Notice³ (“Amnesty Option”) after the three largest bidders in the auction [GWI (“ Metro PCS”) Pocket Communications

² ***Vincent D. McBride Participated in the Federal Communications Commission (“FCC”) first entrepreneurs’ auction No. 22 and auction No.35. 5/8/1996 PUBLIC NOTICE (DA 96-716) Entrepreneurs’ C Block Auction Closes 4/20/1999PUBLIC NOTICE (DA 99-757) C, D, E, and F Block Broadband PCS 1/29/2001PUBLIC NOTICE (DA 01-211) C and F Block Broadband PCS Auction Closes.***

³ **7/2/1998 PUBLIC NOTICE (DA 98-1340)**
Wireless Telecommunications Bureau Announces Broadband Personal Communications Services (PCS) C Block Unconditional Elections *This public notice announces the status of those elections made by PCS C block licensees that were given an opportunity to resubmit their June 8, 1998, elections without any conditions attached. Also contained in the public notice is a listing of the spectrum available for reauction at this time.*

("DCR") and NextWave Telecom ("NextWave") filed for bankruptcy protection⁴.

The timing of these bankruptcies gave the rest of the auction bidders no opportunity to react and therefore we all suffered a penalty that we had no part in creating. This multiple bankruptcy contributed to my loss of my deposit and my market because it occurred without sufficient time for true small bidders like myself to respond and these large bidders falsely drove the prices to unworkable amounts and then received inordinate discounts based on their bankruptcy

⁴ June 8, 1998 STATEMENT OF CHAIRMAN WILLIAM E. KENNARD IN RESPONSE TO NEXTWAVE'S FILING OF BANKRUPTCY

Statement from FCC Chairman William E. Kennard on the appeal Filed by the U.S. Department of Justice from the April 24, 1998 Ruling in the GWI Bankruptcy Case by the U.S. Bankruptcy Court (N.D. Texas) I applaud the Department of Justice for filing an appeal from the bankruptcy court's April 24, 1998 ruling that permitted the GWI licensees to retain their licenses while avoiding making full payment of the amount bid for those licenses at auction.

Appeal from the United States District Court for the Northern District of Texas October 20, 2000 Before GARWOOD, WIENER, and DeMOSS, Circuit Judges. GARWOOD, Circuit Judge: The Federal Communications Commission (FCC), on behalf of the United States, appeals from the district court's judgment affirming a bankruptcy reorganization plan for debtors General Wireless, Inc. (GWI), GWI PCS, Inc. (GWI PCS), and GWI PCS 1, GWI PCS 2, GWI PCS 3, GWI PCS 4, GWI PCS 5, GWI PCS 6, GWI PCS 7, GWI PCS 8, GWI PCS 9, GWI PCS 10, GWI PCS 11, GWI PCS 12, GWI PCS 13, GWI PCS 14 (the subsidiary debtors), (collectively, the Debtors). The reorganization plan included an order that the subsidiary debtor's and GWI PCS's obligation to pay \$954 million to the FCC, evidenced by promissory notes signed by the subsidiary debtors, as part of GWI PCS's winning bids for fourteen radio-spectrum licenses at an FCC auction, was a constructive fraudulent transfer under 11 U.S.C. § 548. The bankruptcy court therefore avoided approximately \$894 million of the \$954 obligation to the FCC and allowed the subsidiary debtors to retain the licenses. The FCC now appeals the avoidance judgment, arguing that its appeal of the avoidance judgment is not equitably moot and that the bankruptcy court improperly assumed the FCC's regulatory authority and erred in avoiding \$894 million of the obligation to the FCC. We affirm.

WIRELESS PHONE FIRM TO RETURN LICENSES Washington Post Staff Writer Mike Mills March 24, 1998; Pocket Communications Inc. a cellular phone company that bid \$1.4 billion in 1996 auctions to win 43 wireless licenses, but then could not pay for them, will return many of the licenses to the federal government and hand the others over to a new company. Pocket, along with its license-owning subsidiary DCR PCS Inc., agreed to these steps in a bankruptcy settlement announced yesterday by the Federal Communications Commission. The deal helps clear up the most

standing⁵. This procedure went against the original Congressional purpose of allowing small businesses to participate and operate in the wireless telecommunications industry⁶.

Auction No. 5 was a \$10 billion dollar disaster,⁷ where the genuinely small businesses that participated had no prior warning of the shenanigans associated with having very large companies dictate how the auction would proceed, germinate and conclude⁸. The three major bidders represented 85% of the total

⁵ **BILLIONS PLEDGED AT WIRELESS LICENSE AUCTION ANALYSTS ASK WHETHER SMALLER-MARKET BIDDERS WILL EVER MAKE MONEY ON THEIR INVESTMENT** *Mike Mills Washington Post Staff Writer February 17, 1996*; Bids in federal auctions for new wireless communications licenses have been going sky high, leaving analysts wondering whether some wishful entrepreneurs have their heads in the clouds. Pledges now total \$6.4 billion for licenses in 493 markets nationwide to provide next-generation digital cellular telephone, paging and data services, known as "personal communications services," or PCS. The auctions, designated for small-business bidders, resume Tuesday.

⁶ **Congress requires the FCC to** "promot [e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small business, rural telephone Companies, and businesses owned by members of minority groups and women." *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order, PP Docket No. 93-253 (1994)*,

⁶ **Implementation of Section 309(j) of the Communications Act** – Competitive Bidding, Fifth Report and Order, PP Docket No. 93-253 (1994), paragraph 9.

⁷ **CELL PHONE LICENSEES SEEK BAILOUT** *Mike Mills Washington Post Staff Writer July 12, 1997*; Suppose you got a letter from Christie's auction house inviting you to bid on a Van Gogh painting. To encourage broader ownership of rare art, the super-wealthy would be barred from the bidding. And to sweeten the deal, Christie's would let winners pay by installment at low interest rates. You go to New York and bid, but prices are sky-high and you go home empty-handed. Months later you learn the winning bidder can't pay what he promised and wants the auctioneer to accept 25% on the dollar.

⁸ **NEXTWAVE ASKS FCC TO PROBE RIVAL BIDDER FIRM ALLEGES COMPETITOR FOR COMMUNICATIONS LICENSE VIOLATED RULES** *Mike Mills Washington Post Staff Writer March 12, 1996*; A District company bidding in a federal auction for a wireless communications license said yesterday it will ask authorities to investigate a rival's ownership structure and consider disqualifying it from further bidding. NextWave Telecom Inc. contends that North Coast Mobile Communications Inc. of

net bids in auction No. 5. The true small businesses that played by the rules and made timely payments in good faith toward serving the public were trampled upon.⁹ It is the true small businesses that were left holding the dirty laundry, and lost 100% of their deposits and suffered the consequences. The very same businesses that the Commission created the exclusive C block licenses for and established the auction policies in response to congressional mandate to ensure that designated entities had a realistic opportunity to obtain licenses in the FCC spectrum auctions¹⁰.

The Integrity of the Auction Process

The Commission has the mandate to operate with the highest Integrity throughout this Auction Process. During Auction 5 and also Auction 35, was this

Huntington, N.Y., has violated Federal Communications Commission rules that limit the auction to small businesses. "We will be asking the FCC to investigate and to consider dismissing

⁹ **SOUTH KOREAN MONEY PUMPS UP AUCTION FOR WIRELESS LICENSES
FOREIGN INVESTORS' HELP TO HIGH BIDDER NEXTWAVE COMMUNICATIONS
HAS SOME RIVALS GRUMBLING** *Mike Mills Washington Post Staff Writer April 4, 1996;*
After weeks of dizzying, multibillion-dollar bidding, federal officials are about to wrap up an auction for 493 wireless communications licenses that have been reserved for U.S. "small businesses. "And a big winner seems to be: South Korea. Large banks and industrial companies from the Pacific Rim nation have pledged a hefty share of the financing behind several bidders, so much that some Wall Street analysts have dubbed the proceedings the "Asian auctions. "Korean.

¹⁰ **FCC Chairman Reed E. Hundt, 1993**

*"In the long and tragic history of inequality between races and gender in America, today we are creating the **greatest single opportunity ever made fairly available to small businesses, women and minorities**. For the first time in our nation's history, the federal government is creating opportunities in a new industry in which all Americans will have a fair chance to compete from day one". "Entrepreneurs' C Block" is established, which is designed to fulfill the statutory mandate to ensure that small businesses, rural telephone companies and businesses owned by*

Integrity served? By breaking the rules from the beginning by allowing NextWave to own licenses when they violated the foreign ownership rules¹¹, as well as changing the requirements to allow very large telecommunications giants to participate by bidding for licenses that were specifically set aside for true small businesses, the Commission failed in displaying Integrity¹². These C Block

minorities and /or women (“referred to as “designated entities”) have the opportunity to participate in providing broadband PCS”

¹¹ **NEXTWAVE OWNERSHIP EDICT BEGS QUESTIONS** *Published January 13, 1997 in RCR News The government's conditional grant of personal communications services licenses to NextWave Telecom Inc., despite finding the startup wireless firm in violation of foreign ownership limits, raises questions about process and policy in the high-stakes auction environment that has transformed the...*

F.C.C. Waives Foreign Ownership Rules For Nextwave Telecom BUSINESS/FINANCIAL DESK **May 19, 1997, Monday** By LESLIE EATON (New York Times) 229 words Late Edition - Final, Section D, Page 4, Column 4 ABSTRACT - Federal Communications Commission will allow Nextwave Telecom Inc, which is trying to build national network for wireless communications, to keep its foreign investors and try to raise more money overseas (S)

¹² **FCC May Open Airwave Sales to Larger Firms Peter S. Goodman Washington Post Staff Writer June 2, 2000;** *The Federal Communications Commission yesterday proposed allowing major wireless telephone carriers to bid for large chunks of the airwaves in major markets in an upcoming auction, revising rules that once restricted the sale to smaller companies. The draft rules released for comment signal the commission's desire to lessen its focus on safeguarding opportunities for smaller entrepreneurs instead of placing more spectrums, an increasingly critical resource--into the hands of the biggest players.*

12 a FURTHER NOTICE OF PROPOSED RULEMAKING (FCC 00-197) 7/2000
Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees *In this document the Commission tentatively concludes that it is in the public interest to modify certain aspects of its rules for the upcoming C and F block auction. The Commission seeks public comment on proposals to reconfigure the size of C block spectrum licenses; to modify the entrepreneur eligibility restrictions for certain licenses in both large and small markets; and to retain the spectrum cap.*

12 b ORDER ON RECONSIDERATION (FCC 00-313) 8/29/2000

Sixth Report and Order and Order on Reconsideration

*In this document, we address the tentative conclusions and proposals in our recent Further Notice of Proposed Rulemaking in this docket (“Further Notice”). We also resolve the petitions that precipitated the Further Notice. **The modifications to the Commission’s rules that we adopt in this order will apply to Auction No. 35, a C and F block auction currently scheduled to begin on November 29, 2000.** The modifications also will apply to any subsequent auctions of C or F*

licenses were intended to be a great opportunity for small businesses to obtain spectrum licenses and compete with other telecom companies to offer the public a competitive choice for service. The Commission placed maximizing short-term revenue for the federal treasury over and above the needs of the original intent to allow diversity and competition in the wireless industry¹³.

Fair and Equitable Auction Relief

It is in my opinion to agree with Eldorado in stating that the deposits forfeited should be returned to the original small businesses in Auction No. 5. It is also my opinion that 100% of the deposits for Auction No. 35 should be returned ASAP¹⁴.

block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future. Also, we conclude that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (PCS) licenses to achieve the various goals.

¹³ **Spectrum Up for Grabs Firms Lobbying Hard To Gain Disputed Piece of Airwaves** Peter S. Goodman *Washington Post* Staff Writers July 11, 2000; The Senate Budget Committee's staff director, Bill Hoagland, has taken to scanning the halls before he steps out of his office: They are often out there, even late into the evening, waiting to collar him." They" are the lobbyists battling over a property worth as much as \$10 billion--one of the last big open chunks of the airwaves capable of carrying wireless telephone calls and high-speed Internet links. In the quest for this spectrum, some of the richest companies in the

13 a A Prized Spectrum Goes on the Block; Wireless Licenses Expected to Raise \$15 Billion for U.S. By STEPHEN LABATON (New York Times) Federal Communication Commission auction of 422 licenses to use airwaves in 195 markets for wireless communications, which begins on Dec 12, is expected to raise more than \$15 billion; analysts says that while many of bidders for European licenses overpaid, telecommunications companies cannot afford to pass up chance for what **William E Kennard, FCC chairman, calls 'prime beachfront property' in wireless communication**; photos; map (M)

13 c **VERIZON, SPRINT BID ON AIRWAVES / OVER \$500M OFFERED FOR WIRELESS SPECTRUM LICENSES ON FIRST DAY** Published on December 13, 2000. Author(s): Sue Kirchhoff, *The Boston Globe*

¹⁴ **Letters McBride / Reiter**

See letter from Vincent D. McBride and Scott D. Reiter to Michael K. Powell, Chairman, Federal Communications Commission ("FCC") (Aug. 25, 2001); letter from Scott D. Reiter and Vincent

Respectfully Submitted,

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21 October 2002

D. McBride to Michael K. Powell, Chairman, FCC (July 16, 2001); letter from Vincent D. McBride and Scott D. Reiter to Michael K. Powell, Chairman, FCC (July 9, 2001)

14 a *Wireless Week 07/02/2001 The ruling giving back Next-Wave Telecom Inc.'s spectrum licenses and leaving re-auction bidders, including carriers backed by AT&T Wireless, Cingular Wireless and Verizon Wireless, high and dry injects even more doubt into an industry already facing uncertainty over spectrum caps, third-generation rollouts and the 700 MHz auction. But talk like that might make Vincent McBride bristle. The former letter carrier plunked down his \$46,000 life savings on a \$600,000 license for Williston, N.D., in a 1995 auction. He lost it when the FCC changed its rules and wouldn't return the down payment. Now McBride has a bigger concern: the \$306,000 down payment he made in the re-auction on a license for Evansville, N.D. "If they want to take my license and give it to NextWave, fine; they have to give me my down payment back," he says.*

14 b *Washington Post Staff Writer October 9, 2002 High Court Hears Airwaves-Auction Suits Justices Skeptical of FCC's Move to Revoke License of Bankrupt Telecom Firm* With billions of dollars in government revenue at stake, a Justice Department lawyer urged a skeptical Supreme Court yesterday to permit the Federal Communications Commission to take back part of the publicly owned airwaves from a bankrupt telecommunications firm -- so the FCC can resell the airwaves to higher bidders.