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November 5, 2002

Office of Chairman Michael K. Powell
Attention: Bryan N. Tramont
Re : WT Docket No. 02-276
Reply Comments of Mountain Solutions Ltd., Inc.

- Any relief granted by the Commission to Auction No. 35 winners should also be extended to Auction No. 10 winners, like Mountain Solutions Ltd., Inc. ("MS"), whose applications have been pending for an extended period during which general economic and industry-specific conditions have declined significantly.[1/] Therefore, if relief is granted to Auction No. 35 high bidders, then MS should also be able to: (i) withdraw its Auction No. 10 applications; (ii) receive a prompt refund in full of its down payments; and (iii) avoid both default liability for the withdrawal and any shortfall liability that might otherwise result from the high bids for its licenses in subsequent re-auctions.

- The extensive forms of relief advocated by many commentators— *e.g.*, withdrawal of any or all pending applications without penalty (or prejudice in terms of subsequent re-auctions), expeditious receipt of down payments still held by the Commission, and complete release from all payment liability associated with winning bids— was never offered to the small businesses and entrepreneurial entities that were high bidders in prior C-Block auctions. When the original C Block winning bidders encountered financial pressures arising from changes in business and financial circumstances that were as adverse as the recent developments now cited to justify unconditional relief from Auction No. 35 bid obligations, the Commission allowed winners only the option of returning all their licenses and forfeiting all down payments, or returning half their licenses and forfeiting half their down payments. [1/]

[1/] MS was the high bidder on two broadband PCS C block markets, Colorado Springs and Fort Collins, CO, in Auction No. 10, the second C block auction.

[2/] Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees (Second Report and Order and Further Notice of Proposed Rule Making in WT Docket 97-82), 12 FCC Rcd. 16436 (1997), as modified on

reconsideration, 13 FCC Rcd. 8345 (1998).

- MS was high bidder on two licenses in Auction No. 10. MS's applications for these licenses have been before the Commission for over six years.[1/] Thus, MS has been a pending applicant for a substantially longer period than the Auction No. 35 applicants who are seeking Commission authorization to walk away from their obligations. During these six years, general economic and industry-specific business conditions have declined to an equal or greater extent than during the period cited by initial commentators advocating relief from their Auction No. 35 commitments.

- Many large carrier commentators claim that they are proposing a "mutual rescission of obligations," because the Commission is now unable to deliver the licenses offered at Auction No. 35 and that the winning bids no longer appropriately reflect the value of the licenses. MS respectfully suggests that this view re-writes history by ignoring the terms and conditions under which Auction No. 35 was conducted. The Commission's prefatory Public Notices explicitly admonished potential bidders that Auction No. 35's outcome was subject to the NextWave litigation, and that otherwise grantable licenses could be held-up indefinitely as a result of that case.[1/] No Auction No. 35 bidder could reasonably claim that it was unaware of this contingency.

- Many parties asking the Commission to be let off-the-hook were, perhaps, unreasonably optimistic in their pre-Auction No. 35 assessments of the duration and outcome of the NextWave litigation, and now seek to be insulated from the consequences of their optimism. Should the Commission grant relief to these parties, there will be no basis for denying comparable treatment to MS, whose applications have been pending far longer.[1/] To do otherwise would contradict the Commission's objective of encouraging small business involvement in wireless communications, undermine the integrity of FCC auctions, and cast doubt as to the Commission's commitment to dispensing equitable treatment to all who come before it.

[3/] Auction No. 10 closed in July 1996. *See* Entrepreneurs' C Block Reauction Closes, Public Notice, DA No. 96-1153 (rel. July 17, 1996) (Wireless Telecommunications Bureau).

[4/] *See* Requests for Refunds of Down Payments Made In Auction No. 35, 17 FCC Rcd 6283 (2002) at ¶ 5.

[5/] Thus, any equitable concerns concerning the economic detriment attributable to the NextWave litigation (*e.g.*, opportunity costs, foregone interest, *etc*.) apply with greater force to MS whose applications have been pending years longer than those of the Auction No. 35 winners.