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December 17, 2002

**VIA ELECTRONIC DELIVERY**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: **Notice of Ex Parte Presentations:**  
**Auction 35 Bidder Relief --WT Docket No. 02-276**

Dear Ms. Dortch:

On December 16, 2002, the undersigned counsel, on behalf of Mountain Solutions Ltd, Inc. ("Mountain Solutions") met with Commissioner Kevin J. Martin and his legal advisor, Samuel L. Feder. We discussed extending the relief granted to the Auction 35 PCS C-Block high bidders to Mountain Solutions with respect to its long-pending Auction 10 PCS C-Block applications. The substance of these communications were detailed in a "Talking Points" paper which was distributed at the meeting. A copy of the presentation material discussed at the meeting is attached hereto.

Pursuant to Section 1.1206(b) of the Commission's Rules (47 C.F.R. §1.1206(b)), this letter is being filed electronically in the above-referenced docket. If there are any questions regarding this matter, please contact the undersigned.

Very truly yours,

*/s/ Michael K. Kurtis*

Michael K. Kurtis

Enclosure

cc: Commissioner Kevin J. Martin  
Samuel L. Feder, Esquire

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## Office of Commissioner Kevin J. Martin

Re: Mountain Solutions Ltd., Inc. Opt out of Auction 10

- \* The Order and Order on Reconsideration in WT Docket No. 02-276 (“*O&OoR*”) allowed Auction 35 High Bidders for 259 licenses previously licensed to NextWave/UrbanComm to dismiss all their applications and to have refunded the remaining three percent of the corresponding high bid amounts that were on deposit with the Commission. High Bidders taking advantage of the relief provided by the *O&OoR* incur no financial liability because the Commission simultaneously waived default penalty and payment rules that would otherwise govern Auction 35 applicants that dismiss applications. In addition, dismissing High Bidders are neither barred nor otherwise disqualified from participating in future auctions for the underlying spectrum.<sup>1/</sup>
- \* Mountain Solutions Ltd., Inc. (“MS”) requests that relief granted to the No. 35 high bidders for NextWave/UrbanComm licenses should also be extended to MS because it is similarly-situated with respect to the two C-Block licenses for which it was high bidder in Auction 10 (which concluded on July 16, 1996).<sup>2/</sup> Indeed, MS’s Auction 10 applications have been pending more than **four years longer** than those for which the *O&OoR* grants special dispensation.<sup>3/</sup> During this protracted period, MS

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<sup>1/</sup> According to a Public Notice, DA 02-3340, released December 3, 2002, High Bidders for 156 of the 259 licenses subject to the *O&OoR* have requested and received authority to dismiss their Auction 35 applications.

<sup>2/</sup> 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.

<sup>3/</sup> Auction No. 10 closed in July 1996. *See* Entrepreneurs’ C Block Reauction Closes, (continued...)

received not one penny in down payment refunds, in sharp contrast to the Auction 35 High Bidders. As a long-pending applicant, MS's is similarly- (or, perhaps, more sympathetically- ) situated to the Auction 35 High Bidder beneficiaries of the *O&OoR*. For that reason, MS respectfully requests the relief granted in the *O&OoR*, particularly: (a) the right to withdraw its two pending Auction 10 applications in exchange for a full refund of its down payment of \$1,180,988; and (b) insulation from all default payments and penalties otherwise required by the Rules for such withdrawal, be extended to the long-pending MS Auction 10 applications.

- \* The *O&OoR* (§ 10) noted that the Commission had “no legal obligation to provide relief to these [Auction 35] bidders who accepted responsibility for the risk (including litigation risk) they assumed by placing their bids on this spectrum” (footnote omitted). MS agrees. Having decided to grant relief to the Auction 35 high bidders, however, there is no rational basis for denying such relief to MS who is in a similar, if not more sympathetic, position with respect to its long-pending Auction 10 applications.

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<sup>3/</sup>(...continued)

Public Notice, DA No. 96-1153 (rel. July 17, 1996) (Wireless Telecommunications Bureau).