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

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Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Cingular Wireless and NextWave Seek FCC	)	
Consent for the Full and Partial Assignment	)	WT Docket No. 03-217
of Thirty-Four Broadband Personal	)	
Communications Services Licenses	)	

To. The Wireless Telecommunications Bureau

OPPOSITION TO PETITION TO DENY FILED BY
NY TELECOM, LLC AND ELDORADO COMMUNICATIONS, LLC

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SUMMARY

NY Telecom, LLC and Eldorado Communications, LLC (collectively, "Petitioners") have once again made a filing that appears designed solely to delay NextWave's emergence from bankruptcy and interfere with a successful reorganization. The Petitioners show up here, as they have before, lacking standing and looking only to hold things up. They fail entirely to rebut the demonstration NextWave and Cingular have made that granting the pending assignment applications will further the public interest. Petitioners do not even contest that the public will benefit from putting to use immediately spectrum that has been tied up for years in litigation. They do not contest that the proposed transaction will enhance competition in certain markets. They do not contest that the additional spectrum will allow Cingular to expand its network capacity and add new services And they do not contest that all of this will happen without any actual or threatened harm to competition

The principal "public interest" argument the Petitioners muster against the applications is a vague assertion of unfairness that completely disregards the legal backdrop to this proceeding and well established Commission precedent. Not only is that assertion inadequate to offset the concrete public interest benefits described in the Applications, Petitioners have not advanced a "public interest" analysis at all – it is instead a "private interest" analysis focusing on concerns unique to Petitioners.

Petitioners also suggest that the transaction should be rejected because of NextWave's unique history. That argument is exactly backwards. As the Petitioners' own filing makes clear, they are familiar with decisions of the bankruptcy court, the D C. Circuit, and ultimately the Supreme Court confirming that NextWave has been the

subject of unfair treatment They are aware the Commission has approved NextWave's five-year buildout demonstrations, satisfying that regulatory requirement. They are also aware that the Department of Justice has entered into a Settlement Agreement on behalf of the FCC in the bankruptcy reorganization proceeding, resolving numerous issues, including the amount owed with respect to certain licenses currently held by NextWave. Petitioners ignore, and ask the Commission to ignore, that backdrop even though, as shown herein, it is legally appropriate and altogether fair for prior events to inform the Commission's exercise of its independent regulatory judgment here. Indeed, NextWave's unique history thus weighs heavily in the public interest balance, but *in favor* of granting the application, not against it.

Indeed, it is Petitioners that threaten the public interest, not only because they seek to deprive the public of the benefits of improved wireless services, but also because they request that the Commission take actions that are at odds with the ruling of the Supreme Court, and the provisions of the Settlement Agreement, which has already been approved by the Department of Justice and the Bankruptcy Court. Given the Commission's long-standing recognition of the "need for comity with bankruptcy courts," the course urged by Petitioners would plainly be contrary to the Commission's own traditional assessment of where the public interest lies

In sum, Petitioners raise no serious argument that granting the applications would not be in the public interest The Commission should, as it has with all of the previous meritless attacks that NY Telecom and Eldorado have raised in connection with the NextWave proceedings, make quick work of the instant filing and grant the Applications.

INTRODUCTION

NY Telecom, LLC and Eldorado Communications, LLC (collectively, "Petitioners") have once again made a filing that appears designed solely to delay NextWave's emergence from bankruptcy and interfere with a successful reorganization.[1] The Petitioners show up here, as they have before, lacking standing and looking only to hold things up. They fail entirely to rebut the demonstration NextWave and Cingular have made that granting the pending assignment applications will further the public interest Petitioners do not even contest that the public will benefit from putting to use immediately spectrum that has been tied up for years in litigation. They do not contest that the proposed transaction will enhance competition in certain markets. They do not contest that the additional spectrum will allow Cingular to expand its network capacity and add new services. And they do not contest that all of this will happen without any actual or threatened harm to competition

The principal "public interest" argument the Petitioners muster against the applications is a vague assertion of unfairness that completely disregards the legal backdrop to this proceeding and well established Commission precedent Not only is that assertion inadequate to offset the concrete public interest benefits described in the Applications, Petitioners have not advanced a "public interest" analysis at all – it is instead a "private interest" analysis focusing on concerns unique to Petitioners.

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[1] This opposition focuses principally on the Petition to Deny filed by NY Telecom and Eldorado Nextel Communications filed comments in this proceeding that are devoted primarily to an unrelated interference dispute with a public safety entity in Maryland, which has since been resolved Although that aspect of Nextel's filing merits no response, to the extent Nextel's Comments raise other issues, they are addressed herein

Petitioners also suggest that the transaction should be rejected because of NextWave's unique history. That argument is exactly backwards. As the Petitioners' own filing makes clear, they are familiar with decisions of the bankruptcy court, the D.C. Circuit, and ultimately the Supreme Court confirming that NextWave has been the subject of unfair treatment. They are aware the Commission has approved NextWave's five-year buildout demonstrations, satisfying that regulatory requirement. They are also aware that the Department of Justice has entered into a Settlement Agreement on behalf of the FCC in the bankruptcy reorganization proceeding, resolving numerous issues, including the amount owed with respect to certain licenses currently held by NextWave. Petitioners ignore, and ask the Commission to ignore, that backdrop even though, as shown herein, it is legally appropriate and altogether fair for prior events to inform the Commission's exercise of its independent regulatory judgment here. Indeed, NextWave's unique history thus weighs heavily in the public interest balance, but *in favor* of granting the application, not against it.

Indeed, it is Petitioners that threaten the public interest, not only because they seek to deprive the public of the benefits of improved wireless services, but also because they request that the Commission take actions that are at odds with the ruling of the Supreme Court, and the provisions of the Settlement Agreement, which has already been approved by the Department of Justice and the Bankruptcy Court. Given the Commission's long-standing recognition of the "need for comity with bankruptcy courts," In re Pocket Communications, Inc., 1998 WL 278742, ¶ 6 n.9 (rel. June 1, 1998) (citations omitted), the course urged by Petitioners would plainly be contrary to the Commission's own traditional assessment of where the public interest lies.

In sum, Petitioners raise no serious argument that granting the applications would not be in the public interest, and, indeed, the filing cannot be viewed as anything other than a thinly disguised attempt at greenmail The Commission should, as it has with all of the previous meritless attacks that NY Telecom and Eldorado have raised in connection with the NextWave proceedings, make quick work of the instant filing and grant the Applications

BACKGROUND

The background to this response is set forth in NextWave's numerous filings with the Bureau and the Commission – including the Public Interest Statement included in the Applications. These filings are expressly incorporated herein, and thus will not be repeated in detail.

Briefly, as a result of financial difficulties that struck the C-Block as a whole, NextWave was obligated to seek protection under the Bankruptcy Code while it reorganized its business in order to pay creditors, including the Commission, and in order to continue the build-out of its PCS licenses. The Company did so by initiating Chapter 11 proceedings on June 8, 1998.

NextWave's reorganization proceeding has been stymied as a result of regulatory, judicial, and legislative proceedings spanning more than five years, before the Commission, a federal bankruptcy court, a federal district court, two U.S. Courts of Appeals, the Supreme Court of the United States, and the U S. Congress The issues involved have been the subject of several congressional hearings and a variety of legislative initiatives. Ultimately, in January of 2003, a U.S. Supreme Court decision resolved a central legal dispute and thereby provided finality to the lengthy litigation process and the attendant public policy debate. See FCC v. NextWave Personal Communications Inc., 537 U S 293 (2003).

On April 22, 2003, the FCC's Universal Licensing System was updated to reflect acceptance of filings NextWave made in 2002 demonstrating compliance with the agency's five-year construction benchmark

On July 14, 2003, following a lengthy investigation, the Wireless and International Bureaus released an order removing foreign ownership and other conditions that had been placed on NextWave's licenses. In re NextWave Personal Communications Inc., 18 F.C.C.R. 14,487 (2003).

In August 2003, NextWave and Cingular reached agreement on a sale of NextWave's rights and interests in 34 licenses (the "Designated Licenses") to Cingular for $1.4 billion. That same month, NextWave, the Department of Justice on behalf of the FCC, and other parties to the reorganization entered into a settlement agreement (the "Settlement Agreement"). Among other things, the Settlement Agreement resolves the government's claims for amounts owed with respect to the Designated Licenses, as well as NextWave's claims with respect to harms caused by acts committed during the bankruptcy proceedings, and provides for a payment of $714 million to the U.S Treasury in full satisfaction of the spectrum auction debts associated with the Designated Licenses. That Agreement has been approved by the U.S. Department of Justice, and is hoped to set the stage for a global resolution of issues remaining in the reorganization, which will avert any need for further litigation and clear the way for NextWave's reorganization to be completed.

The Applications here at issue were filed as part of the proposed NextWave-Cingular transaction and the Settlement Agreement, both of which were approved by the bankruptcy court on September 25, 2003. In re NextWave Personal Communications Inc., Case No 98-B-21529 (ASH) (Bankr. S.D.N.Y. Sept. 25, 2003).

DISCUSSION

I. PETITIONERS LACK STANDING TO RAISE THEIR CLAIMS.

NY Telecom's Petition to Deny must be dismissed because both NY Telecom and Eldorado lack standing. To demonstrate standing, petitioners must show "(1) a distinct and palpable personal injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested." In re Application of Inforum Communications, Inc., 2003 WL 22076546, ¶ 13. Eldorado's prior request for relief was dismissed precisely because it failed to make that showing. In re Requests for Refunds of Down Payments Made in Auction 35, 17 F C.C.R. 6283, n.4 (2002)

NY Telecom attempts to establish standing by alleging that it "previously has called for the surrender and re-auctioning of the licenses at issue in this proceeding," and that it is "'ready, willing, and able'" to bid on those licenses. NYT Petition at 2-3. Those allegations are entirely irrelevant in the current circumstances. Denial of the Applications would not result in spectrum being placed up for re-auction – instead, the spectrum would simply remain with NextWave. Thus, NY Telecom's purported willingness to bid – a willingness that deserves to be viewed with some skepticism – simply does not give it any stake in this proceeding. See Inforum Communications, 2003 WL 22076546, ¶ 13 (denying standing because "denial of the instant assignment application would not provide [petitioner] with the relief it seeks because Inforum would remain as the licensee of the stations") Indeed, NY Telecom would receive no benefit from, and has alleged no injury that would be redressed by, the relief it seeks.[2]

[2] *US Airwaves* and the other cases cited in the Petition are beside the point. Those cases involved challenges that, if successful, would have resulted in more spectrum being auctioned, to the potential benefit of the petitioner Here, the spectrum will either remain

Furthermore, as noted below, the proposed sale of NextWave's rights and interests in the Designated Licenses to Cingular was expressly subject to higher and better offers in the bankruptcy process, a process open to NY Telecom and Eldorado under which they could have bid for the Licenses

Moreover, contrary to Petitioners' contentions, mere willingness and ability to bid for spectrum is not sufficient to provide standing Because there is no realistic possibility that NY Telecom or Eldorado would be able to obtain spectrum in any subsequent open auction, Petitioners simply lack standing See, e.g., Ranger Cellular v. FCC, No. 02-1155 (D.C Cir Nov. 14, 2003) (because FCC has adopted an "open auction" policy in which appellants "would face not a small number of small companies, but rather a large number of large telecommunications firms with the capacity to pay large sums for the [licenses]," appellants could not "as a practical matter" expect to obtain spectrum and thus lacked standing).[3]

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with NextWave or be transferred to Cingular. NY Telecom's willingness to bid at an FCC re-auction is irrelevant

[3] If NY Telecom were correct that the generalized desire to bid for spectrum is sufficient to provide standing, then every potential bidder (both current and potential licensees) would have standing to challenge the initial and continuing qualifications of every licensee. Not only would such an approach represent a vast expansion of Commission and D.C. Circuit precedent on standing, See, e g., City of Orrville v. Federal Energy Regulatory Comm'n, 147 F.3d 979, 985-87 (D C. Cir. 1998) (citing Free Air Corp. v. FCC, 130 F 3d 447, 449 (D C Cir 1997), and SunCom Mobile & Data, Inc. v. FCC, 87 F.3d 1386, 1388 (D.C. Cir. 1986)); In re AT&T Wireless PCS, Inc., 15 F.C.C.R. 4587 ¶¶ 3-4 & n.9 (2000) (explaining that "the denial of . . . a grant would not redress any injury to [petitioner] because such a denial would merely return the licenses to the Commission"), it would broaden the opportunity for administrative mischief and greenmail, as this filing indicates

NY Telecom also claims standing based on another of its frivolous challenges, namely, its appeal of the denial of its challenge to the tolling of NextWave's construction deadlines. But NY Telecom's participation in an unrelated proceeding – a proceeding in which NextWave demonstrated that NY Telecom lacked standing – provides no basis for finding standing in *this* proceeding.

Nor does Eldorado have standing Eldorado's principal complaint is that, in retrospect, it regrets its decision to surrender licenses in 1998 in connection with the Commission's restructuring proceeding because other licensees successfully preserved their license assets for the benefit of their creditors under the Bankruptcy Code. While Eldorado may wish today that it had made a different decision in 1998, that decision was made solely of its own free will. It is absurd to claim that outcomes lawfully achieved by other licensees who made different decisions result in any "unfairness" to or discrimination against Eldorado, much less that those different outcomes give rise, almost six years later in a total unrelated license assignment proceeding, to any plausible basis for action under the Communications Act Whatever disparity resulted from licensees' decisions in 1998, the Supreme Court's decision in NextWave's case makes clear that entities acting in accordance with the law are not operating "unfairly" to anyone. Moreover, denying the Applications will not redress the purported "injury" that Eldorado produced by its own decision.

Eldorado also complains that NextWave's bankruptcy estates will receive $700 million for the benefit of creditors if the Applications are approved (while conveniently forgetting to mention that taxpayers will receive an even greater amount). But Eldorado does not and cannot explain how it is harmed in any legally cognizable way by

NextWave entering into a transaction designed to assist it with repaying its creditors, including, under the Settlement Agreement, the U.S Government Its generalized lament over the financial consequences of granting the Applications cannot possibly support standing

II. PETITIONERS' CONTENTIONS LACK MERIT.

Even if petitioners were found to have standing, their Petition to Deny lacks merit and must be rejected

A. Granting the Applications Is in the Public Interest.

NY Telecom argues first that grant of the Applications is not in the public interest. That argument is meritless.

In the Applications, NextWave and Cingular demonstrated the substantial public interest benefits that would result from the transaction *First*, spectrum that has been the subject of litigation for years will "quickly [be] put into general commercial use to benefit wireless consumers" *Second*, in the markets in which Cingular currently holds no spectrum, "the proposed transaction will expand its national footprint and add a competitor to the market, giving consumers increased choice among wireless competitors and access to the wide array of state-of-the-art voice and data products and services that Cingular offers." *Third*, in markets where Cingular currently offers service, the proposed transaction will allow Cingular "to expand its network capacity and services" and "achieve operational efficiencies and offer a more robust range of services to meet the needs of new and existing subscribers" *Finally*, "by enabling the parties to consummate the court-approved bankruptcy sale for the benefit of creditors, grant of these assignment applications will further 'the equitable purposes of the Federal Bankruptcy Act'" (citing

Space Station System Licensee, Inc. and Iridium Constellation LLC, 17 F.C.C.R. 2271, 2289 ¶ 44 (IB 2002)).

Petitioners' public interest analysis does not dispute these overwhelming and concrete public interest benefits, which are more than sufficient to compel the grant of the Applications. Petitioners' principal argument is, instead, that a grant would "perpetuat[e] the disparate treatment of similarly situated Auction No. 5 winners." NYT Petition at 6. But that argument is based on the fundamental misconception that there has been inappropriate "disparate treatment." NextWave invoked the protections of the Bankruptcy Code, and received a Supreme Court decision establishing conclusively that the federal bankruptcy laws protected its licenses, as they do other assets, while it undergoes reorganization Eldorado chose not to invoke the protection of the Code. NextWave and Eldorado are not similarly situated, and thus there has been no "disparate treatment." Indeed, to the extent that there is any "disparate treatment," it is *NextWave* that is the subject of such treatment, since it alone has been the victim of conduct that the Supreme Court has held to be unlawful Eldorado is also fully aware that NextWave has had two fully funded plans of reorganization thwarted by actions taken in the bankruptcy proceeding. The disparate treatment argument thus favors *approval* of the Applications, not their denial.

Petitioners' remaining public interest arguments are equally unpersuasive. Petitioners argue, for example, that approval of the Applications "favors one party [i.e., NextWave] before the Commission over many others." NYT Petition at 6. But that ignores that NextWave is not similarly situated to Eldorado and parties like it, as the Bureau has already recognized. See In re NextWave Personal Communications Inc and

NextWave Power Partners Inc., 18 F.C C.R 3235, ¶ 10 (2003) (rejecting NY Telecom's request for relief because NY Telecom "has not shown that it or any other auction participant is similarly situated to NextWave or otherwise entitled to the same relief") NextWave, consistent with its fiduciary obligations, sought the protection of the federal bankruptcy laws to protect its assets while it sought to reorganize for the benefit of all of its creditors Moreover, NextWave satisfied its five-year construction requirement, notwithstanding that it was without its license authorizations for a period of at least eighteen months. The "favor" extended to NextWave is nothing more than the standard treatment the Commission would apply to a licensee that has acted appropriately and consistent with the law and has achieved compliance with its regulatory obligations.

Petitioners next suggest that granting the Applications would be "inconsistent with fair competition" NYT Petition at 6 As noted, the Commission's approval of the Applications would in no way jeopardize fair competition – indeed, it advances it. In any event, Petitioners' vague and unquantified invocation of the benefits of "fair competition" cannot possibly outweigh the concrete competitive benefits to wireless consumers set forth in the Applications.

Finally, Petitioners assert that the Applications would "deprive the public of funds owed by NextWave." NYT Petition at 7; see also Nextel Comments at 3-6 (suggesting that the Commission will receive more than $170 million less than it is due). To the contrary, prior to the Settlement Agreement, the amount of any valid claim by the government against NextWave in light of the prior conflicts was unknown, because any claim by the government would be subject to offset and adjustment to reflect claims arising from the government's acts that could have taken years to resolve. In reaching an

agreement to provide what all affected parties have agreed is full payment, the Settlement Agreement accelerates the payment of funds to the public, and has obtained for the U.S Treasury an amount that exceeds what NextWave bid for the licenses in the spectrum auction proceedings.

The public interest plainly requires granting the licenses.

B. If a Waiver is Required, the Standard for Granting such a Waiver Has Easily Been Met.

Petitioners next contend that NextWave and Cingular have failed to meet the Commission's waiver standard This argument, too, is meritless.

At the outset, no waiver is required for the transaction to proceed. In light of the uncertainty surrounding the treatment of NextWave's obligations to the Commission, the amount reflected in the Settlement Agreement constitutes "full payment" as that term is used in 47 C F.R. § 1 2111(c)(1) That amount owed with respect to the Designated Licenses has been resolved under the terms of the Settlement Agreement Petitioners do not take issue with the analysis, and thus their arguments concerning the waiver standard are beside the point

In any event, if a waiver is required, one is surely appropriate here. Petitioners' principal argument is that "NextWave's difficulty is not unique," NYT Petition at 9, and that NextWave's circumstances "amount to nothing more than natural consequences of NextWave's deliberate decision to avoid its financial obligations to the Commission " Id. at 8

The argument that the circumstances of NextWave's case are not "unique" blinks reality The history of those circumstances is recounted in the Applications, and is so universally understood as to not require elaboration here. In any event, the Commission

already has acknowledged that NextWave's circumstances are unique. See, e.g., In re Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35, 17 F.C.C.R. 23,354 ¶ 10 (2002) (noting the "unique situation" surrounding the NextWave circumstances). The Petitioners' unsupported allegation to the contrary cannot be taken seriously.

Moreover, NextWave is particularly deserving of a waiver because despite those circumstances, NextWave still met the five-year construction deadlines on all of its licenses. NextWave's story is thus one of overcoming unique obstacles, and is thus exactly the sort of situation in which a waiver is appropriate.

Nor is there any serious argument that the waiver is inappropriate because the spectrum is being transferred to Cingular, "one of the largest wireless providers in the nation." NYT Petition at 7, see also id. at 8. That argument ignores that NextWave *met its five-year buildout requirements*, and thus the Commission's own rules permit the transfer of the spectrum to anyone qualified to hold the licenses, regardless of the entity's size. There is thus no serious argument that the sale is at all inconsistent with the FCC's designated entity rules. Nor is there any merit to Petitioners' related argument that a waiver – if any waiver is needed – is inappropriate because it would benefit Cingular, rather than NextWave. NYT Petition at 7-8, see also Nextel Comments at 10 (suggesting that waiver is inappropriate because it would result in Cingular's receipt of "discounted spectrum"). There is no reasonable dispute that Cingular is paying market price for the Designated Licenses – not only was there an arm's length negotiation, but the deal was expressly subject to higher and better offers in the bankruptcy process, which was open to Nextel, NY Telecom, and Eldorado.

Finally, Petitioners offer a perfunctory argument that the Commission's interest in full payment outweighs all of the public benefits outlined above and in the Applications, benefits that are fully consistent with the Commission's interest to promote the efficient use of spectrum and the rapid deployment of services for the benefit of the public. Again, if the Applications are approved, not only will the government receive the money it has agreed to accept under provisions of law that Petitioners do not even try to contest, but the benefits to the public from granting the Applications will far outweigh even the imagined deficiency alleged in the Petition to Deny.

C. The Commission Should Deny Petitioners' Request to Ignore the Commission's Own Precedent Regarding the Public Interest Benefits of Accommodating Bankruptcy Proceedings.

Although dubious in any circumstances, Petitioners' arguments with respect to the public interest and waiver are particularly misguided here because they ask the Commission to disregard its own precedent regarding the public interest benefit of accommodating bankruptcy proceedings.

The Commission's own precedents endorsed by the D.C. Circuit have "long recognized the need for comity with the bankruptcy courts" In re Pocket Communications, Inc., 1998 WL 278742, ¶ 6 n.9 (rel. June 1, 1998); see also In re Application of San Diego Television, Inc., Debtor-In-Possession, 11 F.C.C.R. 14689, ¶ 13 (1996); LaRose v FCC, 494 F.2d 1145. 1148 (D.C. Cir. 1974); Telemundo, Inc. v FCC, 802 F 2d 513, 518 (D C Cir 1986).

The path urged by Petitioners, however, is one of conflict, not comity. The bankruptcy court has already reviewed and approved the transaction at issue here as an appropriate part of NextWave's effort to reorganize Denial of the transfer Applications

by the Commission would seriously impair the reorganization process, and would undermine the efforts that have been made by NextWave and the Department of Justice to finally resolve longstanding disputes. The Commission should invite such conflict, if ever, under only the most compelling of circumstances. The arguments offered by Petitioner do not remotely satisfy that heavy burden.

Indeed, Petitioners' arguments are particularly misguided because of the numerous courts and government bodies that have rendered judgments in this case. In making the public interest determination under the Communications Act in this proceeding, the Commission should take note of the views of other bodies that act on behalf of the public. In January of this year, for example, the Supreme Court upheld the application of a provision of the Bankruptcy Code that permits NextWave to retain its spectrum licenses while it proceeds with its reorganization As noted above, the Settlement Agreement was entered into and approved by the Department of Justice on behalf of the FCC in its capacity to resolve disputed monetary claims in a way that provides full and fair payment to the public. The agreements contained in the Settlement Agreement have been determined to be a fair resolution of the issues between NextWave and the government. And finally, the Bankruptcy Court has found both the Settlement Agreement and proposed transfer of the NextWave' rights and interests in the Designated Licenses to Cingular to be in the best interest of the NextWave estates, and has given its approval to those transactions.

The retention of the licenses, the settlement of amounts owed, and authorization to transfer the Designated Licenses out of the bankruptcy estates, subject to receipt of the regulatory approval sought in the Applications, have all been subjected to previous legal

review, and found to benefit the public. Not only do the Petitioners ignore these findings, but in a perverse twist try to reassert those old disputes as a basis to deny the Applications. Rather than argue against the proposed transfers, these actions and rulings only reinforce the fact that the proposed license transfers promote the public interest by quickly putting the spectrum to use and providing the public with the benefit of improved wireless services. Petitioners' arguments should thus be rejected.

For the same reasons, Nextel's assertion that the "bankruptcy proceedings provide no basis for granting Cingular's waiver request" is meritless. The great weight of Commission precedent clearly contradicts Nextel's argument and acknowledges the importance of accommodating the bankruptcy proceedings. Nextel completely ignores this body of precedent.

Nextel also seeks to interfere in these proceedings by repeatedly asserting that the Commission is "more than a creditor," and that the Commission should invoke its regulatory power to "protect the integrity of the auction process." Those arguments should sound familiar. This is the same old mantra Nextel has doggedly urged the Commission to advance over the years before the bankruptcy court, the D C. Circuit, and the Supreme Court, see Nextel Ex Parte (July 25, 1997). As noted above, those are old issues that have been fully and finally resolved by the courts Nextel's filing certainly contains no justification to renew those conflicts.

D. Given the Extensive Public Scrutiny of this Proposed Transaction, the Commission Should Not Further Delay Matter By Seeking Public Comment.

Petitioners' final contention is that the Bureau should expand the scope for public comment to avoid the "unfortunate pattern of shutting the public out of proceedings involving the resolution of the Commission's NextWave 'problem.'" Petition to Deny at 2. The Bureau has previously rejected Petitioners' efforts to create delay by asking for additional public comment, see In re NextWave Personal Communications Inc. and NextWave Power Partners Inc., 18 F.C.C.R 3235, ¶ 10 (2003), and the same result is appropriate here.

Every step of the NextWave saga has been the subject of extensive coverage in the press, and every step of the reorganization process has been the subject of public proceedings in the bankruptcy court. Amicus briefs were filed in both the D.C. Circuit and the Supreme Court proceedings. More generally, there has been no lack of opportunity to comment on NextWave's regulatory status, as Petitioners' frequent filings and the comments of Nextel here indicate With respect to the Cingular transaction, for example, the terms of the sale agreement are part of the public record in the bankruptcy proceedings – indeed, the transaction was held open to the general public for higher and better offers – and the proposed sale has thus been subject to a degree of public scrutiny that greatly exceeds most private transactions presented to the Commission. In this instance, further opportunity for public comment would serve not to illuminate the deal, but simply to delay it. That is undesirable as a general matter, but is particularly so in a sale of this magnitude in markets that can be volatile, and further delay raises the possibility of substantial harm to affected parties, including U.S. taxpayers

CONCLUSION

The Petition to Deny the Applications should be denied.

Respectfully submitted,

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November 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of November, 2003, caused to be served two copies of the foregoing Opposition to Petition to Deny Filed by NYTelecom, LLC and Eldorado Communications, LLC by first-class mail, postage prepaid, on

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