

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

In the Matter of )  
 )  
Requests for Waiver )  
of Section 24.711(b)(3) of the )  
Commission's Rules Establishing )  
the Interest Rate on Installment )  
Payments for C Block PCS Licensees )

**ORDER**

**Adopted: May 18, 1998**

**Released: May 18, 1998**

By the Chief, Wireless Telecommunications Bureau:

1. The Wireless Telecommunications Bureau ("Bureau") of the Federal Communications Commission ("Commission") has before it several requests for waiver of the Commission's rules imposing a 7 percent interest rate on eligible broadband PCS C block licensees whose licenses were conditionally granted on September 17, 1996, and that elected to utilize the Commission's installment payment plan.<sup>1</sup> Because these requests address the same issue, we have opted to resolve this matter in one order, rather than in individual orders. For the reasons discussed below, the requests for waiver are hereby denied.

2. Background. On May 6, 1996, the Commission concluded the broadband PCS C block auction. Pursuant to Section 24.711(b) of the Commission's rules, winning C block bidders that qualified as small businesses were permitted to pay for their licenses in installment payments over the course of their license term.<sup>2</sup> In particular, Section 24.711(b)(3) provides that interest on installment payments "shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted."<sup>3</sup> This rate is determined based upon the interest rate in the most recently-completed Treasury note auction prior to the license grant date, where the Treasury note term is equivalent to the term of the installment plan. Under Section 24.711(b)(3), for

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<sup>1</sup> See Omnipoint Corporation, Broadband PCS Block C Installment Plan Interest Rate for Small Business Licensees - Request for Rule Waiver (December 16, 1996). See also informal requests for waiver of Section 24.711(b)(3) filed by the following parties: Alpine PCS, Communications Venture PCS Limited Partnership, Comscape Telecommunications of Charleston License, Inc., DiGiPH PCS, Inc., Eldorado Communications, L.L.C., Horizon Infotech, Inc., Kmtel, L.L.C., Mercury PCS, L.L.C., Miccom Associates, Northern Michigan PCS Consortium, L.L.C., PCSouth, Inc., Quantum Communications Group, Inc., Savannah Independent PCS Corp., SouthEast Telephone, Ltd., Southern Wireless, L.P., Wireless 2000, Inc. Formal and informal requests for waiver are referred to collectively as "Requests for Waiver."

<sup>2</sup> 47 C.F.R. § 24.711(b). This practice has since been codified. See 47 C.F.R. § 1.2110(f)(3) (requiring each licensee paying for its licenses in installment payments to execute a promissory note and security agreement as a condition of the installment payment plan).

<sup>3</sup> 47 C.F.R. § 24.711(b)(3).

C block licenses conditionally granted on September 17, 1996, the applicable interest rate is 7 percent, while some licenses conditionally granted after the September 17 date are subject to a 6.5 percent interest rate.

3. Subsequent to September 17, 1996, several C block licensees whose licenses were conditionally granted on that date filed requests for waiver of the 7 percent interest rate applicable to their installment payment plans.<sup>4</sup> Specifically, these parties argue that unique facts associated with the August, 1996 U.S. Department of Treasury Auction make a waiver of Section 24.711 appropriate, and that the interest rate applicable to their installment payments should be reduced to 6.5 percent.

4. During the spring of 1997, the Commission also received several requests, from both C and F block PCS licensees, for other types of relief associated with the installment payment program.<sup>5</sup> On March 31, 1997, in response to a joint request from several C block licensees seeking to modify their installment payment obligations, and because of other debt collection issues, the Bureau suspended the deadline for payment of installment payments for all C block licensees.<sup>6</sup> On April 28, 1997, the Bureau extended the suspension to F block licensees.<sup>7</sup>

5. In a Public Notice released on June 2, 1997, the Bureau sought comment on all aspects of the requests for waiver of the 7 percent interest rate discussed above.<sup>8</sup> In addition, the Bureau sought comment on whether, if it determined that a waiver of Section 24.711(b)(3) were appropriate, such relief should be granted to all similarly situated parties, whether or not they have filed a request for waiver.<sup>9</sup> The Bureau received approximately 21 comments and 2 reply comments in response to the *Interest Rate Public Notice*.<sup>10</sup> The majority of commenters -- mostly C block licensees whose licenses were granted on September 17, 1997 -- support a waiver of the 7 percent interest rate, and suggest that any relief granted should be extended to all licensees whose

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<sup>4</sup> See Omnipoint Corporation, Broadband PCS Block C Installment Plan Interest Rate for Small Business Licensees - Request for Rule Waiver (December 16, 1996). See also informal requests for waiver of Section 24.711(b)(3) filed by the following parties: Alpine PCS, Communications Venture PCS Limited Partnership, Eldorado Communications, L.L.C., Horizon Infotech, Inc., Kmtel, L.L.C., Mercury PCS, L.L.C., Miccom Associates, Northern Michigan PCS Consortium, L.L.C., PCSouth, Inc., Savannah Independent PCS Corp., SouthEast Telephone, Ltd., Southern Wireless, L.P., Wireless 2000, Inc.

<sup>5</sup> See, e.g., Letter from Thomas Gutierrez, Esq., et al to Michele C. Farquhar, Esq., Chief, Wireless Telecommunications Bureau (March 13, 1997).

<sup>6</sup> See Installment Payments for PCS Licenses, Order, DA 97-649 (rel. March 31, 1997).

<sup>7</sup> See "FCC Announces Grant of Broadband Personal Communications Services D, E, and F Block Licenses," Public Notice, DA 97-883 (rel. April 28, 1997) at 2.

<sup>8</sup> See "Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes," Public Notice, DA 97-1152 (rel. June 2, 1997) ("Interest Rate Public Notice").

<sup>9</sup> Id.

<sup>10</sup> Parties filing comments and reply comments, and the abbreviations used to refer to such parties, are listed in the Appendix.

licenses were granted on September 17, 1996, whether or not they have filed a request for waiver.<sup>11</sup> In contrast, three commenters oppose any waiver of the 7 percent interest rate.<sup>12</sup>

6. Also on June 2, 1997, the Bureau issued a public notice seeking comment on the proposals from C block licensees regarding alternative financing arrangements and a petition for rule making regarding the issue of broadband PCS C block installment payments.<sup>13</sup> On September 25, 1997, after consideration of the extensive record in that proceeding, the Commission adopted a *Second Report and Order and Further Notice of Proposed Rule Making* in which it created a menu of options to assist C block licensees experiencing financial difficulties under their installment payment obligations.<sup>14</sup> In addition, the Commission ordered a resumption of installment payments for C and F block licensees, effective March 31, 1998. The Commission noted that requests for waiver of the 7 percent interest rate were pending and directed the Bureau to resolve these requests for waiver in a manner consistent with the Commission's decision in the *Second Report and Order and Further Notice of Proposed Rule Making*.<sup>15</sup> On reconsideration, the Commission adopted several modifications to the *Second Report and Order and Further Notice of Proposed Rule Making*, including a postponement of the payment resumption date, which is now July 31, 1998.<sup>16</sup> The Commission also noted that the Bureau would address the interest rate issue in a forthcoming order.<sup>17</sup>

7. Discussion. Section 24.711(b)(3) of the Commission's rules provides that, for small businesses, interest on installment payments "shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted."<sup>18</sup> For licenses conditionally granted on September 17, 1996, the

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<sup>11</sup> See Airadigm Comments at 1, 6; Eldorado Comments at 2; Fortunet Comments at 2; Indus and ChaseTel Comments at 1-4; Integrated Comments at 1; KPCS Comments at 3; McBride Comments at 1; NABOB Comments at 2; NTCA Comments at 1-2; NextWave Comments at 1; Omnipoint Reply Comments at 1-2; RTFC Comments at 1-2; Joint C Block Applicants Reply Comments at 1-2; Alliance Comments at 1, 8-9; Urban Comm Comments at 1-2; Wireless 2000 Comments at 2-3.

<sup>12</sup> Pinnacle Comments at 1, 5; Pioneer Comments at 1; Sprint Comments at 1.

<sup>13</sup> See "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," *Public Notice*, DA 97-82 (rel. June 2, 1997) ("*Installment Public Notice*"). See also Letter from Thomas Gutierrez, Esq., et al to Michele C. Farquhar, Esq., Chief, Wireless Telecommunications Bureau (March 13, 1997); Cook Inlet Region, Inc., Petition for Rulemaking (filed May 7, 1997).

<sup>14</sup> See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 12 FCC Rcd 16,436 (1997) ("*Second Report and Order and Further Notice of Proposed Rule Making*").

<sup>15</sup> See *Second Report and Order and Further Notice of Proposed Rule Making* at n.34.

<sup>16</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Order on Reconsideration of the Second Report and Order*, WT Docket No. 97-82, FCC 98-46 (rel. March 24, 1998) ("*Order on Reconsideration of the Second Report and Order*"); "Wireless Telecommunications Bureau Announces June 8, 1998 Election Date for Broadband PCS C Block Licensees," *Public Notice*, DA 98-741 (rel. April 17, 1998).

<sup>17</sup> *Order on Reconsideration of the Second Report and Order* at para. 77.

<sup>18</sup> 47 C.F.R. § 24.711(b)(3).

applicable interest rate is 7 percent. However, as indicated above, due to varying factors used to establish Treasury note obligations, some licenses granted after the September 17 date are subject to a 6.5 percent interest rate. Those parties that seek a waiver of Section 24.711(b)(3) argue that imposing an interest rate equal to 7 percent frustrates the intent of the Commission's designated entity provisions. They also argue that the Commission's straightforward application of its rules in this instance is inequitable, arbitrary, and unduly burdensome.<sup>19</sup>

8. A waiver of the Commission's rules is appropriate only when a party demonstrates either "that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest," or "that the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest."<sup>20</sup> The Bureau finds that these parties have failed to demonstrate that the underlying purpose of the rule would be served or that unique circumstances warrant a waiver of Section 24.711(b)(3).

9. The Commission adopted the procedures for determining the interest rate applicable to installment payments in the *Competitive Bidding Second Report and Order*, in which it determined, after notice and comment, that interest imposed on installment payments should be equal to the rate for U.S. Treasury obligations of maturity equal to the license term, and that the applicable interest rate should be "determined and fixed at the time of licensing."<sup>21</sup> Since adoption of the *Competitive Bidding Second Report and Order*, the Commission has conducted 16 spectrum auctions, several of which have included an installment payment program for small businesses. In each of these instances, the interest rate on installment payments has been established pursuant to provisions similar to those set forth in Section 24.711(b)(3). Significantly, winning bidders in other auctions typically have been subject to different rates of interest on installment payments resulting from different license grant dates (and thus, different treasury auctions).<sup>22</sup> Section 24.711(b)(3) explicitly provides for situations where the interest rate will vary, and petitioners have not presented a unique set of facts convincing us to make an exception to that rule.

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<sup>19</sup> See, e.g., Omnipoint Request for Waiver at 7-16.

<sup>20</sup> 47 C.F.R. § 24.819.

<sup>21</sup> Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2390-2391 (1994) ("*Competitive Bidding Second Report and Order*"), on recon., *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245 (1994) ("*Competitive Bidding Second Memorandum Opinion and Order*"). See also Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5532 (1994) ("*Competitive Bidding Fifth Report and Order*") (adopting auction rules and procedures for PCS auctions). PCS licenses were issued for a ten-year term.

<sup>22</sup> Compare Applications of ACC-PCS, INC., AER FORCE COMMUNICATIONS B, LP, ALPINE PCS, INC., AT&T WIRELESS PCS, INC., CENTURY PERSONAL ACCESS NETWORK, INC., COMCAST PCS COMMUNICATORS, INC., MCLEOD, INC., MESSAGE EXPRESS COMPANY, NEXTWAVE POWER PARTNERS, INC., NORTHCOAST COMMUNICATIONS, LLC, OPCSE-GALLOWAY CONSORTIUM, PCS DEVCO, INC., RIVGAM COMMUNICATORS, LLC, SPRINTCOM, INC., US WEST COMMUNICATIONS, INC., VTEL WIRELESS COMMUNICATIONS, INC., and WESTERN PCS BTA I CORPORATION For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, DA 97-1345, 12 FCC Rcd 8449 (rel. June 27, 1997) (granting, among other licenses, F block PCS licenses subject to a 6.625 percent interest rate pursuant to 47 C.F.R. § 24.716(a)(2)) and Application of Mercury PCS II, LLC for Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, DA 97-1782 (rel. August 21, 1997) (granting F block PCS licenses subject to a 6.125 percent interest rate pursuant to 47 C.F.R. § 24.716(a)(2)).

10. The parties seeking a waiver of Section 24.711(b)(3) have failed to demonstrate how this underlying purpose of the rule would not be served, or would be frustrated, by imposing an interest rate on their installment payments in the manner prescribed under the Commission's rules.<sup>23</sup> In adopting its installment payment program, including rules for establishing the interest rate applicable to installment payments, the Commission indicated that its primary purpose was to address the inability of small businesses to obtain private financing and to enable such entities to compete more effectively for spectrum being auctioned.<sup>24</sup> Although the Bureau recognizes that petitioners<sup>25</sup> and some commenters<sup>26</sup> point to varying market factors affecting the August 1996 Treasury auction,<sup>27</sup> the Bureau does not find such arguments applicable. While straightforward application of the rule in this instance results in a different interest rate for petitioners than other licensees in the same service, such a result is contemplated under the terms of the rule. It is important that the rule provide a fair and clear standard for establishing interest rates. The Bureau believes it does so, and that petitioners assumed the risk that different interest rates would be applied based on the date of licensing. By way of comparison, other government loans are subject to varying interest rates based on timing and market conditions.<sup>28</sup>

11. Moreover, the Bureau finds that petitioners' argument is largely self-serving. If petitioners believe that all licensees' installment plan notes should be subject to the same rate, the logical time to set the rate would be at the earliest license grant date of September 17, 1996. Under such a system, all notes would be subject to the 7 percent rate assigned to petitioners' notes. For all these reasons, the Bureau also finds that petitioners' arguments fail under the standards set forth in *Wait Radio v. FCC*, which establish a significant burden for parties seeking to compel an agency to deviate, in a specific instance, from rules and procedures which have been tested and applied uniformly in the past.<sup>29</sup>

### ORDERING CLAUSES

12. For the reasons set forth above, the requests for waiver of Section 24.711(b)(3) filed by Omnipoint Corporation, Alpine PCS, Communications Venture PCS Limited Partnership, Comscape Telecommunications of Charleston License, Inc., DiGiPH PCS, Inc., Eldorado Communications, L.L.C., Horizon Infotech, Inc., KMTel, L.L.C., Mercury PCS, L.L.C., Miccom Associates, Northern Michigan PCS Consortium, L.L.C., PCSouth, Inc., Quantum Communications Group, Inc., Savannah Independent PCS Corp., SouthEast Telephone, Ltd., Southern Wireless, L.P., Wireless 2000, Inc. ARE HEREBY DENIED.

13. This action is taken pursuant to delegated authority as set forth in 47 U.S.C. § 155(c) and 47 C.F.R. § 0.331. *See also* Amendment of the Commission's Rules Regarding Installment Payment Financing for

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<sup>23</sup> *See* 47 C.F.R. § 24.813. *See also* Pinnacle Comments at 1.

<sup>24</sup> *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2389-2390; *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5591-92.

<sup>25</sup> *See, e.g.*, Omnipoint Request for Waiver at 8-13.

<sup>26</sup> *See, e.g.*, ComScape Comments at 3-4.

<sup>27</sup> We note that both the July and August, 1996 Treasury Auctions resulted in a 7 percent interest rate.

<sup>28</sup> *See, e.g.*, Small Business Administration, Interest Rates, 61 Fed. Reg. 39,496 (1996).

<sup>29</sup> *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) ("*Wait Radio*") (holding that presumptions of regularity apply with special vigor when a Commission acts in reliance on an established and tested agency rule). *See also* Pinnacle Comments at 2.

Personal Communications Services (PCS) Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 12 FCC Rcd 16,436 (1997) at n.34.

FEDERAL COMMUNICATIONS COMMISSION

Daniel B. Phythyon  
Chief, Wireless Telecommunications Bureau

**APPENDIX**Parties Filing Comments

Airadigm Communications, Inc. ("Airadigm")  
Comscape Telecommunications of Charleston License, Inc. ("ComScape")  
DiGiPH PCS, Inc. ("DiGiPH")  
Eldorado Communications, L.L.C., Kmtel L.L.C., Mercury PCS L.L.C., and Miccom Associates ("Eldorado")  
Fortunet Communication, L.P. ("Fortunet")  
Indus, Inc, and Chase Telecommunications, Inc. ("Indus and ChaseTel")  
Integrated Communications Group Corporation ("Integrated")  
Kansas Personal Communication Services, Inc. ("KPCS")  
Vincent D. McBride ("McBride")  
Morris Communications, Inc. ("Morris")  
National Association of Black-Owned Broadcasters, Inc. ("NABOB")  
National Telephone Cooperative Association ("NTCA")  
NextWave Telecom, Inc. ("NextWave")  
Pinnacle Telecom, L.P. ("Pinnacle")  
Pioneer Telephone Association, Inc. ("Pioneer")  
Rural Telephone Finance Cooperative ("RTFC")  
September 17 Alliance ("Alliance")  
Sprint Spectrum, L.P. ("Sprint")  
Urban Communicators PCS Limited Partnership ("Urban Comm")  
Quantum Communications Group, Inc. ("Quantum")  
Wireless 2000, Inc., Northern Michigan PCS Consortium, L.L.C., PCSouth, Inc., and Communications Venture PCS Limited Partnership ("Wireless 2000")

Parties Filing Reply Comments

Omnipoint Corporation ("Omnipoint")  
Savannah Independent PCS Corporation, Brookings Municipal Utilities, PVT Wireless Limited Partnership, PCS Plus, L.L.C., Southwestern Minnesota PCS Limited Partnership, Western Minnesota PCS Limited Partnership, North Dakota PCS Limited Partnership, and Horizon Personal Communications, Inc. ("Joint C block Applicants").