



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 00-145
January 31, 2000

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON SBC COMMUNICATIONS INC.'S REQUEST FOR WAIVER OF THE ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE UPCOMING PCS C AND F BLOCK AUCTION

Comment Date: February 10, 2000

Reply Date: February 15, 2000

SBC Communications Inc. ("SBC") has filed a request for waiver of the eligibility requirements under Section 24.709 of the Commission's rules to allow it to participate in the PCS C and F block auction scheduled to begin on July 26, 2000.¹ Section 24.709 of the Commission's rules restricts the eligibility for C and F block licenses to entities with total assets and gross revenues below specified levels.² SBC requests a waiver under Section 1.925 of the Commission's rules to allow companies other than such entities to participate in the upcoming C and F block auction.³

SBC argues that granting its waiver request and allowing it to participate in the upcoming C and F block auction would serve the public interest by speeding the delivery of wireless services to the public and enhancing competition in numerous market areas.

We seek comment on whether grant of SBC's waiver request would further the public interest. Commenters should address the sufficiency of the showing made in support of the waiver in light of the requirements of 47 C.F.R. § 1.925 and any other public interest considerations. Interested parties may file comments on or before February 10, 2000. Parties interested in submitting reply comments must do so on or before February 15, 2000.

All comments should reference SBC's request for waiver and include the DA number of this Public Notice (DA 00-145). Comments should be filed with the Office of the Secretary, Federal Communications Commission, TW B204, 445 12th St. S.W. Washington, DC 20554. Comments also should be provided to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Rm # 4-A624, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St. S.W. Washington, DC 20554.

¹ 47 C.F.R. § 24.709. In a recent Public Notice, the Commission announced that the auction of C and F block broadband PCS licenses would begin on July 26, 2000. See "Auction of C and F Block Broadband PCS Licenses, Notice of Auction Scheduled for July 26, 2000," *Public Notice*, DA 00-49 (rel. January 12, 2000).

² 47 C.F.R. § 24.709.

³ 47 C.F.R. § 1.925.

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 C.F.R. §§ 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The SBC waiver request is available for public inspection and copying in the Reference Center, Room CY A257, 445 12th St., S.W., Washington, DC 20554. Copies of the waiver request are also available from ITS at 1231 20th St. N.W., Washington, DC 20036, or by calling (202) 857-3800.

For further information, contact Leora Hochstein of the Auctions and Industry Analysis Division at (202) 418-0660.

By the Chief, Wireless Telecommunications Bureau

-FCC-

Wayne Watts
Vice President and
Assistant General Counsel

SBC Communications Inc.
175 E. Houston Street
San Antonio, Texas 78205
Phone 210-351-3476



WAIVER – EXPEDITED ACTION REQUESTED

January 21, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
c/o Mellon Bank
P.O. Box 358130
Pittsburgh, PA 15251-5130

Re: Petition of SBC Communications Inc. for a Waiver of the Eligibility
Requirements of 47 C.F.R. § 24.709 for the PCS Frequency Blocks C and
F Auction to Benin on July 26, 2000

Dear Ms. Salas:

Enclosed for filing please find an original and four copies of the Petition of SBC Communications Inc. for a Waiver of the Eligibility Requirements of 47 C.F.R. § 24.709 for the PCS Frequency Blocks C and F Auction to Begin on July 26, 2000. Also enclosed are a Form 159 and a check payable to the Federal Communications Commission in the amount of \$135 for the prescribed filing fee.

Please direct questions or correspondence concerning this petition to me.

Sincerely,

Wayne Watts

Enclosures

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

_____))
In the Matter of))
))
Petition of SBC Communications Inc.))
For a Waiver of the Eligibility))
Requirements of 47 C.F.R. § 24.709))
For the PCS Frequency Blocks C and F))
Auction to Begin on July 26, 2000))
))
_____))

To: The Commission

PETITION OF SBC COMMUNICATIONS INC.
FOR A WAIVER OF SECTION 24.709
AND FOR EXPEDITED ACTION

James D. Ellis
Wayne Watts
Carol L. Tacker
SBC Communications Inc.
175 E. Houston
San Antonio, TX 78205
(210) 351-3476

Dated: January 21, 2000

EXECUTIVE SUMMARY

SBC applauds the Commission's decision to re-auction the PCS spectrum that was originally licensed to **NextWave**. **NextWave's** failure to honor the commitments it made over three years ago has harmed the public interest by allowing this spectrum to remain unused, as well as by denying the treasury monies owed for this valuable resource. The public interest requires the Commission to put this spectrum into the hands of carriers who will promptly and effectively put it to maximum use.

To date, designated entities have experienced serious difficulties. The three largest winners of the C and F block auctions went bankrupt, and approximately 80% of the C block spectrum, representing over \$6.5 billion of the \$10.2 billion bid in that auction, has either been entangled in bankruptcy proceedings or returned to the Commission. Significantly, as shown by the Commission's records, the designated entities have failed to introduce service to virtually all markets, and, in the major markets, 9 out of 10 C block licenses were acquired by companies who subsequently declared bankruptcy. Indeed, **NextWave** itself was the auction winner in the majority of the 50 largest markets.

SBC seeks a waiver of the eligibility rules for the auction of C and F block authorizations to begin on July 26, 2000. Limiting participation in the upcoming auction exclusively to designated entities would invite a replay of the very problems that have plagued this process to date. SBC will be an active participant in this auction and will seek to obtain a substantial number of the C and F block authorizations.

It is well established that the Commission has the power to grant such a waiver if the public interest would be served either: (1) because the waiver is needed to **implement**

Commission policies or (2) because of unique or unusual circumstances. Both standards are met here. Opening the auction to SBC will ensure the participation of a bidder with the resources both to commence service quickly and to honor its payment commitments. This spectrum will not only be put into use faster, but also, it will be put to use by an experienced wireless operator capable of competing effectively with the multiple existing wireless operators in these market areas. It will enable SBC to meet the explosive increase in demand for wireless services in market areas where SBC does not currently provide facilities-based service. In contrast to a typical designated entity, SBC can and will compete effectively with the existing major wireless providers, such as AT&T Wireless, Sprint, Nextel, BellAtlantic/GTE/Vodafone/AirTouch and VoiceStream/Aerial/Omnipoint, which have existing networks, customer bases, support systems and name brand recognition. The rapid changes in the wireless marketplace since the Commission first awarded this spectrum, and the long period of time this spectrum has gone unused, constitute appropriate circumstances for granting the waiver.

The grant of this waiver will also be consistent with the Commission's efforts to encourage participation by smaller companies. Designated entities will remain eligible for bidding credits and other benefits, but both the past difficulties of NextWave and others, as well as intensifying competition in wireless markets, must be taken into account by the Commission in connection with the re-auction of this spectrum. Allowing a non-designated entity like SBC to participate will encourage successful entry of smaller companies because it will increase the likelihood that they will only attempt to enter the markets where they can be competitive.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
A. The Public Interest Requires Expedited Approval of SBC's Request.....	3
II. THE WAIVER STANDARD	4
III. THE WIRELESS MARKET HAS CHANGED SUBSTANTIALLY	5
A. The Set Aside of Spectrum for Designated Entities Has Not Been As Successful A Means of Implementing Section 309(j) as the FCC Anticipated	6
B. Future Competitive Conditions Will Make It Difficult for Designated Entities to Compete Successfully On a Broad Geographic Basis or In Larger Markets.....	10
IV. THE GRANT OF THIS WAIVER PETITION WILL SERVE THE PUBLIC INTEREST	12
A. Allowing SBC to Participate Will Bring Services Quickly to the Public	12
B. Allowing SBC to Participate Will Enhance Competition In Wireless Markets	14
C. Allowing SBC to Participate Will Benefit the Public Without Undermining the Policy of Assisting Smaller Companies	16
D. The Commission Has Granted Waivers In Similar Circumstances	18
V. CONCLUSION	19

ATTACHMENT: Affidavit of Stanley T. Sigman
Group President -- SBC National Operations

**PETITION OF SBC COMMUNICATIONS INC.
FOR A WAIVER OF SECTION 24.709
AND FOR EXPEDITED ACTION**

I. INTRODUCTION

Pursuant to Sections 1.3 and 1.925 of the Commission's Rules, SBC Communications Inc. ("SBC") hereby petitions for an expedited waiver of 47 C.F.R. § 24.709 so that it can participate in the auction scheduled to begin on July 26, 2000 for reclaimed C and F block PCS authorizations. If the Commission wishes to see this spectrum, which has now lain fallow for over three years, utilized promptly to provide new, competitive wireless services to the public, it must open the auction to companies in addition to designated entities. Restricting this new auction to designated entities will ensure that the difficulties, which have plagued virtually all the designated entities that participated in the initial auctions, will be repeated. Indeed, the marketplace changes that have occurred in the ensuing years have aggravated those difficulties, and make it less likely that a designated entity would succeed today in making effective use of this spectrum.'

¹ As the Commission is acutely aware, the three designated entities which acquired the largest number of C block licenses all declared bankruptcy. See Donaldson, Lufkin & Jenrette, The Global Wireless Communications Industry, at 48 (Summer 1999) ("DLJ Report"); FCC, Federal Communications Commission C-Block Auction: Final Results, available at <http://www.fcc.gov/wtb/auctions/blk_c/5_cursum.gif> (listing highest bidders). Virtually all the others faced sufficient financial difficulties to require the Commission to provide them with relief. See, e.g., In re 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,

The grant of this waiver petition – like the waiver the Commission’s Staff publicly stated it would recommend when it entered into the Term Sheet with Nextel² – would serve the public interest because it will: (1) speed the delivery of additional wireless services over this still dormant spectrum; (2) provide substantial new competition in numerous market areas, including most of the major markets throughout the country, through the entry of an experienced, technically advanced and financially strong entrant; (3) avoid a repetition of the C block scenario; (4) increase the likelihood that smaller companies that are successful in the auction will also be successful in the marketplace; and (5) maximize the recovery for the treasury. The Commission has the power to grant this petition and has granted waivers in other situations where the public interest would be similarly served.³ As demonstrated in the accompanying Affidavit of Stanley T. Sigman, the Group President for SBC National Operations (“Sigman

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12 FCC Rcd. 16,436 (1997). With this history, it is questionable whether there exist today sources of adequate funding to allow many of the designated entities to make timely and effective use of the same frequencies and become meaningful competitors in these same markets.

² See Nextel’s Term Sheet For Comprehensive Settlement Agreement and Joint Plan of Reorganization (the “Term Sheet”), tiled as exhibit 99.1 to Nextel Communications, Inc., S.E.C. Form 8-K (filed Aug. 18, 1999).

³ See, e.g., In re Dominion Video Satellite, Inc., Order and Authorization, 14 FCC Rcd. 8182 (Int’l Bur. 1999) (waiver of DBS rules warranted to permit competition in DBS service); In re Application of Columbia Communications Corporation, Order and Authorization, 14 FCC Rcd. 33 18 (1999) (waiver of financial qualification requirements warranted because waiver would “increase capacity and significantly expand” service, “thereby enhancing competition”).

Affidavit”), SBC is firmly committed to participate actively in the upcoming auction if this waiver is granted.

A. The Public Interest Requires Expedited Approval of SBC’s Request

SBC requests the Commission to give this waiver **expedited** consideration in view of the fast pace of developments in wireless markets. During the past several years, the Commission has taken numerous actions, including the award of new spectrum and the approval of many mergers and other transactions, to facilitate the ability of wireless carriers to establish large regional, and even national, wireless footprints. Expedited action on this petition will enable SBC to refine its nationwide wireless strategy based on its ability to participate in the auction. In addition, expedited consideration of this petition is necessary so that all potential bidders who may wish to participate in the upcoming auction, both designated entities and others, are aware of who is eligible to participate and can base their plans, and make appropriate financial arrangements, in light of that information. The extensive press coverage of the proceedings involving **NextWave**, including the Staff’s determination that Nextel would be entitled to a similar waiver, means that potential commenters have been on notice for months that the Commission would be dealing with this issue. Accordingly, SBC respectfully requests that this petition promptly be placed on public notice, that

comments or oppositions be filed within 7 days of such notice, and that SBC reply to such comments or oppositions within 2 days.⁴

II. THE WAIVER STANDARD

Section 1.925 of the Commission's Rules authorizes the Commission to grant a waiver when it is in the public interest to do so, either because a waiver is needed to implement Commission policies or because of unique or unusual circumstances.⁵ A petitioner has the burden to demonstrate that the public interest will be served by the waiver,⁶ and the circumstances here clearly require that the Commission grant this waiver if it wishes to ensure that this valuable and needed spectrum is put into service promptly and effectively. Allowing SBC to participate, and to acquire licenses in the C and F block re-auction, will both speed the delivery of long-delayed service to the public and enhance competition through the entry of an experienced, financially sound wireless operator that is fully capable of competing head to head with the major existing carriers in these markets. Moreover, the unique circumstances involving NextWave and the other

⁴ The Commission's rules provide it with discretion to establish an appropriate comment period without fixing any minimum time requirements. See 47 C.F.R. §1.925(a). Moreover, even in a rulemaking proceeding, where the Administrative Procedure Act typically requires an agency to give the public thirty days notice before a new or modified rule becomes effective, Section 553(d)(1) of that Act allows the Commission to modify its rules on less than 30 days notice when the change in the rules will relieve a restriction. 5 U.S.C. § 553(d)(1). SBC, of course, is not seeking to modify a rule; it requests only a waiver of the designated entity restriction for this particular auction.

⁵ See 47 C.F.R. §1.925(b)(3).

⁶ *WAIT Radio v. FCC*, 418 F.2d1153, 1157 (D.C. Cir. 1969).

designated entities that have failed to utilize this spectrum counsel in favor of opening up this auction to SBC, a non-designated entity.

Opening up the auction will not compromise the Commission's policy of encouraging – on a viable basis – participation by smaller companies. Of course, some designated entities from the original auctions have fared better than **NextWave**, so that policy has already borne fruit. However, unless the Commission allows SBC to participate in this auction, similar problems are likely to recur.

Indeed, protecting such smaller companies against competition with larger carriers at the auction stage simply delays the time when they will have to compete with larger carriers in the market. Opening up the auction to the same competitors who will eventually face each other in the market, however, ensures that all participants will base their bids on a realistic assessment of both their competitive abilities and their resources, thereby increasing the likelihood that auction winners, including designated entities (who will, of course, continue to enjoy the use of bidding credits and other benefits), will provide service to customers and succeed in the marketplace.

III. THE WIRELESS MARKET HAS CHANGED SUBSTANTIALLY

The appropriate response of the Commission to the failures of **NextWave** and other designated entities to put their spectrum to use must be considered in light of the current and future demand for wireless telecommunications services, the history of the Commission's efforts to allocate spectrum, and the ability of small companies to compete in the wireless marketplace. As set forth below, each of these factors requires the

Commission to open up the auction process if it wishes to avoid a new generation of NextWaves.

A. The Set Aside of Spectrum for Designated Entities Has Not Been As Successful A Means of Implementing Section 309(i) as the FCC Anticipated

The demand for wireless services has increased dramatically in recent years and is expected to continue to grow rapidly. In 1984, there were only 92,000 wireless customers.⁷ By 1998, the customer base had increased to almost 70 million,⁸ and analysts predict that within ten years there may be 100 million (or more) wireless telephone subscribers.⁹ In view of this exploding demand, the Commission's paramount concern must be to ensure that sufficient spectrum is allocated for wireless services and that the allocated spectrum is placed into service quickly and with adequate funding.

During the past several years, the Commission has addressed this demand through the allocation of PCS spectrum to supplement the cellular spectrum and through the use of auctions to award the new spectrum. The Commission's efforts in the case of non-designated entity auctions have proven successful; over 60 of both the A/D and B/E block

⁷ See Stuart N. Brotman, Communications Law and Practice § 5.05[1] (1999).

⁸ See DLJ Report, supra, at 11.

⁹ See FCC, Broadband PCS Fact Sheet, available at <<http://www.fcc.gov/wtb/pcs/bbftsh.html>> (visited Jan. 14, 2000). Cf. DLJ Report, supra, at 7 ("Our conclusion: the U.S. penetration rate is going to take off. We have revised our long-term models to show an ultimate penetration of nearly 70% versus 63% in our last report.").

licensees in the top 50 MSAs were offering service to the public by the summer of 1999.¹⁰

The Commission's efforts to ensure that small entrepreneurs can participate in this dynamic business, however, have not been entirely successful. Acting pursuant to Section 309(j) of the Communications Act, which requires the Commission to ensure that small businesses receive the opportunity to participate in the provision of spectrum-based services, the Commission set aside 986 C and F block PCS licenses for companies with income and assets below specified levels, and it also provided such entities with incentives to participate in these auctions, including bidding credits, an installment payment option, and tax certificates." The Commission concluded initial auctions, open only to entities meeting the Commission's criteria, to distribute the C block and F block licenses in May 1996 and January 1997.

Unfortunately, the vast majority of C and F block licensees have not succeeded in the market. While NextWave's troubles have garnered the most attention in the press, it has hardly been alone. The top three winning bidders in the Commission's 1996 C block auction — representing over \$6.5 billion of the \$10.2 billion the Commission was pledged through that auction — later declared bankruptcy.* The fourth largest bidder

¹⁰ DLJ Report, supra, at 107-08.

¹¹ In re Implementation of Section 309(J) of the Communications Act – Competitive Bidding, Fifth Report and Order, 9 FCC Rcd. 5532, ¶¶ 113-47 (1994).

¹² Those three bidders were NextWave, DCR PCS, Inc. (a subsidiary of Pocket Communications) and GWI PCS, Inc. (a subsidiary of General Wireless). See FCC, Federal Communications Commission C-Block Auction: Final Results, available at

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defaulted almost immediately on its **payments**.¹³ In fact, it has been estimated that licenses amounting to approximately 80 percent of the winning bids at the Commission's C-block auction either became entangled in bankruptcy proceedings or were returned to the Commission.¹⁴

These problems have been particularly severe in major markets. Among the top 10 markets by population, 9 of the C block licenses were won by parties who later declared bankruptcy, and, according to the FCC's data, only 1 of the 20 licenses issued

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<http://www.fcc.gov/wtb/auctions/blk_c/5_cursum.gif>; John Sullivan, "NextWave's Gain Is Nextel's Loss as Broadband Vision Resurrect Urban Licenses," Fiber Optic News, Dec. 27, 1999. General Wireless has since emerged from bankruptcy. See Heather Forsgren Weaver, "FCC Bankruptcy Language stripped from Spending Bill," RCR Radio Communications Report, Oct. 25, 1999, at 6.

¹³ See "Proposal to Let C-Block Companies Defer Interest Payment is Dead," Communications Today, Nov. 7, 1997. That bidder, BDPCS Inc. (a unit of then-Questcom Inc.), had pledged over \$850 million for 17 licenses. See FCC, Federal Communications Commission C-Block Auction: Final Results, available at <http://www.fcc.gov/wtb/auctions/blk_c/5_cursum.gif>; Mark Landler, "High Bids Beaching NextWave Default Would Force U.S. to Re-Auction Airwaves," Pittsburgh Post-Gazette, Jan. 14, 1997, at C8. BDPCS's winning bids included licenses covering Phoenix, Denver and Seattle. See FCC, Auction #5 C Block PCS Auction Charts: Final Round Results for all Licenses, available at <<http://www.fcc.gov/wtb/auctions/summary/charts.html#cblk>> (visited Jan. 19, 2000). BDPCS defaulted days after the auction's close, unable to even satisfy the initial 5 percent bid deposit. Nancy Gohring, "Fool's Gold: Many risk-taking dreamers were lured to wireless by the promise of C block riches," Telephony, Sept. 21, 1998. The Commission later re-auctioned the licenses. "BDPCS Sues U S West," Washington Telecom News, May 12, 1997.

¹⁴ Joint Pretrial Order, NextWave Personal Communications, Inc. v FCC, No. 98 B 21529 (ASH), at 38 (Bankr. S.D.N.Y. 1999) (plaintiffs contention of facts).

¹⁵ The only operational PCS system awarded in the 1996 auction is the Omnipoint PCS Entrepreneurs Inc. subsidiary operating on the C Block in Philadelphia.

for the C and F blocks in these markets was operational at the beginning of 2000.¹⁶ Furthermore, in the top 50 metropolitan statistical areas, only 9 of 100 C and F block licenses were offering service on a commercial basis by the summer of 1999.¹⁷ As a result, the Commission has had to conduct two re-auctions of C block licenses and one re-auction of F block licenses that became available due to auction winners' inability to meet required payment schedules and other difficulties." Moreover, even re-auctioning has failed to put a number of these licenses into service; several blocks of spectrum have

¹⁶ See FCC, Buildout Schedule and Technology Chosen by C Block Licensees" available at <<http://www.fcc.gov/wtb/pcs>> (updated Jan. 3, 2000); FCC, Buildout Schedule and Technology Chosen by D, E, and F Block Licensees, available at <<http://www.fcc.gov/wtb/pcs>> (updated Jan. 3, 2000); FCC, Federal Communications Commission C-Block Auction: Final Results, available at <http://www.fcc.gov/wtb/auctions/blk_c/5_cursum.gif>.

¹⁷ DLJ Report, supra, at 107-08. From the Commission's data, it appears that fewer than 3 percent of either the C or F Block licensees are presently operational. See FCC, Buildout Schedule and Technology Chosen by C Block Licensees, available at <<http://www.fcc.gov/wtb/pcs>> (updated Jan. 3, 2000); FCC, Buildout Schedule and Technology Chosen by D, E, and F Block Licensees, available at <<http://www.fcc.gov/wtb/pcs>> (updated Jan. 3, 2000).

¹⁸ See Auction of C and F Block Broadband PCS Licenses, Public Notice, DA 00-49, 2000 WL 16440 (Jan. 12, 2000); Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999, Minimum Opening Bids and Other Procedural Issues, Public Notice, 13 FCC Rcd. 24540 (1998); FCC Issues Procedures, Terms and Conditions for July 3 Reauction of Defaulted C Block Licenses, Public Notice, 11 FCC Rcd. 22,211 (1996).

already been re-auctioned **twice**,¹⁹ and a number of spectrum blocks were bought by **NextWave** and will thus have to be auctioned yet **again**.²⁰

B. **Future Competitive Conditions Will Make It Difficult for Designated Entities to Compete Successfully On a Broad Geographic Basis or In Larger Markets**

In 1994, when the Commission originally adopted its rules to encourage the participation of smaller companies in the wireless marketplace, the failures discussed above were not reasonably foreseeable. At that time, wireless service was largely limited to the two original cellular carriers, and all new entrants would have been entering the market more or less simultaneously, which would have meant that C and F block auction winners would not have been competitively disadvantaged in relation to the other new entrants. As a result, there appeared to be ample room for smaller companies, especially given the rapidly increasing demand for wireless services. Accordingly, dedicating the C and F blocks exclusively to small companies – rather than simply granting them bidding credits or other preferences in an auction open to all types of companies – seemed sensible.

The competitive landscape that new entrants will face following the re-auction of these licenses, however, has changed dramatically. Such companies will now face four

¹⁹ For example, Phoenix, Albuquerque and Tucson have been re-auctioned twice.

²⁰ See Auction of C and F Block Broadband PCS Licenses, Public Notice, DA 00-49, 2000 WL 16440 (Jan. 12, 2000); C,D,E, and F Block Broadband PCS License Auction Closes, Public Notice, 14 FCC Rcd. 6688 (1999); Entrepreneurs' Block C Reauction Closes, Public Notice, 11 FCC Rcd. 8183 (1996); and Erratum in Public Notice DA 96-1 153 Announcing Close of the Entrepreneurs' C Block Reauction, 15 FCC Daily Dig. 133 (rel. July 18, 1996).

or more wireless carriers already in the markets, all with substantial head starts. The existing carriers are well established, with facilities in place, substantial name brand recognition and **sizeable** customer bases – and many of the major carriers, like SBC, are seeking to assemble essentially national, facilities-based footprints which are very attractive to wireless customers because they facilitate both broad calling scopes and the efficiencies allowed by integrated networks. Such facilities-based service is important to improving SBC's ability both to provide ubiquitous service features and functionalities across markets.

In recent years this trend toward wide area, facilities-based wireless networks has accelerated, as shown by such transactions and ventures as AT&T/McCaw, Sprint PCS, Bell Atlantic/NYNEX Mobile, SBC/Telesis/SNET/Ameritech, GTE's purchase of wireless properties from Ameritech, and the recent agreement of Bell Atlantic/GTE and Vodafone/AirTouch to pool their wireless properties. The consolidations among these wireless carriers and the creation of these wide area systems clearly benefit wireless consumers, while at the same time presenting a daunting competitive challenge for small, new entrants in any wireless markets. Indeed, the decision of some designated entities to give spectrum back to the Commission was unquestionably motivated in part by the realization that they could not compete effectively, even when they were not starting out in a market with 4 or more strong, existing competitors. Given the problems these designated entities encountered several years ago, when conditions appeared to be more favorable, it is likely that they will face even greater difficulty in obtaining financing, building out their networks, and competing successfully in the future.-

IV. THE GRANT OF THIS WAIVER PETITION WILL SERVE THE PUBLIC INTEREST

Granting this waiver petition will enable SBC quickly to bring new services to the public in market areas where SBC does not currently have wireless facilities, and that will enhance competition in the wireless marketplace. This can be accomplished without depriving designated entities of the opportunity to participate, and the grant of this waiver would be consistent with other waivers granted by the Commission.

A. Allowing SBC to Participate Will Bring Services Quickly to the Public

The most obvious benefit of allowing wider participation in the auction to begin on July 26th will be to put this spectrum to use quickly. The purpose of allocating new spectrum was to expand dramatically the availability of wireless services to the public and to increase competition in the wireless industry. For far too long, however, the NextWave spectrum – which includes spectrum in most of the major markets across the country – has gone unused. Given the exponential growth in the demand for wireless services, allowing this situation to continue any longer than necessary is contrary to the public interest.

There can be no question regarding SBC's expertise in offering high quality wireless services, and SBC has the resources to build facilities on a large scale very rapidly and to shoulder the other substantial start-up costs and risks associated with entering new markets that are already served by other large, well established carriers.²¹

²¹ See Sigman Affidavit, attached hereto, ¶ 3. Through its wireless subsidiaries, SBC offers cellular, PCS and paging services to 10.3 million customers and serves 132 cellular metropolitan/rural service areas and PCS major/basic trading areas nationwide.

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The Commission has repeatedly recognized SBC's qualifications in the wireless area.²² SBC is prepared to bring them to bear with respect to any of the C and F Block licenses that it may acquire, and there can be no doubt regarding SBC's ability to pay for any spectrum for which it is the highest bidder and to build out the systems.

By contrast, continued reliance exclusively on small, unreliably-funded and inexperienced designated entities to build out this spectrum will likely result in delay and uncertainty as to whether and when the spectrum will be used to provide service. The failure of the previous winners to perform as promised shows that restricting participation in the up-coming auction to designated entities is a prescription for more failures.

That is not to say that the Commission should abandon its efforts to encourage participation by smaller companies. Indeed, allowing wider participation in the auction should ensure that designated entities will focus on markets that they can afford to enter

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SBC subsidiaries also are leading providers of digital wireless communications, which makes possible additional features such as real-time news and weather updates, Caller ID, message waiting indicator and short messaging service. SBC has made strides to open the world of wireless communications to new customers through innovative new service and payment options, including prepaid calling cards that allow customers to buy predetermined amounts of service and wireless "phone-in-a-box" offerings that allow customers to purchase wireless equipment at retail outlets.

²² See, e.g., In re Applications of Comcast Cellular Holdings, Co. and SBC Communications Inc., Memorandum Opinion and Order, 14 FCC Rcd.10,604, ¶ 4 (1999) ("SBC/Comcast"); In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications to SBC Communications Inc., Memorandum Opinion and Order, 13 FCC Rcd. 21,292, ¶ 27 (1998) ("SBC/SNET"); In re Applications of Pacific Telesis Group and SBC Communications Inc., Memorandum Opinion and Order, 12 FCC Rcd. 2624 (1997).

and where they can compete effectively. The Commission's primary goal, however, should be to expedite the widespread delivery of expanded service to the public via this spectrum.²³ Allowing broader participation in the auction is the way to do that.

B. Allowing SBC to Participate Will Enhance Competition In Wireless Markets

The nature of competition in wireless markets has changed dramatically since the establishment of the first cellular systems. Beginning with locally-based systems, carriers first sought to provide wider service through roaming agreements and more recently through the development of regional systems. The Commission has repeatedly emphasized the benefits of such systems in numerous orders finding that consolidations of wireless carriers served the public interest because they provide expanded calling scopes and create efficiencies that would ultimately benefit consumers.²⁴

²³ While speeding service to the public is perhaps the most important benefit of allowing SBC or others to participate, increasing the number of bidders, including bidders with substantial resources, will also maximize the recovery for the treasury. While this is not a primary concern, it is not an inconsequential one for the FCC or for Congress.

²⁴ See, e.g., SBC/Comcast, supra, ¶ 10; In re Applications of Vanguard Cellular Systems, Inc. and Winston, Inc., Memorandum Opinion and Order, 14 FCC Rcd. 3844, ¶ 23 (WTB 1999); In re Applications of 360 Communications Co. and ALLTEL Corporation, Memorandum Opinion and Order, 14 FCC Rcd. 2005, ¶ 41 (WTB 1998); SBC/SNET, supra, ¶¶ 44-45; In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co., Order, 10 FCC Rcd. 13,368, ¶¶ 45-46 (1995) (citing In re Application of Corpus Christi Cellular Telephone Co., Memorandum Opinion and Order, 3 FCC Rcd. 1889, ¶ 19 (1988); see also In re Application of Madison Cellular Telephone Co., Memorandum Opinion and Order, 2 FCC Rcd. 5397, ¶ 4 (1987); In re Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, N.A., and C-Call Corn., Order, 10 FCC Rcd. 3361, ¶¶ 23-27 (1995); In re Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc., Order, 10 FCC Rcd. 7783, ¶ 14 (1995); In re Applications of Dial Page, Inc. for Consent to Transfer Control of Dial Call, Inc., SMR and Business Radio Licenses to Nextel

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It is highly unlikely that any of the designated entities that are eligible for C and F block licenses would ever have the resources to acquire and build out wide area networks and overcome the existing wireless providers' substantial resources and head start in these market areas. By contrast, the problem facing SBC is the lack of spectrum in certain areas that are desirable to fill out its footprint. Given SBC's ability to provide services promptly and to engage in robust competition in the markets it enters, the Commission should not give only smaller companies, who likely cannot compete as effectively, a lock over the spectrum that SBC desires to provide facilities-based competition in additional market areas. That is particularly true with respect to the former NextWave licenses, which cover many of the major markets that are attractive for SBC to enter and would warrant SBC's efforts to commit the substantial resources necessary to acquire the authorizations, construct the networks and aggressively enter these market areas. Opening up the auction for these authorizations would, like other actions the Commission has taken, continue to foster the development of national networks, thus enhancing competition among the major carriers and allowing them to serve the public more effectively.²⁵

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Communications, Inc., Order, DA 95-2379, 1 Comm. Reg. (P&F) 1269, ¶ 21 (rel. Nov. 22, 1995).

²⁵ It is also particularly appropriate to grant a waiver with respect to the NextWave licenses. Under the Commission's rules, NextWave would have been allowed to transfer its licenses to a non-designated entity after 5 years. See 47 C.F.R. § 24.709(a)(3). Those licenses were granted in February 1997, so by the time the new auction is held it will

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C. Allowing SBC to Participate Will Benefit the Public Without Undermining the Policy of Assisting: Smaller Companies

For the reasons discussed above, allowing SBC to participate in the auction will advance the Commission's policies of expanding wireless services and enhancing wireless competition. This does not mean, however, that allowing SBC to participate will undermine the Commission's policy of encouraging the entry of smaller companies.

While some designated entities have enjoyed a degree of success, the bankruptcy of companies like NextWave, DCR and GWI, and the problems encountered by other designated entities who acquired spectrum in a large number of markets – including the major markets that they could not afford to pay for or to build out – show that the old rules for encouraging small company participation have not worked effectively.

Allowing SBC to participate should help avoid those failures by providing a business discipline to the auction process. Faced with competitive bidding from a well qualified, non-designated entity like SBC, each participant in the auction, and its financial backers, will have to assess carefully what markets are most important to its business plans and offer the greatest opportunity for a successful entry, as well as how much it should be willing to pay for those markets. For example, this calculus might lead larger carriers like SBC to focus on major markets, which will require very substantial outlays of

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have been 3% years since NextWave received the licenses. Since the time is fast approaching when SBC could have purchased the licenses from NextWave, it is appropriate to allow it to participate in the auction.

capital, while smaller companies might choose to focus on smaller markets that they can afford to enter and where they stand a better chance of competing effectively.

Opening up the auction would also be fully consistent with the Commission's statutory **mandate**²⁶ because designated entities would remain eligible for the bidding credits and other benefits provided by the Commission's Rules. See 47 C.F.R.

§ 1.211 O(e). As the Commission noted as recently as earlier this month – in adopting its new 700 MHz auction rules, which included bidding credits for designated entities, but no entrepreneurs-only blocks, such bidding credits fulfill the Commission's obligations under Section 309(j)(3)(B):

We remain committed to meeting the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. We believe the bidding credits we adopt here for small businesses will further these objectives because many minority- and women-owned entities, as well as rural telephone companies, are small businesses and therefore will qualify for these special provisions.²⁷

²⁶ Section 309(j)(3)(B) of the Communications Act directs the Commission to design competitive bidding methodologies that “**promot[e]** economic opportunity and competition and **ensur[e]** that new 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 businesses, rural telephone companies, and businesses owned by members of minority groups and women.” 47 U.S.C. 309 (j)(3)(B).

²⁷ In re Service Rules for the 746-764 and 776-794 MHz Bands, First Report and Order, FCC 00-5, 2000 WL 11920 (rel. Jan. 7, 2000).

Congress has mandated, and the Commission has repeatedly recognized, that competition, rather than regulation, should be the driving force in shaping communications markets. While granting bidding credits to give smaller companies help in entering the market is perfectly consistent with that goal, allocating spectrum in a way that disregards competitive forces is not.

D. The Commission Has Granted Waivers In Similar Circumstances

There is ample authority to grant the waiver SBC seeks. Most obviously, the Staff has already publicly announced, in connection with the NextWave reorganization Term Sheet, that it would recommend granting essentially the same waiver to Nextel. This announcement was clearly based on the factors discussed above. Since SBC is indistinguishable from Nextel for purposes of participating in the upcoming auction, a waiver is appropriate. Moreover, as a number of other cases make clear, a waiver is appropriate where the net result is increased competition and the delivery of additional services to the public.²⁸ The waiver SBC seeks would achieve those very benefits.

²⁸ See In re Dominion Video Satellite, Inc., 14 FCC Rcd. 8182 (1999) (waiving requirement to construct and launch satellite in order to enhance competition and expand service offerings in DBS service); In re Application of MCI Telecommunications Corporation, 14 FCC Rcd. 11,077 (1999) (waiving financial qualification requirements in order to expand service and promote competition); In re Application of Columbia Communications Corporation, 14 FCC Rcd. 33 18,116 (1999) (granting waiver of financial qualifications rules for international satellite services because waiver would “enable Columbia to increase capacity and significantly expand its service offerings without preventing additional entry, thereby enhancing competition in the market for international satellite services”); In re Transmissions Holdings, Inc., 14 FCC Rcd. 3769, ¶10 (WTB and CSB 1999) (granting waiver of Sections 101.603(a) and (b) to allow Transmissions Holdings to modify its POFS microwave stations to transmit video entertainment in the 12 GHz band because waiver would “promote competition in one of

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V. **CONCLUSION**

For the reasons set forth above, the Commission should expeditiously grant a waiver of the eligibility requirements in 47 C.F.R. § 24.709 to allow SBC (or its subsidiaries) to participate in the auction of PCS spectrum scheduled to begin on July 26, 2000, and to be granted any licenses for which it submits a winning bid.

Respectfully submitted,



James D. Ellis
Wayne Watts
Carol L. Tacker
SBC Communications Inc.
175 E. Houston
San Antonio, TX 78205
(210) 351-3476

Dated: January 21, 2000

[Footnote continued from previous page]

the most highly concentrated communications markets, local video distribution, without any countervailing sacrifice of spectrum efficiency”).

Attachment

[Attached is a facsimile copy of the Affidavit of Stanley T. **Sigman**. The original will be filed as **soon** as it is receive-d in Washington.]

AFFIDAVIT OF STANLEY T. SIGMAN

STATE OF TEXAS)
) ss:
 COUNTY OF BEXAR)

STANLEY T. SIGMAN, being duly sworn, deposes and says:

1. My name is Stanley T. Sigman. I am the Group President – SBC National Operations for SBC Communications Inc. (“SBC”). In this capacity, I am responsible for all of SBC’s domestic wireless operations.

2. The purpose of this affidavit is to explain why SBC will participate in the auction for reclaimed C and F Block PCS authorizations scheduled to begin on July 26, 2000, provided that the Federal Communications Commission grants the necessary waiver of Section 24.709 of the Commission’s Rules.

3. SBC, through its wireless subsidiaries, is a leading provider of wireless communications services to consumers and businesses. Through its wireless brands – Southwestern Bell Wireless, Ameritech Cellular, Pacific Bell Wireless, Nevada Bell Wireless, SNET Wireless, Cellular One, and others – SBC offers cellular, PCS and paging services to 10.3 million customers. SBC serves 132 cellular metropolitan/rural service areas and PCS major/basic trading areas nationwide. SBC subsidiaries also are leading providers of digital tireless communications, which makes possible additional features such as real-time news and weather updates, Caller ID, message waiting indicator and short messaging service. SBC has made strides to open the world of wireless communications to new customers through innovative new service and payment options, including prepaid calling cards that allow customers to buy predetermined amounts of service and wireless “phone-in-a-box” offerings that allow customers to purchase wireless equipment at retail outlets.

4. Like SBC, the major wireless carriers have taken numerous steps over the past several years to expand and to provide facilities-based service in as many market areas as possible. This enhanced competition clearly benefits consumers and has led to a dramatic increase in the demand for wireless service. SBC wants to meet that demand in those market areas in which it does not currently hold wireless authorizations, in order to provide the consistent features and uniform functionality that consumers expect.

5. Therefore, SBC wants to participate in the re-auction of C and F Block PCS authorizations scheduled to begin on July 26, 2000 in order to bid on and obtain authorizations that would enable SBC to increase the number of market areas in which it can provide competitive, facilities-based wireless service.

6. In addition, in some markets where SBC has facilities, SBC provides **wireless** services using **less** than the 45 MHz **permitted** under the CMRS **spectrum** cap. Acquisition of additional spectrum in these markets would permit SBC to provide better quality service and offer additional features to its customers, as well **as** hasten the deployment **of 3G wireless technology**. **SBC wants** to participate in the upcoming auction in **order to** bid on such **spectrum**.

7. **If the Commission grants SBC's** petition **for** a waiver of Section **24.709** of the **Commission's Rules**, **SBC will aggressively seek to acquire** a substantial number of the authorizations that are being re-auctioned, and it will commit the financial and other resources necessary to build the new systems quickly **and** to compete vigorously in the **new market areas**.



Stanley T. Sigman
 Stanley T. Sigman

Subscribed and sworn to before me the 21 day of January, 2000.

Valerie H. James
 Notary Public

COPY

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

In the Matter of)
)
Petition of SBC Communications Inc.)
For a Waiver of the Eligibility)
Requirements of 47 C.F.R. § 24.709)
For the PCS Frequency Blocks C and F)
Auction to Begin on July 26, 2000)
)

To: The Commission

**SUPPLEMENT TO PETITION OF SBC COMMUNICATIONS INC.
FOR A WAIVER OF SECTION 24.709**

On January 21, 2000, SBC Communications Inc. ("SBC") filed with Mellon Bank in Pittsburgh, PA, a Petition For a Waiver of the Eligibility Requirements of 47 C.F.R. §24.709 For the PCS Frequency Blocks C and F Auction to Begin on July 26, 2000 (the "Petition"). SBC attached a facsimile copy of the Affidavit of Stanley T. Sigman to the Petition and stated that it would file the original Affidavit upon its receipt in Washington. Attached is the original of Mr. Sigman's Affidavit. SBC requests that this original be appended to its Petition.

Respectfully submitted,

Wayne Watts

James D. Ellis
Wayne Watts
Carol L. Tacker
SBC Communications Inc.
175 E. Houston
San Antonio, TX 78205
(210) 351-3476

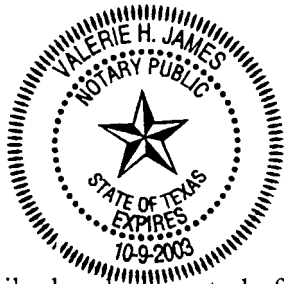
January 24, 2000

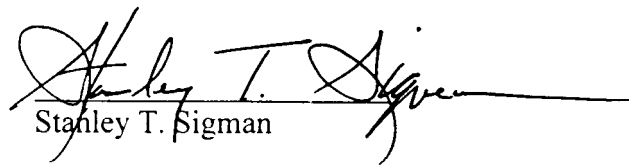
Copies distributed to:

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Kathryn C. Brown
Kathleen Ham

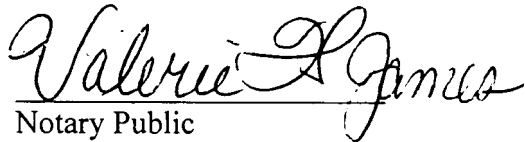
6. In addition, in some markets where SBC has facilities, SBC provides wireless services using less than the 45 MHz permitted under the CMRS spectrum cap. Acquisition of additional spectrum in these markets would permit SBC to provide better quality service and offer additional features to its customers, as well as hasten the deployment of 3G wireless technology. SBC wants to participate in the upcoming auction in order to bid on such spectrum.

7. If the Commission grants SBC's petition for a waiver of Section 24.709 of the Commission's Rules, SBC will aggressively seek to acquire a substantial number of the authorizations that are being re-auctioned, and it will commit the financial and other resources necessary to build the new systems quickly and to compete vigorously in the new market areas.




Stanley T. Sigman

Subscribed and sworn to before me the 21 day of January, 2000.


Notary Public