April 7, 1999

Mark J. O'Connor, Esq.
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1200 19th Street, N.W.
Washington, DC 20036-2430

Dear Mr. O'Connor:

This letter is in response to a request filed on behalf of Omnipoint Corporation ("Omnipoint")[1] for a limited waiver of Section 24.710(a) of the Commission's rules.[2] Section 24.710(a) prohibits an auction applicant from winning more than 98 C and F block broadband personal communications services ("PCS") licenses. The rule requires an applicant that is the high bidder for more than 98 C and F block licenses to withdraw its bids for a sufficient number of licenses to comply with the 98-license limitation.

Omnipoint, a bidder in Auction No. 22,[3] requests a waiver of Section 24.710(a) for Auction No. 22[4] in the following two ways. First, Omnipoint asks that the 98-license limit be raised to 112 for all Auction No. 22 bidders to reflect the increase in the total number of C block licenses that resulted from the disaggregation of some C block licenses pursuant to the Commission's *C Block Restructuring Orders*.[5] Second, Omnipoint asks that C block spectrum returned to the Commission pursuant to the pure amnesty payment option not count in the 112-license limit for Auction No. 22 bidders.[6] Omnipoint argues that its

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[1] Letter from Mark J. O'Connor, Counsel for Omnipoint Corporation, to Amy J. Zoslov, Chief, and Mark Bollinger, Deputy Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (March 31, 1999) ("*Waiver Request*").

[2] 47 C.F.R. § 24.710(a).

[3] Auction No. 22 began on March 23, 1999.

[4] *Waiver Request* at 3, 4.

[5] *See* Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16436 (1997) ("*C Block Second Report and Order*"); Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998) ("*C Block Reconsideration Order*") (collectively "*C Block Restructuring Orders*").

[6] *Waiver Request* at 1-2.

Mark J. O'Connor, Esq.
April 7, 1999

request meets one of the two alternative standards governing grant of waiver requests, i.e, that the underlying purpose of the rule would not be served or would be frustrated by the rule's application to Auction No. 22, and that a grant of the waiver would be in the

public interest.[7]  We agree.

In 1994, the Commission designated broadband PCS licenses in the C and F blocks as "entrepreneurs' blocks."[8]  To achieve a fair distribution of licenses within these two blocks, the Commission decided that no single entity could win more than 98 C and F block licenses, which represented approximately 10 percent of the then-total of 986 C and F block licenses.[9]  The Commission determined that this limit would ensure that at least 10 winning bidders would enjoy the benefits of the entrepreneurs' blocks, while still allowing bidders to pursue aggregation strategies that included large numbers of licenses and extensive geographic coverage.[10]

Subsequently, in the *C Block Restructuring Orders*, the Commission allowed C block licensees the option of disaggregating 15 MHz of their 30 MHz C block licenses and returning this spectrum to the Commission for future auction.[11]  The exercise of this option added 134 C block licenses to the original C and F block license total, bringing the current total to 1,120 C and F block licenses.[12]  The Commission

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[7]  *See* 47 C.F.R. § 1.925; *Waiver Request* at 1-2.  Omnipoint relies on Section 24.819 of the Commission's rules, 47 C.F.R. § 24.819.  On February 12, 1999, however, Section 24.819 was superseded by Section 1.925, which contains essentially the same standard for granting a waiver.  *See* 63 Fed. Reg. 68,904 (December 14, 1998).

[8]  *See* 47 C.F.R. § 24.709(a); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, FCC 94-178, *Fifth Report and Order*, 9 FCC Rcd 5532, 5585 ¶ 121 (1994) ("*Fifth Report and Order*").

[9]  *Fifth Report and Order* at 5606 ¶ 170.

[10]  *Id.*  The 98-license limit applies only to licenses won at auction; it is not an ownership cap on the total number of licenses that may be obtained post-auction.  *Id.* at 5606 ¶ 171.  *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, FCC 94-285, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 464-65 ¶¶ 114-16 (1994) (retaining the 98-license limit); Amendment of Parts 20 and 24 of the Commission's rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, FCC 96-278, *Report and Order*, 11 FCC Rcd 7824, 7895 ¶¶ 149-50 (1996) (declining to modify the 10 percent license limit rule).

[11]  *C Block Second Report and Order*, 12 FCC Rcd at 16455-56 ¶¶ 38-39; *C Block Reconsideration Order*, 13 FCC Rcd at 8366-67 ¶ 49.

[12]  *See* Wireless Telecommunications Bureau Announces Broadband Personal Communications Services C Block

Mark J. O'Connor, Esq.
April 7, 1999

also allowed C block licensees to return spectrum to the Commission under a "pure amnesty" option while maintaining their eligibility to reacquire this returned spectrum in future

auctions or through other means.[13]  The Commission did not address whether or not spectrum returned pursuant to the pure amnesty option would continue to count against licensees' 98-license limit.

We find it would be in the public interest to grant a waiver to all Auction 22 bidders.  Allowing bidders to win 10 percent of the new number of C and F block licenses would result in a 112-license limit.  We find Omnipoint's arguments persuasive and believe that the underlying purpose of Section 24.710(a) would not be served by adherence to the 98-license limit for bidders in Auction No. 22.  There has been a wide distribution of C and F block licenses from Auctions No. 5, 10, and 11.  In addition, because the number of C and F block licenses in existence now totals 1,120, an increased limit of 112 C and F block licenses applicable to bidders in Auction No. 22 would maintain the limit at the 10 percent of total licenses envisioned by the Commission.

We also find it would be in the public interest not to count against the license limit those licenses returned pursuant to the "amnesty option."[14]  The Commission established the 98-license limit prior to its decision to allow C block licensees to return spectrum pursuant to the *C Block Restructuring Orders*.  We agree with Omnipoint that C block spectrum returned under the pure amnesty option should not count against Auction No. 22 bidders' C and F block license limit, because such licenses will be counted against the license limits of the bidders that ultimately acquire the licenses at auction.

Accordingly, we grant Omnipoint's request for a limited waiver of Section 24.710(a) for bidders in Auction No. 22.  Bidders in Auction No. 22 will be subject to a 112-license limit.  We clarify that C and F block licenses won by Auction No. 22 bidders at prior auctions count toward this limit, except that C block spectrum returned to the Commission pursuant to the pure amnesty option does not count toward the limit.

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Elections, *Public Notice*, DA 98-1168 (rel. June 16, 1998); Erratum to Wireless Bureau Announces Broadband Personal Communications Services C Block Elections (rel. June 18, 1998); Wireless Telecommunications Bureau Announces Broadband Personal Communications Services (PCS) C Block Unconditional Elections, *Public Notice*, DA 98-1340 (rel. July 2, 1998).


[13]     *C Block Second Report and Order*, 12 FCC Rcd at 16462-64 ¶¶ 53-58; *C Block Reconsideration Order*, 13 FCC Rcd at 8357-59 ¶¶ 31-35.


[14]     *Waiver Request* at 5.  Omnipoint appears to be referring to the pure amnesty option.  *Id.*

Mark J. O'Connor, Esq.
April 7, 1999

       This action is taken pursuant to delegated authority under Section 0.331 of the Commission's rules. 47 C.F.R. § 0.331.

                         Sincerely,


                         Amy J. Zoslov
                         Chief, Auctions and Industry Analysis Division
                         Wireless Telecommunications Bureau