



NEWS

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

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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NEWS MEDIA CONTACT:
Richard Diamond at (202) 418-0506

FCC ANNOUNCES NEXTWAVE SETTLEMENT AGREEMENT

Vital Spectrum Resources Freed, Nets at least \$4 Billion

The Federal Communications Commission announced today that the government has reached an agreement with NextWave Communications, Inc. (NextWave) regarding NextWave's broadband personal communication service (PCS) licenses, which have been in dispute since 1996.

The proposed deal would immediately make available for other uses the vast majority of the spectrum that had been tied up in litigation since NextWave declared bankruptcy in 1998.

The government pursued three overarching goals in settling this case: (i) putting the NextWave spectrum that lay dormant for so long to active use; (ii) recouping value from NextWave for the U.S. government; and (iii) facilitating a final resolution to the entire matter within the context of the Supreme Court's *NextWave* opinion.

Specifically, the agreement:

- provides for the immediate return of spectrum licenses that will account for at least 90% of NextWave's spectrum when licenses already sold to Cingular Wireless are taken into account;
- contemplates total cash recovery (including NextWave's down payment) of \$1.6 billion if anticipated sales occur;
- results in a total cash and spectrum recovery of at least \$4 billion based on NextWave's original purchase price;
- requires additional cash payments to the U.S. Treasury if there is a dramatic increase in value and sale of the spectrum that NextWave retains;
- extinguishes any potential claims for damages against the FCC and the U.S. government;
- builds in safeguards to ensure prompt and timely payment by NextWave; and
- avoids the use of debt instruments, which could be subject to further default and delay.

The deal will require approval of the U.S. Bankruptcy Court for the Southern District of New York.

Background

From 1996 to 1997, NextWave purchased dozens of wireless spectrum licenses in FCC auctions for approximately \$4.8 billion. NextWave was entitled to pay over time for the licenses it purchased. Each license granted to NextWave by the Commission was conditioned on NextWave's full and timely payment of all its installments, and the licenses made clear that failure to make such payment caused their automatic cancellation. In 1998, after making an initial down payment of \$500 million, NextWave filed for bankruptcy and refused to make additional payment. Extensive litigation followed in multiple courts, ultimately resulting in today's settlement. The FCC recently approved NextWave's sale of some wireless spectrum to Cingular Wireless LLC resulting in \$714 million in cash to the FCC and leaving NextWave with the balance of the wireless spectrum licenses at issue here (prior to this settlement).

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