

Before The
Federal Communications Commission
Washington, D.C. 20554

In The Matter Of)
)
Broadband PCS Spectrum) Report No. AUC-03-58-A
Auction Scheduled for)
January 12, 2005)

COMMENTS OF MAXICOM PCS, LLC

Maxicom PCS, L.L.C. (“Maxicom”) respectfully submits its Comments in response to the proposed rules for Auction No. 58 set forth in the Commission’s Public Notice dated June 18, 2004 (the “PN”). Maxicom was founded and is managed by entrepreneurs with over 25 years of experience in the wireless telecommunications industry.

Maxicom participated as an investor in small businesses that bid in the C and F block PCS auctions. Maxicom was an early investor in AirLink, LLC, an entity that placed a \$20M deposit at the FCC to participate in the C Block auction in 1996. AirLink subsequently withdrew from the auction based on its belief that the auction prices would not support a sound business plan. AirGate Wireless, another Maxicom investment, participated in the F block auction and was awarded licenses for five BTAs. AirGate Wireless participated in several C block re-auctions including the last C block re-auction, Auction 35. In that auction, AirGate Wireless participated as the general partner of SVC BidCo, L.P. - the high bidder on 5 licenses. These auction results were later rescinded by the FCC based on the Supreme Court’s ruling. Maxicom currently intends to participate in Auction 58 with a designated entity.

As a veteran of the PCS auctions, Maxicom supports the Commission's proposal in the PN to keep certain C block spectrum closed for bidding by small businesses only and to provide bidding credits in the open bidding for C and F block spectrum. These restrictions and credits are important if small businesses like Maxicom are to have a viable opportunity to obtain PCS spectrum in the auction. While the C block has had a difficult history, due in large part to the reckless behavior of a few bidders like Nextwave, other entrepreneurs behaved responsibly and continue to seek opportunities to acquire spectrum. Maxicom has learned that the opportunity to bid in an auction against small businesses does not guarantee success; however, the opportunity to bid successfully is only realistic if the auction is closed to small businesses or includes bidding credits that help level the playing field.

Without closed bidding and bidding credits in the open bidding blocks, small businesses will not be able to raise the capital necessary to participate in the auction. The auction process requires a commitment of significant financial resources as well as a dedication of time by management. For small businesses both of these resources are limited. In prior auctions, Maxicom has helped its small business bidders raise equity and debt financing. All of the financing was dependent on the bidder's status as a small business, closed bidding on certain spectrum blocks, and the availability of bidding credits. Without these incentives for small business participation, capital will not be available for small businesses to participate in broadband PCS auctions. Investors and lenders are not willing to finance small businesses to bid in auctions where their competitors are large companies with significant financial resources and access to capital.

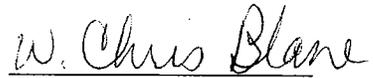
The rules proposed in the PN for the auction embody the requirements of the statute authorizing the use of spectrum auctions and the Commission's policy goals of avoiding excessive concentration of licenses and providing opportunities for diversity in ownership of spectrum. Congress conditioned the Commission's authority to award spectrum by auction on the creation of rules that would not close the auction door to small businesses, rural telephone companies and businesses owned by minorities and women. 47 U.S.C. §309(j)(3)(B). The Commission should keep the door of opportunity open in Auction 58.

Maxicom urges the Commission to adhere to its auction rules as proposed in the PN that meet the requirement of Section 309(j) of the Communications Act, as amended. Closed bidding for certain C block spectrum and bidding credits in the open C and F blocks as proposed by the Commission in the PN will help to disseminate licenses among a wide variety of applicants including small businesses. 47 U.S.C. §309(j).

Small businesses, like those in which Maxicom has invested, have learned to be patient and exercise sound business judgment in bidding in PCS auctions. They have also relied on the PCS auction rules developed by the Commission over the past ten years that recognize the significant contribution that small businesses can make to the U.S. economy and the PCS industry. The eligibility rules proposed in the PN will provide a realistic opportunity for small businesses to participate in what may be the final

broadband PCS auction. Accordingly, Maxicom encourages the Commission to apply the rules as proposed in the PN to Auction 58.

Respectfully submitted,

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