

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

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|--------------------------------|---|------------|------------|
| In re Applications of |) | File Nos. | |
| |) | 00200CWL96 | 00430CWL96 |
| GWI PCS, Inc. |) | 00406CWL96 | 00436CWL96 |
| |) | 00410CWL96 | 00442CWL96 |
| For Authority to Construct and |) | 00413CWL96 | 00447CWL96 |
| Operate Broadband PCS Systems |) | 00417CWL96 | 00455CWL96 |
| Operating on Frequency Block C |) | 00420CWL96 | 00459CWL96 |
| |) | 00424CWL96 | 00462CWL96 |

MEMORANDUM OPINION AND ORDER

Adopted: January 27, 1997

Released: April 4, 1997

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. By this *Memorandum Opinion and Order*, we grant applications for fourteen Broadband C Block Personal Communication Services (PCS) licenses for which GWI PCS, Inc. (GWI PCS) was the high bidder.¹ A list of the licenses is set forth in Appendix A. We also dismiss as moot the "Petition to Deny, or Alternatively, Informal Objection" (Informal Objection) filed jointly by Antigone Communications Limited Partnership and PCS Devco, Inc. (Antigone/Devco) against these applications. Antigone/Devco argues that GWI PCS' foreign ownership exceeded the benchmark set forth in Section 310(b)(4) of The Communications Act of 1934, as amended (the Act), and that GWI PCS violated Section 1.2105(c) of the Commission's rules prohibiting collusion among auction applicants.² We have independently

¹ On November 5, 1996, GWI PCS submitted minor amendments to reflect the *pro forma* assignment of each of the 14 applications that it submitted for C Block PCS licenses from GWI PCS to 14 newly created wholly owned subsidiaries of GWI PCS. Those *pro forma* assignments were granted by Public Notice on January 27, 1997. See Public Notice, Wireless Telecommunications Bureau Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block Licenses to GWI PCS, Inc., DA 97-156 (released January 27, 1997). On February, 28, 1997, we subsequently granted a second *pro forma* assignment which transferred certain licenses to intermediate subsidiaries and one license to a newly formed subsidiary of General Wireless, Inc. See Public Notice, Wireless Telecommunications Bureau, Commercial Wireless Service Information, Report No. LB-97-22 (released February 28, 1997).

² 47 U.S.C. § 310(b)(4); and 47 C.F.R. § 1.2105(c).

investigated these issues and find there to be no substantial and material questions of fact. We therefore dismiss Antigone/Devco's Informal Objection as moot.

II. BACKGROUND

2. GWI PCS was the high bidder for 14 C Block PCS licenses. GWI PCS is the wholly owned subsidiary of General Wireless, Inc. (GWI or the Parent).³ On May 22, 1996, GWI PCS electronically filed a Form 600 application with the Commission.⁴ Subsequently, on May 31, 1996, the Commission released a Public Notice accepting GWI PCS' application for filing and setting July 1, 1996, as the cut-off date for filing petitions to deny.⁵ On July 17, 1996, sixteen days after that cut-off date, Antigone/Devco jointly filed its Informal Objection. On July 31, 1996, GWI PCS filed an "Opposition to Informal Objection" disputing Antigone/Devco's claims.⁶ Antigone/Devco responded to GWI PCS' opposition on August 16, 1996.

3. Antigone/Devco's Informal Objection argues that a June 28, 1996 stock registration filing with the Securities Exchange Commission (SEC) revealed, for the first time, GWI's relationship with Hyundai Electronics of America (Hyundai).⁷ Hyundai, a wholly-owned subsidiary of a Korean corporation, was also an attributable investor in U.S. Airwaves, Inc., the parent of U.S. Airwaves Holding, Inc. (U.S. Airwaves) which was eligible to bid for, and nominally bid in, all markets in the C Block auction.⁸ Antigone/Devco argues that since GWI's SEC information was not publicly available for several days after the June 28 filing, the Commission should accept its late-filed petition, or alternatively, consider its pleading as an informal objection and address the merits.⁹

4. Because the Wireless Telecommunications Bureau (Bureau) needed additional information to determine the qualifications of GWI PCS to be a Commission licensee, we invoked our investigative powers under Section 308(b) of the Act to gather more information

³ GWI PCS's Federal Communications Commission Long Form 600 Application filed May 22, 1996, Ex. A. at 1 (GWI PCS Form 600).

⁴ GWI PCS Form 600.

⁵ See Public Notice, Broadband Personal Communications Services Entrepreneurs' C Block Serv. Information, Report No. CW-96-5 (released May 31, 1996).

⁶ Because we dismiss the Informal Objection as moot by our Section 308(b) investigation, we do not reach the standing of Antigone/Devco to bring the petition, as raised in GWI PCS' "Opposition to Informal Objection."

⁷ Antigone/Devco's "Petition to Deny, or Alternatively, Informal Objection" at 3-6.

⁸ See *infra* note 63.

⁹ *Id.* at 1 n.2. We note that the Bureau was aware of the GWI/Hyundai relationship prior to the June 28 SEC filing because the same information was provided in Ex. J of GWI PCS' Form 600. Ex. J, however, was not made available to the public while a confidentiality request was pending.

about Hyundai's relationship with GWI, GWI PCS and U.S. Airwaves.¹⁰ Pursuant to Section 308(b), letters of inquiry were sent by the Bureau to GWI, Hyundai and U.S. Airwaves regarding GWI's foreign investment, and the extent and timing of GWI's financial arrangements with Hyundai.¹¹ Responses to the inquiry and documentary support were submitted by GWI, Hyundai and U.S. Airwaves on November 25, 1996.¹² On December 5, 1996, the Bureau sent the parties a supplemental letter of inquiry requesting additional information and documents.¹³ Responses and the requested documents were received by the Bureau on December 16, 1996.¹⁴

5. As set forth in detail in Section III(A), below, our Section 308(b) investigation found that GWI PCS's foreign ownership falls below the twenty five percent benchmark of Section 310(b)(4) of the Act. In Section III(B), below, we also found insufficient evidence to warrant a finding of a violation of Section 1.2105(c)'s prohibition of collusion. Because our 308(b) investigation addressed the issues raised by Antigone/Devco and found there to be no substantial and material questions of fact, we dismiss the Informal Objection without reaching the procedural issues raised by the parties. We find that GWI PCS is qualified to be a Commission licensee and that grant of licenses to GWI PCS is in the public interest. Accordingly, on January 27, 1997, concurrently with the adoption of this *Memorandum Opinion and Order*, the Bureau released a Public Notice granting GWI PCS licenses for the 14 markets in which it was the high bidder.¹⁵ The grant was conditioned upon GWI PCS's timely submission of its remaining down payment, which has been paid, and satisfaction of its installment payment obligations.¹⁶

¹⁰ See Section 308(b) Letter of Inquiry to Jay Birnbaum, Esq., Y.H. Kim, and Robert Zipp, Esq. from David Furth, Chief, Commercial Wireless Division, dated November 15, 1996 (November 15 Letter of Inquiry).

¹¹ *Id.*

¹² Letter to David Furth, Chief, Commercial Wireless Division from Bartley C. Deamer, Esq., dated November 22, 1996 (November 22 Response to Letter of Inquiry); and Letter to David Furth, Chief, Commercial Wireless Division from Jay Birnbaum, Esq., dated November 25, 1996 (November 25 Response to Letter of Inquiry).

¹³ Supplemental Section 308(b) Letter of Inquiry to Jay Birnbaum, Esq., Y.H. Kim, and Robert Zipp, Esq. from David Furth, Chief, Commercial Wireless Division, dated December 5, 1996 (December 5 Supplemental Letter of Inquiry).

¹⁴ Supplemental Response to Letter of Inquiry to David Furth, Chief, Commercial Wireless Division from Bartley C. Deamer, Esq., dated December 13, 1996 (December 13 Supplemental Response to Letter of Inquiry); and Supplemental Response to Letter of Inquiry to David Furth, Chief, Commercial Wireless Division from Jay Birnbaum, Esq., dated December 16, 1996 (December 16 Supplemental Response to Letter of Inquiry).

¹⁵ See Public Notice, Wireless Telecommunications Bureau Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block Licenses to GWI PCS, Inc., DA 97-156 (released January 27, 1997).

¹⁶ We note that the Bureau has ordered "that the installment payment deadline for all broadband PCS installment payments is suspended pending further action that will reinstate such deadlines." See *In the Matter of Installment Payments for PCS Licenses, Order*, DA 97-649 (released March 31, 1997).

III. DISCUSSION

A. Foreign Ownership

6. Pursuant to the limitations set forth in the Act, we must consider whether GWI PCS exceeds the twenty five percent foreign ownership benchmark of Section 310(b)(4).¹⁷ Absent a public interest showing, a licensee cannot be directly or indirectly controlled by an entity that has more than twenty five percent foreign ownership.¹⁸ GWI PCS' Form 600 provided the Commission with a detailed listing of both the domestic and foreign owners of its sole shareholder and parent company, GWI, and certified that GWI's foreign ownership fell below the statutory benchmark of Section 310(b)(4).¹⁹

7. Exhibit J of GWI PCS' Form 600, however, summarized a Loan Agreement, Stock Purchase Agreement, Equipment Purchase Agreement, Employee Training Agreement, and Senior Promissory Note between GWI and Hyundai. These agreements (collectively referred to hereinafter as the "Hyundai Loan Agreement") comprise the totality of the financial arrangements between GWI and Hyundai. Hyundai, a wholly owned subsidiary of a Korean corporation, was not included in GWI PCS' Form 600 foreign ownership calculations. Pursuant to our authority under Section 308(b) of the Act, we sought additional information regarding the number of shares of GWI stock held by foreign shareholders as well as the amount of capital contributed by foreign investors, including Hyundai.²⁰ Based on the information and documentary support received in response to our inquiries,²¹ we conclude that GWI's foreign ownership falls below the statutory benchmark of Section 310(b)(4).

1. Consideration of Stock Ownership and Capital Contributions under Section 310(b)(4) of the Act.

8. As a threshold matter, Section 310(b)(4) confers an affirmative duty upon applicants and licensees to report to the Commission all foreign ownership that may exceed the twenty five percent benchmark. The Commission's decision in *Fox I* states that "[a]n applicant must specifically and directly inform the Commission that the ownership structure under consideration may exceed the foreign ownership benchmark, and that absent such explicit notification and an

¹⁷ 47 U.S.C. § 310(b)(4).

¹⁸ *Id.*

¹⁹ GWI PCS Form 600, Ex. A at 2-6.

²⁰ Because performance under the Hyundai Loan Agreement is contingent upon grant of GWI PCS' licenses, we requested that GWI provide information regarding Hyundai's rights and obligations under the Hyundai Loan Agreement once Hyundai advances sums under the loan to GWI, and GWI distributes stock to Hyundai.

²¹ November 22 Response to Letter of Inquiry; November 25 Response to Letter of Inquiry; December 13 Supplemental Response to Letter of Inquiry; and December 16 Supplemental Response to Letter of Inquiry.

express finding by the Commission that allowing the applicant to exceed the benchmark is in the public interest, an applicant may not exceed the benchmark."²² Accordingly, we affirm that it is an applicant or licensee's obligation to notify the Commission of any foreign ownership that may exceed the statute's twenty five percent benchmark by providing the Commission with information regarding both the number of its foreign-held shares of stock as well as the amount of its capital contributed by foreign investors.²³

9. A Section 310(b)(4) inquiry turns on a two-pronged analysis, one pertaining to voting interests and the second to ownership interests.²⁴ The first prong of a Section 310(b)(4) analysis requires that we calculate the percentage of outstanding shares of foreign-owned stock in a parent corporation, while the second prong seeks to measure the benefits of ownership.²⁵ The Commission has consistently stated, "[s]tock ownership in a corporation generally measures an investor's benefit of ownership in that corporation, including voting rights and distributions of dividends, and generally reflects the amount of shareholder capital contributed to the corporation."²⁶ It is axiomatic that a prudent investor invests funds that fairly reflect the benefits that it expects to receive in return for its investment. Thus, where the ownership of corporate shares does not correspond to the capital contributed to a corporation, we evaluate both stock ownership and capital contributions to determine the percentage of ownership interests held by an individual investor.²⁷

10. *Bona fide* debt, however, is immaterial in a Section 310(b)(4) analysis.²⁸ *Fox II* and *NextWave* affirmed that "debentures, warrants, options and other convertible instruments do not

²² See Application of Fox Television Stations, Inc., *Memorandum Opinion and Order*, 10 FCC Rcd 8452, 8475, ¶ 53 (1995) (*Fox I*).

²³ *Id.*; see also Application of NextWave Personal Communications, Inc., *Memorandum Opinion and Order*, DA 97-328, ¶ 87 (Wireless Telecommunications Bureau February 14, 1997) (*NextWave*). An Application for Review was filed on March 17, 1997, by Antigone Communications Limited Partnership and PCS Devco, Inc. and is currently pending in the Bureau.

²⁴ BBC Licenses Subsidiary L.P., *Order*, 10 FCC Rcd 10968, 10973, ¶ 22 (1995).

²⁵ *NextWave* at ¶ 36 (citing Data Transmission Co., *Order*, 59 F.C.C. 2d 909, 910 (1976) (finding that Section 310(b) was satisfied where a foreign investor owned 9.5 percent of the licensee's shares and 9.67 percent of the parent's shares, despite providing additional funding through convertible debt)); Westinghouse Radio Stations, Inc., *Order*, 19 F.C.C. 2d 1359, 1451 (1955) (finding that 22.42 percent foreign ownership of shares issued by parent corporation was within the Section 310(b) benchmark).

²⁶ *Id.* (citing *Fox I*, 10 FCC Rcd at 8472-8473, ¶¶ 46-47).

²⁷ *Id.* (citing *Fox I*, 10 FCC Rcd at 8468, ¶ 36 & 8474, ¶ 48).

²⁸ Univision Holding Inc., *Order*, 7 FCC Rcd 6672, 6673, ¶ 2 n.6 (1992) (*Univision*) (citing Data Transmission Co., *Order*, 52 F.C.C. 2d 439 (1975)).

constitute 'capital stock'" and are not relevant in a Section 310(b)(4) inquiry.²⁹ In *Univision*, the Commission explained that under normal lending conditions, creditors do not possess either an ownership or voting interest in a licensee so "the direct restrictions embodied in [S]ection 310(b) are not applicable to debt interests."³⁰ Following this reasoning, we exclude *bona fide* debt from our Section 310(b)(4) foreign ownership calculations. Future interests are also not factored into Section 310(b) determinations. Following Commission precedent, in *DCR PCS, Inc.* the Bureau held that "an option held by a foreigner to buy stock in a licensee or the parent of a licensee is not cognizable until it is exercised."³¹ Although we will not factor *bona fide* debt or legitimate future interests into our Section 310(b)(4) calculations,³² we will not accept a licensee's nomenclature at face value.³³

11. In *Fox I*, an Australian company contributed ninety-nine percent of Fox's paid-in capital but only owned twenty four percent of its voting stock.³⁴ Although Fox contended that its licenses should be renewed because its foreign ownership of stock fell below the twenty five percent statutory benchmark, the Commission explained that "[u]sing a simple 'count the shares' approach may not accurately reflect the actual extent of alien ownership interests in a corporation, particularly when the corporation issues more than one class of stock and, those classes have widely divergent characteristics."³⁵ *Fox I*, therefore, also considered the amount of foreign capital contributed to a corporation to determine compliance with the statutory ownership benchmark. The Commission granted the renewal of Fox's licenses conditioned upon a promise that Fox would restructure its foreign equity capital contributions to fall within Section 310(b)(4).³⁶

²⁹ Application of Fox Television Stations, Inc., *Memorandum Opinion and Order*, 11 FCC Rcd 5714, 5720, ¶ 16 (1995) (*Fox II*); *NextWave* at ¶ 46.

³⁰ *Id.*

³¹ *DCR PCS, Inc., Order*, DA 96-1816 at ¶ 24 (Wireless Telecommunications Bureau Nov. 4, 1996). An Application for Review of this *Order* was filed on November 29, 1996, by National Telecom PCS, Inc. and is currently pending in the Bureau. In *DCR PCS*, the Bureau distinguished the Commission's Entrepreneur Block and Designated Entity Eligibility rules which require that stock options be treated as fully exercised for purposes of eligibility from the Commission's rules for foreign ownership. In examining foreign ownership separately and apart from PCS eligibility, we stated we would "not treat options as exercised in those cases where there [was] a redemption or savings clause contained in the applicant's corporate charter which would allow it to redeem foreign shares to ensure compliance with Section 310(b)(4) of the Act in the event such an option were exercised." *Id.*

³² *Wilner & Scheiner, Order*, 103 F.C.C. 2d 511, 519, ¶ 14 n.38 (1985) (*Wilner & Scheiner*); see also *Univision* 7 FCC Rcd at 6676-77, ¶ 22 n.19.

³³ *Fox II*, 11 FCC Rcd at 5720, ¶ 16.

³⁴ *Fox I*, 10 FCC Rcd at 8454, ¶ 2.

³⁵ *Id.* at 8468, ¶ 36.

³⁶ *Id.* at 8524, ¶ 183.

12. Fox's restructuring failed because the Commission determined that Fox's \$1.4 billion debt instrument was not *bona fide* debt but rather, paid-in equity.³⁷ To distinguish debt from equity, *Fox II* applied the following five factors recommended by Congress: "[1] whether there [was] a written unconditional promise to repay the money on demand and to pay a fixed rate of interest; [2] whether there [was] subordination to or preference over any indebtedness of the company; [3] the company's debt/equity ratio; [4] whether the alleged debt [was] convertible to stock; and, [5] what [was] the relationship between holdings of stock in the corporation and holdings of the interest in question."³⁸ In so doing, *Fox II* "examine[d] the economic realities of the transactions under review and not simply the labels attached by the parties to their corporate incidents."³⁹ Pursuant to this analysis, where debt disguises paid-in equity, it is included in foreign ownership calculations.⁴⁰

13. We recently considered the application of the *Fox II* factors in *NextWave*.⁴¹ In *NextWave*, the applicant sought C Block PCS licenses where its parent corporation's foreign stock ownership and foreign capital contributions exceeded the statutory benchmark of Section 310(b)(4).⁴² Applying the factors enunciated in *Fox II*, the Bureau examined *NextWave*'s debt instruments and determined that certain financial agreements were more properly characterized as equity.⁴³ The Bureau granted *NextWave*'s licenses conditioned on its restructuring to conform its foreign ownership to the twenty five percent statutory benchmark of Section 310(b)(4) within a six month time period.⁴⁴

14. Applying Commission precedent and examining the economic realities of the Hyundai/GWI relationship, we find that, based on a totality of the circumstances, the Hyundai Loan Agreement constitutes *bona fide* debt. Thus, GWI's foreign ownership falls below the twenty five percent benchmark of Section 310(b)(4). This conclusion is based on the analysis set forth below.

³⁷ *Fox II*, 11 FCC Rcd at 5719, ¶ 15.

³⁸ *Id.* at 5720, ¶ 16.

³⁹ *Id.* at 5719, ¶ 14.

⁴⁰ *Id.*

⁴¹ *NextWave* at ¶ 44.

⁴² *Id.* at ¶ 7.

⁴³ *Id.* at ¶ 47.

⁴⁴ *Id.* at ¶ 1.

2. GWI's Foreign Investment Falls Below the Statutory Benchmark

15. GWI has authorized three classes of common stock: Class A, Class B, and Class C. GWI has issued 3 shares of Class A stock, 105,472 shares of Class B stock, and 609,239 shares of Class C stock. Of the 714,714 shares issued, 148,300 shares of GWI's stock are held by foreign owners. Thus, the amount of GWI's foreign-held shares of stock falls below the Section 310(b)(4) statutory benchmark because 20.7 percent of GWI's issued stock is foreign owned. Similarly, GWI has received \$67,598,790 in paid-in-capital, of which \$14,830,000 was contributed by foreign investors. Because 21.9 percent of GWI's paid-in capital has been provided by foreign sources, GWI's foreign capital contributions also fall below the statutory threshold for foreign ownership. These calculations, however, exclude any interest of Hyundai in GWI by virtue of the Hyundai Loan Agreement.

16. GWI has negotiated a loan with Hyundai for \$50 million and has given a promissory note for that sum. Once the Hyundai loan is made to GWI, it will be GWI's only outstanding debt other than the \$954 million it owes to the United States Government for the financing of its purchase of GWI PCS' fourteen C Block licenses. Under the terms of the Hyundai Loan Agreement, GWI may draw upon the principal of the loan once the Commission grants GWI PCS its licenses. As the Commission stated in *Fox II*, our review under Section 310(b)(4) "will apply an analysis based on the economic realities of the situation to any proposed transaction to which a distinction between debt and equity is pertinent."⁴⁵ In the instant matter, the Bureau examined the Hyundai Loan Agreement in accordance with Commission precedent to determine whether it should be characterized as equity or *bona fide* debt. Applying the *Fox II* factors to the Hyundai Loan Agreement, we conclude that, based on a totality of the circumstances, the Hyundai transaction constitutes *bona fide* debt and is therefore not relevant to our Section 310(b)(4) calculations. Our analysis applying the five *Fox* factors is as follows:

17. A written unconditional promise by GWI to repay the principal amount of the Hyundai loan on demand and to pay a fixed interest rate. The Hyundai Loan Agreement bears a 6.5 percent interest rate and is due and payable one year from the anniversary of the signing of the senior promissory note.⁴⁶ If the debt is not retired upon the one year anniversary of the signing of the senior promissory note, then there is a renewal option and the interest rate increases to 9 percent per annum on the outstanding principal balance of the note until the obligation is fully paid.⁴⁷ While we note that a 6.5 percent interest rate was lower than the prime rate of 8.25 percent at the time the loan was signed, this factor standing alone is not significant

⁴⁵ *Fox II*, 11 FCC Rcd at 5719, ¶ 14; see also *Wilner & Scheiner*, 103 F.C.C. 2d at 519, ¶ 14 n.38 (stating that the "Commission has the discretion to consider a broad range of factors, including debt transactions, in evaluating whether to grant an exemption from a strict application of the statutory benchmark contained in Section 310(b)(4) in a specific factual situation where such an exemption would further the public interest.")

⁴⁶ December 16 Supplemental Response to Letter of Inquiry, Ex. 1.

⁴⁷ *Id.*

enough to warrant a finding that the Hyundai Loan Agreement should be characterized equity rather than debt.

18. Accordingly, we find that GWI's unconditional promise to repay Hyundai on demand at a fixed interest rate, coupled with the additional factors analyzed below, leads to the conclusion that the Hyundai Loan Agreement constitutes *bona fide* debt. Our decision acknowledges the principle propounded by tax courts, that parties are not precluded "from exercising sound business judgment in obtaining needed investment funds at the most favorable rate possible, whether it be a commercial loan, or more likely, . . . a loan from private interested sources with sufficient faith in the success of the venture and their ultimate repayment to delete or minimize the 'risk factor' in their rate of return."⁴⁸

19. Whether there is subordination to or preference over any indebtedness of GWI. This factor determines the extent to which debt is subordinated to other indebtedness, and to what extent the debt has a repayment preference over any other indebtedness.⁴⁹ In a corporation's capital structure, one of the risks of equity ownership is its inferior liquidation preference which is subordinated to outstanding debt. Generally, where a creditor's only hope for repayment is after obligations to the debtor's other creditors are satisfied, such subordination indicates that the advances are capital contributions and not debt.⁵⁰

20. We have assessed the overall subordination obligations and preference rights in the Hyundai Loan Agreement with GWI, and we find that these subordination and preference rights are characteristic of debt. Any amounts due under the Hyundai Loan Agreement with GWI will be subordinated only to the United States Government financing of \$954 million for GWI PCS's 14 C Block licenses. With the exception of the Federal Government financing, the Hyundai Loan Agreement provides for superior liquidation preferences to any other indebtedness of GWI, and GWI is not permitted to incur debt senior to, or of the same parity as, the Hyundai Loan Agreement.⁵¹ We find the fact that the Hyundai Loan Agreement is subordinated only to the Federal Government financing to be further evidence that Hyundai has a debt interest, and not an equity stake, in GWI.

21. GWI's debt to equity ratio. A high debt to equity ratio can provide strong evidence that debt is not *bona fide*.⁵² Where too little equity supports large debt, it is assumed that any

⁴⁸ *Tomlinson v. The 1661 Corporation*, 377 F.2d 291, 299 (5th Cir. 1967).

⁴⁹ *NextWave* at ¶ 53 n.142 (citing *Roth Steel Tube Co. v. Commissioner*, 800 F.2d 625, 631-632 (6th Cir. 1986)).

⁵⁰ *Id.*

⁵¹ December 16 Supplemental Response to Letter of Inquiry, Ex. 1 at ¶ 2.1.

⁵² See *Fox II*, 11 FCC Rcd at 5721, ¶ 17. Fox had a debt to equity ratio of 1400 to 1.

repayment of the debt would likely be dependent upon the ultimate success of the venture.⁵³ This is so because potentially any material business loss to the company could be likely to result in its inability to repay the obligation in question.⁵⁴ Thus, advances to a thinly capitalized company are generally indicative of venture capital rather than traditional *bona fide* debt because of the substantial degree of risk to the lender.⁵⁵

22. A debt-to-equity ratio compares a company's total liabilities with its stockholder's equity.⁵⁶ Stockholder's equity includes "the difference between the assets and the liabilities" of the company.⁵⁷ In calculating GWI's debt-to-equity ratio, we include the \$954 million debt owed to the United States Government under the government's installment plan for the payment of GWI PCS' C Block licenses.⁵⁸ The Hyundai Loan Agreement appears to be GWI's only indebtedness other than its Federal Government financing. Thus, the Hyundai Loan Agreement and the Federal Government financing constitute an integral part of GWI's financial structure and contribute to generate a debt-to-equity ratio of approximately 7.6 to 1. GWI's financial leverage is within commercially reasonable bounds for a start-up venture. Notably, a 7.6 to 1 debt-to-equity ratio falls below those recognized by tax courts as reflecting *bona fide* debt arrangements.⁵⁹

23. Whether the alleged debt is convertible to stock. Under the terms of the Hyundai Loan Agreement, GWI can elect to repay its obligation in the form of either cash, Class C stock, Class C warrants, or a combination thereof.⁶⁰ While GWI is entitled to repay its obligation through the issuance of its Class C stock or Class C warrants, such repayment is permissible only to the extent GWI will not exceed the Section 310(b)(4) benchmark. In the event that there is an issuance of stock in violation of Section 310(b)(4), the terms of the Hyundai Loan Agreement provide for a reversal of the violating transaction through a stock repurchase plan. Further, if GWI elects to repay through the issuance of warrants, those warrants will be valued based upon

⁵³ *Id.*

⁵⁴ *Bauer v. Commissioner*, 748 F.2d 1365, 1369 (9th Cir. 1985).

⁵⁵ *Id.*

⁵⁶ *Id.* at 1368.

⁵⁷ *Id.*

⁵⁸ *NextWave* at ¶ 55 (stating that the Wireless Telecommunications Bureau found no reason "to exclude the debt that NTI would owe to the United States Federal Government under the government's installment plan for payment of NextWave's PCS licenses in calculating NTI's debt-to-equity ratio.")

⁵⁹ *Bauer*, 748 F.2d at 1369 (finding that a debt to equity ratio of 8 to 1 was sufficient to warrant a characterization of *bona fide* debt); *see also NextWave* at ¶ 55 (finding in the context of the facts presented to the Bureau that NextWave's debt to equity ratio of 14 to 1 evidenced a thinly capitalized venture); *Fox II*, 11 FCC Rcd at 5721, ¶ 17 (finding that Fox's parent corporation's debt to equity ratio of 1400 to 1 was not *bona fide* debt).

⁶⁰ November 25 Response to Letter of Inquiry, Ex. D at ¶ 5(f) (March 15, 1996 Loan Agreement).

the market price of the shares at the time of repayment. Although the senior promissory note is renewable for a second year if any principal balance remains outstanding on the obligation, and although the senior promissory note can be repaid through the issuance of stock or warrants, we note that such repayment does not occur through automatic conversion.

24. Conversion rights within a financing agreement established by a lender generally benefit the lender by permitting it to determine whether, and the extent to which, it chooses to convert all or part of its creditor relationship to become an equity holder or whether it maintains a creditor/debtor relationship. Where, as here, the repayment of debt is with cash or through the issuance of stock or warrants, and is under the sole control and at the discretion of the debtor, we find it less likely that the arrangement is designed to disguise equity holdings.

25. The relationship between Hyundai's stock holdings in GWI and holdings of the debt in question. The Bureau has no evidence to suggest that Hyundai is currently a shareholder in GWI. Further, the Hyundai Loan Agreement does not create rights similar to those normally reserved for an equity holder. While GWI may retire its \$50 million obligation to Hyundai partially in the form of stock or warrants, the residual loan balance will perform in accordance with the terms of the Hyundai Loan Agreement. Given GWI's current capital structure and foreign ownership levels, approximately \$2.7 million (5.4%) of the \$50 million loan may be retired in the form of stock, thereby preserving Hyundai's creditor status. Also, at any time the principal outstanding on loan exceeds \$10 million, Hyundai is entitled to one of nine GWI Board seats and may cast one of seven Board votes.⁶¹ However, once the loan is retired below \$10 million, the board seat is rescinded.⁶² Such factors lend support to the conclusion that the Hyundai Loan Agreement constitutes *bona fide* debt.

26. Analyzing the Hyundai/GWI relationship in accordance with the five factors adopted in *Fox II*, we conclude that, based on a totality of the circumstances, the agreement represents *bona fide* debt. Because we find the Hyundai Loan Agreement is *bona fide* debt, it is not included in our Section 310(b)(4) analysis. As stated above, both GWI's foreign-held shares of stock and foreign capital contributions fall below the twenty five percent statutory benchmark of Section 310(b)(4). Accordingly, we find that GWI's level of foreign ownership would not prevent grant to GWI PCS of the fourteen C Block licenses.

B. Compliance with Collusion Rules

27. We next consider whether the financial investment by Hyundai in GWI violated Section 1.2105(c) of the Commission's rules prohibiting collusion between applicants bidding in the same geographic area.⁶³ At the time U.S. Airwaves filed its C Block short form application

⁶¹ See *infra* ¶ 41.

⁶² *Id.* at ¶ 5(d).

⁶³ 47 C.F.R. § 1.2105(c).

(FCC Form 175), Hyundai held a 7.1 percent equity interest in U.S. Airwaves' parent company, and held debt instruments with stock conversion rights representing an additional 16.6 percent of the fully diluted equity of the parent company, U.S. Airwaves, Inc. (the Parent). U.S. Airwaves was a wholly owned subsidiary of the Parent.⁶⁴ U.S. Airwaves was eligible to bid in all of the 493 markets in the initial C Block auction.⁶⁵ Consequently U.S. Airwaves was a mutually exclusive applicant with all participants in the auction, including GWI PCS.

28. On February 15, 1996, U.S. Airwaves withdrew from the C Block auction. On February 20, 1996, representatives from Hyundai and GWI entered into negotiations for Hyundai to extend a loan to GWI.⁶⁶ On March 15, 1996, Hyundai and GWI executed the Hyundai Loan Agreement which was conditioned upon GWI PCS receiving "the grant of PCS licenses for at least 10 million POPs within the top 50 BTAs."⁶⁷ An earlier, unexecuted draft of the Hyundai Loan Agreement contains language that conditions the loan upon GWI PCS receiving licenses for any one or more of the following: a) 10 million POPs in the top 50 BTAs, (including Las Vegas, West Palm Beach, and Austin), or b) San Francisco, or c) Los Angeles, or d) Houston and Dallas.⁶⁸

29. Except for narrowly defined exceptions, Section 1.2105(c)(1) of the Commission's rules strictly prohibits any applicant after the filing of its FCC Form 175 from "cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies until after the high bidder makes the required down payment."⁶⁹ Bids or bidding strategies include capital calls or requests for additional funds in support of bids or bidding strategies.⁷⁰ For purposes of the collusion rule, the term "applicant" includes the entity submitting the application, holders of ownership interests amounting to 5 percent or greater of an applicant, and officers and directors of the entity submitting the application.⁷¹ At least with regard to

⁶⁴ U. S. Airwaves Federal Communications Commission Form 175, filed on December 1, 1995 (U.S. Airwaves Form 175).

⁶⁵ *Id.* U.S. Airwaves placed nominal bids in the majority of these markets.

⁶⁶ November 22 Response to Letter of Inquiry at ¶ 13.

⁶⁷ November 25 Response to Letter of Inquiry, Ex. D (March 15, 1996 Loan Agreement).

⁶⁸ December 16 Supplemental Response to Letter of Inquiry, Ex. 16 (March 12, 1996 Draft Loan Agreement).

⁶⁹ 47 C.F.R. § 1.2105(c)(1).

⁷⁰ In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7687, ¶ 8 (1994) (*Memorandum Opinion and Order*); see also 47 C.F.R. § 1.2105(c)(6)(ii).

⁷¹ 47 C.F.R. § 1.2105(c)(6); see also *Memorandum Opinion and Order*, 9 FCC Rcd at 7687, ¶ 8 (stating, "The term 'applicant' shall include the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interest and any stock interest amounting to 5 percent

bidding consortia, the Commission has stated that the fact that one bidder has withdrawn its application before entering into a consortium does not reduce the importance of our collusion rules and has declined to allow applicants to form mid-auction bidding consortia with applicants who had withdrawn from the auction.⁷² The Commission's concern is that such consortium arrangements, particularly in an environment where bidder identities are known, might bring undue pressure to bear on smaller bidders to withdraw in exchange for teaming up with other larger bidders, or sham applications might be filed to demand payment from other applicants.

30. Although prohibited contact includes discussions that disclose in any manner information that affects bidding strategy,⁷³ Section 1.2105(c)(4) of the Commission's rules allows non-controlling attributable investors to invest in multiple bidders in the same geographic area, after the filing of short form applications, so long as (1) those investors certify to the Commission that they have not, and will not communicate with more than one applicant concerning bids or bidding strategies, and (2) the investment does not change the control of an applicant.⁷⁴ The Commission has defined bids or bidding strategies to include, *inter alia*, which licenses an applicant will or will not bid on.⁷⁵ In establishing the exception to the collusion rules, the Commission recognized the importance of facilitating the flow of capital to applicants by enabling parties to make non-controlling investments in multiple applicants for licenses in the same geographic license areas while ensuring that these investments will not lead to collusion among bidders.⁷⁶ The certification requirement was intended as a deterrent and enforcement mechanism to those who might otherwise enter into anti-competitive arrangements under the

or more of the entity submitting a short form application, and all officers and directors of that entity. . . .").

⁷² See In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fourth Memorandum Opinion and Order*, 9 FCC Rcd 6858, 6867, ¶ 51 (1994) (*Fourth Memorandum Opinion and Order*); see also Letter to Mark Grady from Kathleen O'Brien Ham, Chief Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd 10895 (rel. April 16, 1996). (Responding to a request to waive Section 1.2105(c) to allow active C Block participants to solicit investment from the control groups of inactive applicants.)

⁷³ See 47 C.F.R. § 1.2105(c); see also *Memorandum Opinion and Order*, 9 FCC Rcd at 7687, ¶ 8.

⁷⁴ 47 C.F.R. § 1.2105(c)(4) "After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in . . . other applicants for licenses in the same geographic license area provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest . . . ; and

(ii) The arrangements do not result in any change in control of an applicant."

⁷⁵ *Memorandum Opinion and Order*, 9 FCC Rcd at 7689, ¶ 11.

⁷⁶ *Id.*

exception. In enforcing the collusion rules, the Bureau will consider all relevant factors in each particular case, including whether both parties knew or should have known that the activities in question would affect bidding or bidding strategies, and that the activities in fact had such an effect.

1. Application of the Collusion Rules to Hyundai and GWI.

31. Under Section 1.2105(c)(6), Hyundai's 7.1 percent equity ownership interest in U.S. Airwaves qualifies Hyundai as an applicant, and therefore Hyundai is subject to the Section 1.2105(c) prohibition of collusion among applicants. The record evidences that U.S. Airwaves and GWI PCS identified common markets on their FCC Form 175s. We, therefore, must examine whether Hyundai's subsequent loan to GWI falls within the exception to the Commission's collusion rule. Hyundai made a Section 1.2105(c)(4) certification on March 26, 1996, notifying the Commission of the Hyundai/GWI relationship, and certifying that there would be no transfer of bidding information to GWI.⁷⁷

32. To be eligible for the exception to the collusion rule, we must determine whether Hyundai was a non-controlling attributable investor in U.S. Airwaves.⁷⁸ Hyundai will be deemed a "non-controlling" attributable investor if it exercised neither *de jure* nor *de facto* control over U.S. Airwaves. We find that Hyundai was an attributable investor in U.S. Airwaves, but did not have *de jure* or *de facto* control of U.S. Airwaves. U.S. Airwaves was organized under the 25 percent equity requirement of Section 24.709(b)(5), of the Commission's C Block eligibility rules.⁷⁹ U.S. Airwaves Management L.L.C., (AWM) was the qualifying investor,⁸⁰ and owned 15 percent of U. S. Airwaves fully diluted equity through shares of Class A Common Stock. Kleiner, Perkins, Caufield & Byers (KPCB), an institutional investor, owned 10 percent of U. S. Airwaves fully diluted equity through shares of Series A Preferred Stock. To satisfy the *de jure* control requirement of Section 24.709(b)(5)(i)(B), the Class A Common and Series A

⁷⁷ See Letter to William F. Caton, Acting Secretary, Federal Communications Commission from Hyundai Electronics of America, dated March 26, 1996. In its letter Hyundai states, "Hyundai has not and will not communicate with GWI in relation to: (1) cooperating, collaborating, discussing or otherwise knowingly receive information concerning the development or execution of the substance of GWI's bids or bidding strategies . . . and (2) discussing or negotiating settlement agreements on GWI's behalf with other applicants."

⁷⁸ 47 C.F.R. § 1.2105(c)(4).

⁷⁹ 47 C.F.R. § 24.709(b)(5). "Control Group Minimum 25 Percent Equity Requirement. In order to be eligible to exclude *gross revenue* and *total assets* of persons or entities identified in paragraph (b)(3) of this section an applicant must comply with the following requirements:

(i) ...[C]ontrol group must own at least 25 percent of the applicant's total equity as follows:
(A) At least 15% of the applicant's total equity must be held by qualifying investors."

⁸⁰ See 47 C.F.R. § 24.709(a). Eligibility for frequency Blocks C and F is limited to those with gross revenues of less than \$125 million in each of the last two years, and total assets of less than \$500 million.

Preferred Stock controlled 50.1 percent of the voting rights of U. S. Airwaves and elected 8 of 13 members of the Board of Directors.⁸¹ Under the terms of a stockholders agreement, AWM voted the shares of KPCB.⁸² In contrast, Hyundai held 7.1 percent of U.S. Airwaves' fully diluted equity through Series B Preferred Stock, and could elect 2 of 13 members of the Board of Directors.⁸³

33. Although a finding of *de facto* control necessarily turns on the facts of each case,⁸⁴ the Commission has provided guidance on evaluating when rights granted to minority investors constitute indicia of *de facto* control. In the *Fifth Memorandum Opinion and Order*, the Commission stated: "[N]on-majority or non-voting shareholders may be given a decision-making role in major corporate decisions that fundamentally affect their interests as shareholders without being deemed to be in *de facto* control."⁸⁵ Such major corporate decisions include: issuance or reclassification of stock, setting compensation for senior management, expenditures that significantly affect market capitalization, incurring significant corporate debt or otherwise encumbering corporate assets, sale of major corporate assets, and fundamental changes in corporate structure, including merger or dissolution.⁸⁶

34. In this case, Hyundai was entitled to elect 2 members of the Board of Directors of U. S. Airwaves. Moreover, under the U. S. Airwaves Certificate of Incorporation, Hyundai, as a holder of Series B Preferred Stock, could veto certain major corporate actions including: a merger of the corporation, a sale of all the corporate assets, a liquidation of the corporation, and amendments to the Articles of Incorporation that would reduce the par value of the Series B Preferred Stock.⁸⁷ These rights are typical minority shareholder rights designed to protect investment.

⁸¹ U.S. Airwaves Form 175.

⁸² November 22 Response to Letter of Inquiry, Ex. 16 (March 3, 1995 Stockholders Agreement).

⁸³ U.S. Airwaves Form 175.

⁸⁴ See *Univision*, 7 FCC Rcd at 6675, ¶ 15; see also *Storer Communications, Inc.*, *Memorandum Opinion and Order*, 101 F.C.C. 2d 434, 441, ¶ 22 (1985).

⁸⁵ In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 488, ¶ 81 (1994) (*Fifth Memorandum*). (Noting that while such decision making authority can be an indicia of control in other contexts, such authority alone is insufficient evidence to establish that a minority investor has *de facto* control of a start-up company that must raise large amounts of capital.)

⁸⁶ *Id.*

⁸⁷ November 22 Response to Letter of Inquiry, Ex. 13 (Restated Certificate of Incorporation of U.S. Airwaves, Article 5, Section 5.3.9 *et seq.*).

35. Since Hyundai, in its certification letter, stated that it discussed bids and bidding strategies with U. S. Airwaves, any communications or discussions with GWI relating to bids or bidding strategies would be precluded by our rules. Consequently, as part of our 308(b) investigation we examined the events leading up to Hyundai's investment in GWI. Specifically, we examined whether the negotiation of the Hyundai Loan Agreement and related documents provided GWI with information that in any manner affected bidding strategies. Our examination included a draft of the Hyundai Loan Agreement, which specified success in certain markets. A March 12, 1995 draft of the Hyundai Loan Agreement sent by Hyundai to GWI would have obligated Hyundai to make the loan upon GWI PCS receiving licenses for one or more of the following: 1) 10 million POPs in the top 50 BTAs (including West Palm Beach, Las Vegas, and Austin) or 2) Los Angeles, or 3) San Francisco, or 4) Dallas and Houston.⁸⁸ The reference to specific markets raises the issue of whether this language rises to the level of "communication" between Hyundai and GWI, or whether this language evidences that the parties actually discussed bids or bidding strategies in those markets. Discussions of specific markets are of particular relevance because they increase the possibility that information related to bids and bidding strategies will be transferred between bidders.

36. Sworn declarations filed by Baxom Kim, Hyundai's lead negotiator, and Roger Linquist, President of GWI PCS, declare under penalty of perjury that no discussions concerning specific markets in which GWI PCS was contemplating bidding were ever held.⁸⁹ Our investigation found no evidence to refute the sworn declaration that "GWI never . . . even discussed with Hyundai whether it would or would not bid on any of the specific licenses proposed by Hyundai to be included in the closing condition."⁹⁰ In fact, we reviewed the bidding patterns of GWI PCS prior to and subsequent to Hyundai's investment to determine if GWI PCS might have acted on any information regarding bids or bidding strategies communicated or discussed with Hyundai. Our analysis of GWI PCS' actual bids both before and after the submission of the draft Hyundai Loan agreement show consistent bidding patterns, and no evidence that GWI PCS changed its bids upon receipt of the draft Hyundai Loan Agreement. Where one applicant has dropped out of the auction, subsequent discussions related to specific markets between a non-controlling investor in the first applicant and a remaining applicant would not necessarily give rise to the type of anti-competitive activity of concern to the Commission in creating its collusion rules.⁹¹

⁸⁸ December 16 Supplemental Response to Letter of Inquiry, Ex. 16 (March 12, 1996 Draft Loan Agreement).

⁸⁹ "Reply of General Wireless, Inc. to Partial Response of Antigone Communications Limited Partnership and PCS Devco," at Declaration of Roger D. Linquist, dated December 30, 1996; and Declaration of Baxom Kim, dated January 2, 1997.

⁹⁰ *Id.* at Declaration of Roger D. Linquist, dated December 30, 1996.

⁹¹ See In the Matter of Amendment of Part 1, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-60, WT Docket No. 97-82, (rel. February 28, 1997). The Commission has proposed changes to the collusion rules to permit non-controlling attributable investors in multiple applicants to hold substantive discussions concerning bids and bidding strategies if the original applicant withdraws from the auction, and the

37. We also do not find evidence of collusive behavior in the final Hyundai Loan Agreement, which references only "a grant of licenses for 10 million POPs in the top 50 BTAs."⁹² We conclude that such a broad provision does not constitute a sharing of bidding information, and appears to be the type of arrangement that the exception to the collusion rule was intended to permit. The rule against collusion does not prohibit discussions reasonably necessary to negotiate such a loan, provided the other conditions of the exception are met. The general, non-specific information that was contained in the Hyundai Loan Agreement, as executed, does not qualify as a sharing of "bidding strategies," and consequently, did not violate the prohibition of collusion. Accordingly, we find no evidence of a violation of the Section 1.2105(c) prohibition of collusion.

38. We also find that the second criteria of Section 1.2105(c)(4), has been met.⁹³ Under this criteria, no change in control of an applicant may occur as a result of a non-controlling attributable investor of an applicant taking an interest in other applicants in the same geographic market. This requirement assures that the true party in interest does not change, and that the investor may not direct the actions of the second applicant in order to reduce its competitive relationship with the first applicant. As we previously stated, Hyundai had only up to approximately 24 percent holdings in U.S. Airwaves, and therefore did not have *de jure* control, and otherwise did not exercise *de facto* control over that applicant.⁹⁴

39. Hyundai also does not have *de jure* control over GWI. Hyundai will only be able to take up to a 25 percent interest in GWI, who in turn holds 100 percent of the voting stock of GWI PCS. Hyundai, to the extent that it may receive shares upon performance of the Hyundai Loan Agreement, will receive only Class C Shares of GWI stock.⁹⁵ The Class A shares, which are held solely by members of the control group, confer 50.1 percent of the voting rights in GWI.⁹⁶ Further, GWI has structured its Board to consist of nine seats but only seven votes.⁹⁷ Four of those votes are controlled by the directors elected by the Class A shareholders and the remaining three votes are cast collectively by the directors elected by the Class C shareholders. At any time the principal outstanding on the loan exceeds \$10 million, Hyundai receives one of the three votes granted to the directors elected by the Class C shareholders. The

attributable investor certifies to the Commission that no discussions were held prior to the date that the original applicant withdrew from the auction.

⁹² November 25 Response to Letter of Inquiry, Ex. D (March 15, 1996 Loan Agreement).

⁹³ 47 C.F.R. § 1.2105(c)(4)(ii).

⁹⁴ See *supra* at ¶ 29.

⁹⁵ November 25 Response to Letter of Inquiry, Ex. D (March 15, 1996 Loan Agreement).

⁹⁶ GWI PCS Form 600.

⁹⁷ November 25 Response to Letter of Inquiry at ¶ 31.

directors elected by the other Class C holders share fractional votes.⁹⁸ Finally, Hyundai is not part of the GWI PCS control group, which holds 50.1 percent of the total equity in GWI, thereby controlling GWI PCS.

40. Nor do we find evidence that Hyundai exercises *de facto* control of GWI. GWI has verified by a letter from counsel that "Hyundai played no role in any decisions made by the GWI board or stockholders holding shares of any class of GWI stock regarding the selection of GWI's management, personnel, corporate financing or preparation of FCC applications."⁹⁹ In addition, the fact that GWI has capitalized itself and will finance some of its infrastructure in part from Hyundai resources does not rise to the level of *de facto* control.

41. In sum, we find that Hyundai and GWI PCS did not violate the Commission's prohibition of collusion.

C. Conclusion

42. For the forgoing reasons, we find no material or substantial questions of fact that warrant further investigation or the designation of these matters for a hearing. Finding that the public interest will be served, we grant the 14 C Block PCS licenses for which GWI PCS, Inc. was the high bidder at auction to the entities set forth in Appendix A.¹⁰⁰

43. GWI PCS submitted the remaining portion of the 10 percent down payment due on each of its licenses on February 3, 1997, and opted to pay the remainder of the amount due on each license in installments in accordance with Parts 1 and 24 of the Commission's rules. For each license granted, each licensee will be subject to the terms and conditions of the promissory note and security agreement executed and returned to the United States Department of Treasury.¹⁰¹

D. Ordering Clauses

44. Accordingly, IT IS ORDERED that, pursuant to the authority delegated by Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, GWI PCS, Inc.'s applications for the licenses for which it was the high bidder in the C Block Auction ARE GRANTED, to the licensees listed in Appendix A, each of which is subject to the conditions set forth above.

⁹⁸ *Id.*

⁹⁹ *Id.* at ¶ 15.

¹⁰⁰ See Public Notice, Wireless Telecommunications Bureau Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block Licenses to GWI PCS, Inc., DA 97-156 (released January 27, 1997).

¹⁰¹ See *supra* n. 16.

45. IT IS FURTHER ORDERED that, pursuant to Sections 0.331, 47 C.F.R. § 0.331 and 24.830(a)(4), 47 C.F.R. § 24.803(a)(4), of the Commission's rules, Antigone/Devco's "Petition to Dismiss or Deny, or Alternatively, Informal Objection," filed on July 17, 1996 IS DISMISSED as moot.

A handwritten signature in black ink, appearing to read 'Michele C. Farquhar' with a stylized flourish at the end.

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

APPENDIX A

| Market | CallSign | File Number | Name |
|--------|----------|---------------|------------------|
| B022 | KNLF556 | 00200-CW-L-96 | GWJ PCS 7, INC. |
| B024 | KNLF557 | 00406-CW-L-96 | GWJ PCS 8, INC. |
| B079 | KNLF558 | 00410-CW-L-96 | GWJ PCS 2, INC. |
| B151 | KNLF559 | 00413-CW-L-96 | GWJ PCS 14, INC. |
| B152 | KNLF560 | 00417-CW-L-96 | GWJ PCS 10, INC. |
| B160 | KNLF561 | 00420-CW-L-96 | GWJ PCS 9, INC. |
| B293 | KNLF562 | 00424-CW-L-96 | GWJ PCS 12, INC. |
| B313 | KNLF563 | 00430-CW-L-96 | GWJ PCS 13, INC. |
| B389 | KNLF564 | 00436-CW-L-96 | GWJ PCS 4, INC. |
| B397 | KNLF565 | 00442-CW-L-96 | GWJ PCS 6, INC. |
| B404 | KNLF566 | 00447-CW-L-96 | GWJ PCS 1, INC. |
| B434 | KNLF567 | 00455-CW-L-96 | GWJ PCS 5, INC. |
| B469 | KNLF568 | 00459-CW-L-96 | GWJ PCS 11, INC. |
| B485 | KNLF569 | 00462-CW-L-96 | GWJ PCS 3, INC. |