

shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective 30 days after the publication of this **Federal Register** Notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State/Commonwealth:

Massachusetts Department of Environmental Protection, Drinking Water Program, One Winter Street, Boston, MA 02108.

Connecticut Department of Public Health, Drinking Water Division, 450 Capitol Avenue, P.O. Box 340308—51 WAT, Hartford, CT 06134—0308.

Vermont Department of Environmental Conservation, Water Supply Division, 103 South Main Street, Waterbury, VT 05671—0405.

New Hampshire Department of Environmental Services, Water Supply Engineering Bureau, P.O. Box 95, 6 Hazen Drive, Concord, NH 03302—0095.

**FOR FURTHER INFORMATION CONTACT:** Barbara McGonagle, Office of Ecosystem Protection (telephone 617—918—1608).

**Authority:** Sections 1401 and 1413 (42 U.S.C. 300g—2) of the Safe Drinking Water Act, as amended (1996), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: September 26, 2002.

**Robert W. Varney,**  
Regional Administrator, EPA—New England.  
[FR Doc. 02—25426 Filed 10—4—02; 8:45 am]  
**BILLING CODE 6560—50—P**

## FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02—276; FCC 02—248]

### Commission Seeks Comment on Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document seeks comment on whether the Commission should take further action with regard to the pending applications for licenses won during Auction No. 35, which would consist of one of two scenarios described in the document. Under these scenarios, the Commission would refund certain amounts on deposit with the Commission for licenses subject to pending litigation or regulatory proceedings, and allow individual applicants to request voluntary dismissal of their license applications, with prejudice, for some or all of the licenses subject to pending litigation or regulatory proceedings.

**DATES:** Comments are due on or before October 11, 2002, and reply comments are due on or before October 21, 2002.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW—A325, Washington, DC 20554 or hand carry comments to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m.

**FOR FURTHER INFORMATION CONTACT:** Scott Delacourt at (202) 418—0639.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 35 Pending License Applications* Public Notice released September 12, 2002. The complete text of the *Auction No. 35 Pending License Applications Public Notice*, including the statement, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY—A257, Washington, DC, 20554. The *Auction No. 35 Pending License Applications Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445

12th Street, SW., Room CY—B402, Washington, DC, 20554, telephone 202—863—2893, facsimile 202—863—2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

### Background

1. On March 26, 2002, the Commission granted partial refunds of the down payments made by certain winning bidders in Auction No. 35 *Partial Refund Order*, 17 FCC Rcd 6283 (not published in the **Federal Register**). These winning bidders had made down payments and filed long-form applications for spectrum associated with licenses that had previously been issued to NextWave Personal Communications Inc., NextWave Power Partners Inc. (collectively "NextWave") and Urban Comm-North Carolina, Inc. ("Urban Comm"). This spectrum, as well as Auction No. 35, continues to be the subject of extensive litigation and pending regulatory proceedings. Key issues over the effectiveness of the Commission's automatic cancellation rules with respect to NextWave's licenses are scheduled for oral argument before the Supreme Court on October 8, 2002.

2. Pursuant to the *Partial Refund Order*, the Commission has already refunded approximately \$2.8 billion to the Auction No. 35 winning bidders who have not yet received their licenses, but it retained an amount equal to three percent of the net winning bids for these licenses and maintained the pending status of the applications for these licenses. The total amount still on deposit with the Commission is \$489,548,061. The total amount of these Auction No. 35 winners' obligations, including the refunded down payments, to the government for the former NextWave and Urban Comm licenses won at the auction is \$16,318,268,700. The Commission has already received \$504,419,150 in final payments for other licenses won and granted based on Auction No. 35.

3. As noted in the *Partial Refund Order*, the Commission was sympathetic to the needs of the auction winners, many of whom are small businesses, to have access to their funds to continue to operate their businesses. At the same time, the Commission held that it must protect the integrity of Auction No. 35 in the event the Commission is ultimately successful in its litigation. It therefore struck a balance between the hardship that would be imposed by continuing to retain the entirety of the down payments and the need to protect the integrity of the auction. Accordingly, it refunded to the payors of record a substantial portion of the monies on deposit.

4. However, the Commission's *Partial Refund Order* also found, *inter alia*, that the continued litigation associated with particular licenses *did not* relieve the winning bidders of the obligation to pay their full bid amounts for licenses won in Auction No. 35. In this regard, the Commission disposed of matters raised by Verizon in a letter to the Commission's Deputy General Counsel in which Verizon argued that it no longer had an obligation to pay the amount it bid in Auction No. 35 based on the theory that spectrum auctions create contractual relationships between the Commission and winning bidders, and that the Commission's failure to make timely delivery of the licenses rendered the contract void. No other Auction No. 35 applicant advanced this contract theory. In response to Verizon's letter, the *Partial Refund Order* stated that auctions are a regulatory mechanism for distributing licenses and that the relationship between the Commission and winning bidders of spectrum licenses is governed by the Communications Act, the Commission's competitive bidding regulations, and Public Notices setting forth specific conditions on particular auctions. Those conditions, the Commission stated, included the auction's contingency on the "final" outcome of the Next Wave litigation. Therefore, the Commission held that the fact that spectrum associated with the former NextWave licenses was not yet available for use by the Auction No. 35 winning bidders did not require the Commission to relieve Verizon of its bid obligations.

5. Verizon challenged the Commission's *Partial Refund Order* in two courts. In the D.C. Circuit, in case No. 02-1110, Verizon seeks a ruling that the delay in licensing caused by the NextWave litigation entitles Verizon to declare its auction obligations void. In the Court of Federal Claims, in case No. 02-280c, Verizon seeks a declaration nullifying Auction No. 35 as well as consequential damages. We stand by our legal conclusions in the *Partial Refund Order*, and do not through the *Auction No. 35 Pending License Applications Public Notice* suggest any support for Verizon's legal argument.

#### Discussion

6. Since the Commission issued its *Partial Refund Order* several months ago, the state of the capital markets for entities, including the applicants, engaged in the provision of wireless telecommunications services, as well as other telecommunications services, has continued to decline rapidly. Specifically, since March, the Commission has received submissions

asserting that unique and troubling financial circumstances have led to difficulties in accessing capital and other problems for companies of all sizes, which in turn has affected the customers they serve. For instance, these commenters suggest that the impact of continuing contingent liabilities on credit ratings in the midst of a severe downturn in capital markets could potentially frustrate other policy objectives as well as quality of service. Moreover, as we have seen in the past, market downturns affect the value of spectrum licenses won at auction and licensees' (or applicants') ability to meet auction payment obligations. At the same time, the Commission remains concerned about protecting the integrity of its spectrum auction program. Concerns about the state of the capital markets must be balanced against this important public interest consideration.

7. Taking official notice of the status of the capital markets and other economic events, the Commission, on its own motion, seeks comment on these observations and whether it should take further action with regard to the pending applications for licenses won during Auction No. 35 for spectrum formerly licensed to NextWave and Urban Comm.

8. Specifically, the Commission seeks comment on whether it should consider further, *inter alia*, the following scenarios:

(i) *Full Refund and Option to Dismiss All Pending Applications*. Upon request, the Commission would refund to the payor of record the full amount of monies on deposit with the Commission for the licenses subject to the NextWave litigation and Urban Comm proceedings. The Commission would also provide a period of time for individual applicants to request voluntary dismissal of all of their applications, with prejudice.

Under this scenario, applicants obtaining a full refund and choosing to dismiss their applications would lose all claims to the affected Auction No. 35 licenses. Should the Commission prevail in the litigation, new initial licenses for the spectrum would be assigned by auction at a future date. In addition, the Commission would waive, in whole or part, its default rules for these licenses and, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards, forgive the debt incurred on them at Auction No. 35. The Commission seeks comment on whether it would be advisable to waive the default rules, or to extend debt forgiveness, in whole or in part, to a bidder opting for dismissal of its application(s). In addition, we seek

comment on whether a bidder receiving a waiver or debt forgiveness should be barred from participating in the reauction of the licenses or otherwise obtaining such licenses for a period of time. Finally, the Commission seeks comment on whether applicants that would like to keep their applications pending should reaffirm their commitment to their Auction No. 35 obligations or just remain silent.

(ii) *Selective Opt-Out for Pending Applications*. The Commission would grant individual applicant requests for voluntary dismissal of their applications, with prejudice, for certain licenses and not others.

Under this scenario, the Commission would provide applicants the opportunity to pick and choose licenses for which to keep the applications pending and which to dismiss. The Commission seeks comment on whether all of the down payments should be refunded or only down payments associated with the dismissed licenses. As with the first scenario, applicants choosing to dismiss their applications would lose all claims to the affected licenses. Should the Commission prevail in the litigation, new initial licenses for the spectrum would be assigned by auction at a future date. In addition, the Commission would, in whole or part, waive its default rules for dismissed license applications and, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards, forgive the debt on them incurred at Auction No. 35. Again, the Commission seeks comment on whether a bidder opting for dismissal of its application(s) and receiving a full or partial waiver of the default payment rules should be barred from participating in the reauction of the licenses or otherwise obtaining such licenses for a period of time.

9. Although the oral argument in the Supreme Court case is fast approaching and the Commission has the utmost confidence in the merits of its case, the Commission and winning bidders in Auction No. 35 still face the possibility of prolonged litigation over such licenses during uncertain and trying economic conditions. The Commission also recognizes that should the Supreme Court rule in the government's favor, there may nevertheless be unresolved issues over the licenses, that would prolong the litigation. Depending on the length of the delay, capital market conditions may continue to change, increasing the possibility that winning bidders in Auction 35 will be in a significantly different position that at the time of the auction. Accordingly, the

Commission seeks comment on the scenarios discussed based on the changed circumstances since issuance of its *Partial Refund Order*. The Commission also seeks comment on whether granting relief under any of the options discussed herein would promote or disserve the public interest objectives outlined in section 309(j) of the Communications Act, including "promoting economic opportunity and competition" and ensuring "efficient and intensive use of the electromagnetic spectrum."

#### Procedural Matters

10. Pursuant to 47 CFR 1.1200(a), the Commission may adopt modified *ex parte* procedures in particular proceedings if the public interest so requires. Accordingly, issues related to the *Auction No. 35 Pending License Applications Public Notice* will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. Designating this matter as "permit but disclose" will provide an opportunity for all interested parties to comment on the policy questions concerning the treatment of the funds on deposit. All other matters concerning Auction No. 35 applications that are the subject of NextWave's Petition to Defer and other petitions to deny remain restricted, pending further action by Public Notice.

11. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 11, 2002, and reply comments on or before October 21, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or

messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Marlene H. Dortch, Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-25348 Filed 10-4-02; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL HOUSING FINANCE BOARD

##### Sunshine Act; Meeting Announcing an Open Meeting of the Board

**TIME AND DATE:** 10 a.m., Wednesday, October 9, 2002.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** The entire meeting will be open to the public.

#### MATTER TO BE CONSIDERED:

- Amendment to the Federal Home Loan Bank of Seattle Capital Plan.
- Amendment to the Federal Home Loan Bank of Indianapolis Capital Plan.
- Federal Home Loan Bank of Dallas Request for an additional Elective Director from the State of Texas.
- Public Interest Director—Board of Directors Office of Finance (Tentative).

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Secretary to the Board, (202) 408-2837.

**Elaine L. Baker,**

*Secretary to the Board.*

[FR Doc. 02-25498 Filed 10-2-02; 4:33 pm]

**BILLING CODE 6725-01-P**

#### FEDERAL RESERVE SYSTEM

##### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 2002.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *Jasper Banking Company ESOP*, and *James H. Bryan, Trustee*, both of Jasper, Georgia; to acquire additional voting shares of JBC Bancshares, Inc., Jasper, Georgia, and thereby indirectly acquire additional voting shares of Jasper Banking Company, Jasper, Georgia.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Male Family Investments II, L.P.*, Augusta, Kansas; to acquire control of Prairie Capital, Inc., Augusta, Kansas, and thereby indirectly acquire voting shares of Prairie State Bank, Augusta, Kansas.

Board of Governors of the Federal Reserve System, October 1, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02-25366 Filed 10-4-02; 8:45 am]

**BILLING CODE 6210-01-S**

#### FEDERAL RESERVE SYSTEM

##### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the