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FCC ANNOUNCES IT WILL REFUND A SUBSTANTIAL PORTION OF CERTAIN AUCTION #35 DOWN PAYMENTS

Washington, D.C. – The Federal Communications Commission (FCC) has announced that it will refund a substantial portion of down payments made by winning bidders in Auction No. 35 for licenses previously issued to NextWave Personal Communications Inc., NextWave Power Partners Inc. (NextWave) and Urban Comm-North Carolina, Inc. (Urban Comm). The FCC will return approximately $2.8 billion, or 85 percent, of the down payments currently held. The Commission will maintain the pending status of the applications for these licenses. This action will give the bidders access to the bulk of their money while at the same time preserving the results and integrity of Auction No. 35.

<u>Background</u>:

In Auction No. 35, the FCC auctioned licenses to use spectrum previously licensed to NextWave and Urban Comm, both of which previously defaulted on their payment obligations. Nets bids for those licenses totaled approximately $16.3 billion, and the FCC collected downpayments totaling approximately $3.3 billion. The United States Court of Appeals for the D.C. Circuit subsequently ruled in *NextWave v. FCC* that Section 525 of the Bankruptcy Code forbade the FCC from canceling licenses held by NextWave. The United States and the Commission petitioned the Supreme Court to review the case, and the Petition was granted on March 4, 2002. Prior Public Notices had made Auction 35 contingent on the final outcome of litigation over the NextWave and Urban Comm licenses.

In January 2002, a coalition of winning bidders (Petitioners) jointly requested full refund of their down payments.

<u>Specifics of Today's Action</u>:

The Commission affirmed that winning Auction No. 35 bidders continue to be bound by their bid obligations. The FCC recognized, however, that it has some discretion with respect to the amount of down payments it maintains on deposit. The Commission found that petitioners, many of whom are small businesses, may require access to their funds to continue to operate their businesses. At the same time, the Commission must protect the integrity of Auction No. 35 in the event the Commission is ultimately successful in its litigation and a bidder subsequently defaults on its payment obligations. The Commission therefore struck a public interest balance between the hardship that would be imposed by continued retention of the down payments and the need to protect the integrity of the auction by authorizing refund of a substantial portion of the down payments.

To effectuate the partial refund, the Commission waived its rules requiring that down payments equal to 20 percent of winning bidders' total net bids be held by the FCC until resolution of the licensing process. Instead, the FCC will retain an amount, for each bidder, equal to three percent of that winning bidder's total net bids for the licenses. Three percent represents the minimum amount of money a bidder must pay if it defaults on its bid obligation. The FCC set out specific procedures companies must follow in order to receive refunds.

The Commission will maintain the pending status of the applications for these licenses. Should the Commission prevail in the NextWave litigation, winning bidders in Auction No. 35 will be required to pay the full amount of their winning bids or be subject to default under the Commission's rules.

The Commission also rejected the claim of Verizon Wireless (Verizon) that the delay in licensing entitles it to avoid its obligation to pay the full amount of its winning bids. The Commission stated that by participating in the auction, Verizon assumed a known risk of litigation-related delay and thus continues to be bound by the auction rules. Those rules require all bidders to pay their full bid in the event the Commission is ultimately successful in its litigation and the licenses are issued.

Action by the Commission on March 26, 2002, by Order (FCC 02-99). Chairman Powell, Commissioners Abernathy, Copps and Martin.

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