cingular WIRELESS

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November 26, 2003

Katherine M. Harris
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 03-217

Dear Ms. Harris:

Cingular Wireless LLC ("Cingular"), by its attorneys, hereby responds to three questions posed by the Wireless Telecommunications Bureau regarding the above-referenced proceeding.[1] The questions, and Cingular's responses, are set forth below.[2]

(1) Describe how the "FCC Direct Payment" referenced in the "Term Sheet for Agreement Regarding the §363 Sale of Rights and Interests in Certain Licenses" ("Term Sheet") and the request for waiver of sections 1.2111 and 24.714 of the Commission's rules should be apportioned among the "Designated Licenses."

At the outset, it should be noted that Cingular was not party to or a signatory to the Term Sheet that sets forth the FCC Direct Payment amount. Cingular negotiated and agreed with NextWave on a purchase price of $1.4 billion for the Designated Licenses as a package, without apportioning the purchase price on a license-by-license basis. The FCC Direct Payment was agreed upon by the parties to the Term Sheet (NextWave, the FCC and NextWave's other creditors) *after* Cingular and NextWave had agreed upon the lump sum purchase price for the package of spectrum authorizations.

As noted in the assignment applications, the $714 million FCC Direct Payment is more than sufficient to pay in full the unpaid principal amount attributable to each of the Designated Licenses. The total amount of unpaid principal is approximately $687.5 million, leaving approximately $26.5 million

[1] Letter from Katherine M. Harris, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael R. Wack and David G. Richards (Nov. 12, 2003).

[2] Capitalized terms used herein, unless otherwise indicated, are the same as those used in the Purchase Agreement between NextWave Telecom Inc., NextWave Personal Communications Inc., NextWave Partners Inc., NextWave Power Partners Inc. and Cingular Wireless LLC, dated August 4, 2003, or the Term Sheet, respectively.

remaining from the FCC Direct Payment to be applied to unpaid accrued interest. The Commission could apportion the FCC Direct Payment so that all unpaid principal on each of the Designated Licenses is paid, with payment of accrued interest apportioned according to the size of the principal amount.

(2) Provide evidence for the representations stated in the request for waiver, including the representations made in footnotes 3 and 30 and accompanying text of the request, that the Department of Justice has approved the Term Sheet in accordance with its authority under the Debt Collection Improvement Act of 1996.

The Term Sheet executed August 4, 2003 among the FCC, NextWave and NextWave's other creditors is the vehicle for settlement of the auction debt owed to the United States government. Section 8 of the Term Sheet describes the conditions that must be met before its terms may become effective. One of these conditions is that "the settlement reflected in this Term Sheet receives all necessary and appropriate approvals by the DOJ and the FCC . . . ."

Since the settlement embodied in the Term Sheet involves the compromise of a debt that exceeds $100,000, the U.S. Department of Justice ("DOJ") must approve that compromise under 31 U.S.C. § 3711 and 31 C.F.R. § 902.1. As the pending waiver request represents (in the text accompanying footnotes 3 and 30 of Exhibit 1 to the lead application), DOJ has approved the Term Sheet. This fact is evidenced by statements of Assistant U.S. Attorney David Kennedy in hearings before the U.S. Bankruptcy Court for the Southern District of New York on August 21, 2003, addressing the Bidding Procedures Order, and September 25, 2003, addressing the Sale Order. Complete copies of the transcripts of these proceedings are enclosed herewith as Enclosures 1 and 2, respectively.

Specifically, at an August 21, 2003 hearing before the U.S. Bankruptcy Court, Deborah Schrier-Rape, counsel for NextWave, told the court:

> The agreement with the FCC has, I think counsel will represent later, received DOJ approval at this point. There were two conditions, one was DOJ approval and then if the transaction is approved by this Court, subsequently there would be regulatory approval of the actual assignment transfers. So the first step of that condition has now been achieved.[3]

Shortly thereafter, Mr. Kennedy confirmed that "Ms. Schrier-Rape is correct that the Department of Justice has signed off on the term sheet . . . ."[4] At the Bankruptcy Court's September 25, 2003 hearing, at

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[3] Enclosure 1 – Transcript of Hearing on Bidding Before The Honorable Adlai S. Hardin, Jr., United States Bankruptcy Judge, Case No. 98-21529, August 21, 2003, at 9 (U.S. Bkptcy. S.D.N.Y., Aug. 21, 2003).

[4] *Id.* at 11.

which the proposed transaction was approved by the court, Mr. Kennedy reiterated that DOJ had approved of the Term Sheet.[5]

(3) Describe specifically how any exercise of the Department of Justice of its authority under the Debt Collection Improvement Act of 1996 impacts the Commission's resolution of the request for waiver of sections 1.2111 and 24.714 of the Commission's rules.

The public interest standard governing the FCC's consideration of applications for the assignment of licenses is clearly broader than the standards governing DOJ approval of a compromise of debt owed to the government. The waivers requested in this proceeding are fully supported by the record separate and apart from the standards that apply to the approval of debt compromises. Nevertheless, there is overlap between the debt compromise standards and the public interest factors which the Commission weighs in judging whether to grant a waiver. Thus, DOJ's exercise of its authority to approve the debt compromise clearly lends additional support for grant of the requested relief.

The debt compromise process is governed by the Federal Claims Collection Act ("FCCA").[6] Among other things, the FCCA required DOJ (in conjunction with the General Accounting Office) to adopt regulations that would establish a uniform system for federal debt collection.[7] As required, DOJ promulgated the Federal Claims Collection Standards ("FCCS") to govern all attempts by DOJ or another agency to collect debt owed the federal government.[8] An agency owed a debt of $100,000 or less may compromise the debt, but if the debt is greater than $100,000, the agency must seek DOJ approval of the compromise.[9]

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[5] *See* Enclosure 2 – Transcript of Hearing Re Approval of Sale Before The Honorable Adlai S. Hardin, Jr., United States Bankruptcy Judge, Case No. 98-21529 at 5 (U.S. Bkptcy. S.D.N.Y., Sept. 25, 2003). Unfortunately, the court reporter's transcription did not fully capture Mr. Kennedy's remarks at the September 25th hearing. However, anyone in attendance (including Mr. Kennedy himself) can confirm that Mr. Kennedy again assured the court that DOJ had given its approval of the Term Sheet.

[6] Pub. L. 89-508, 80 Stat. 308 (1966, codified at 37 U.S.C. §§ 3701 *et seq.*). The FCCA was amended by the Debt Collection Improvement Act of 1996 ("DCIA") to strengthen the debt collection abilities of agencies. *See* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, Chapter 10, 110 Stat. 1321, 1321-358 - 1321-381 (1996); *see also* House Report 104-537 (Apr. 25, 1996).

[7] *See* Federal Claims Collection Act, § 3(b) (currently codified at 31 U.S.C. § 3711(e)); *see also* 1966 U.S.C.C.A.N. at 2534. Historically, the DOJ was the only agency authorized to compromise debts owed the federal government. *See* 38 Op. Att'y Gen. 98, 99; *Swift v. United States*, 276 U.S. 311, 331-32 (1928). DOJ recommended enactment of the FCCA to reduce both its involvement in debt collection and court congestion by permitting other agencies to settle certain debt collection claims without DOJ involvement. *See generally* S. Rep. No. 1331 (reprinted in 1966 U.S.C.C.A.N. 2532); H.R. Rep. No. 1533, 89th Cong., 2d Sess. (1966).

[8] These standards are currently contained in 31 C.F.R. Parts 900-904.

[9] *See* 31 U.S.C. § 3711(a). This compromise ceiling was initially $20,000, but was subsequently raised to $100,000. *See* Pub. L. 89-508, 80 Stat. 308 (1966); Pub. L. 101-552, § 8(b), 104 Stat. 2746 (1990).

Subpart O of Part 1 of the Commission's rules, 47 C.F.R. §§ 1.1900 *et seq.*, explicitly states that the FCC's ability to compromise claims and/or to suspend or terminate collection must be in accordance with the FCCS.[10] Under the FCCS, the agency to which the debt is owed must initially determine whether a compromise would be appropriate[11] by weighing the following factors:

- The ability of the debtor to pay the full amount in a reasonable amount of time;
- The ability of the Government to collect the debt in full within a reasonable amount of time;
- Whether the cost of collecting the debt justifies collection of the full amount; and
- Whether there is considerable doubt regarding the Government's ability to prove its case in court.[12]

In order for DOJ to give its approval, the agency first must recommend approval of the compromise and then DOJ must independently evaluate – using these same factors – whether the compromise is appropriate under the FCCS.[13] If a debt compromise is approved by DOJ, the Government is required to accept "less than the full amount owed *in full satisfaction* of the claim."[14]

In sum, in considering a proposed compromise of a debt owed to the government, DOJ considers whether the interests of the United States would be served by accepting payment of less than the full amount of the debt. DOJ considers the views of the agency to which the debt is owed. In fact, as discussed below, the debt compromise approval process begins with a recommendation by the agency. In the context of this proposed transaction, this process has already occurred.

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[10] *See* 47 C.F.R. § 1.1915 (FCC "may attempt to effect compromise . . . in accordance with the standards set forth in . . . the Federal Claims Collection Standards"); 47 C.F.R. § 1.1916 (the "suspension or termination of collection action shall be made in accordance with the standards set forth in . . . the Federal Claims Collection Standards"); 47 C.F.R. § 1.1917 ("referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in . . . the Federal Claims Collection Standards").

[11] *See* 31 C.F.R. § 902.1.

[12] 31 C.F.R. § 902.2(a)(1)-(4); *see also* 31 C.F.R. § 902.3 (stating that "agencies may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if the agency's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the agency's acceptance of the sum to be agreed upon"); 31 C.F.R. § 902.2(e) (stating that a debt may not be worth collecting if collection of the full amount is not necessary to further an enforcement principle).

[13] *Id.* As part of this process, DOJ will compromise if it "believes that a compromise of a claim is substantially more favorable than the verdict or judgment that would probably result from further litigation." DOJ, United States Attorney Manual, Civil Resource Manual at 4-3.200.

[14] General Accounting Office, Principles of Federal Appropriations Law, GAO/OGC-94-33 at 13-51 (Nov. 1994) (emphasis added). *See also* 31 U.S.C. § 3711(c) (stating that "[a] compromise under this section is final and conclusive . . ."); 31 C.F.R. § 902.7 (a compromise releases the debtor "from further non-tax liability on the compromised debt . . . ."); DOJ, United States Attorney Manual, Civil Resource Manual at 4-3.220 (the "acceptance of a plan for reorganization under the Bankruptcy Code amounts to a compromise of a claim.").

The Term Sheet constitutes a negotiated arms-length settlement of litigation. The DOJ on behalf of the FCC agreed to accept $714 million in full satisfaction of all its claims on the Designated Licenses.[15] As noted above, DOJ on its own behalf has approved the Term Sheet, which also has been approved by the U.S. Bankruptcy Court, subject to the Commission's regulatory review.[16] The Commission now has before it a request for any waivers of the unjust enrichment provisions contained in Sections 1.2111 and 24.714 of the Commission's rules that may be necessary to effectuate this agreement.

DOJ's exercise of its authority to approve the Term Sheet and the debt compromise is important to the Commission's consideration of this waiver request for the following reasons:

- The debt that is the subject of both the DOJ approval and the FCC's consideration of the requested waiver results from the same source: the FCC's auction rules.
- DOJ's approval was predicated upon the FCC's recommendation, which under the statute and regulations governing debt compromise, as well the FCC's own rules, was made after evaluating the public interest factors set forth in the FCCS;
- The FCC's recommendation that DOJ approve the debt compromise necessarily took into account the amount owed under the FCC's unjust enrichment rules; and
- DOJ made an independent review of the relevant public interest factors and determined that a compromise of NextWave's debt would serve the interests of the United States.

Application of the debt compromise standards by DOJ overlaps significantly with the public interest standards that the FCC must apply in considering the instant waiver request. A waiver of the unjust enrichment rules would serve the public interest because:

- Resolving claims in NextWave's bankruptcy proceeding as to the Designated Licenses will enable the government to collect a sum certain within a reasonable amount of time and avoid the uncertainties of additional bankruptcy litigation, thereby serving the Section 309(j) goal of "rapid deployment of new technologies, products, and services for the benefit of the public . . . without administrative or judicial delays";[17]

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[15] *See* Term Sheet, Section 3(b).

[16] *See* Order Under 11 U.S.C. §§ 105, 363 and 1146(c) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 6004 and 9019 (A) Approving the Terms and Conditions of an Agreement for the Sale of the Debtors' Rights and Interests in Certain Designated Licenses; (B) Authorizing the Sale Free and Clear of All Liens, Claims and Encumbrances, Subject Only to FCC Regulatory Review and Approval and HSR Approval; (C) Authorizing Debtors to Satisfy Certain Secured Indebtedness Related to Such Licenses; and (D) Approving Settlement and Releases Between the Debtors and the FCC with Respect to Claims Related to Such Designated Licenses (entered Sept. 25, 2003 in the United States Bankruptcy Court for the Southern District of New York) at 14.

[17] 47 U.S.C. §309(j)(3)(A).

- Absent the proposed transaction, NextWave could not pay the debt owed within a reasonable period of time; thus, recovery for the public of a portion of the value of the auctioned spectrum would not be available; and
- All potential claims by NextWave and its creditors regarding the Designated Licenses would be released, thereby removing any doubt as to the Government's ability to collect on its claims.

These factors are important both to the debt compromise approval and to the FCC's consideration of the waiver request. Arguments on this point are fully reflected in the record.[18]

In conclusion, the record in this proceeding demonstrates that, even without regard to the factors underlying DOJ's debt compromise approval, the public interest would be served by grant both of the requested relief and of the pending assignment applications. However, the considerations that gave rise to DOJ approval of the debt compromise provide additional support for this public interest finding. If upon your review of the foregoing responses, you believe that Cingular has misunderstood any of your questions or additional inquiry is warranted, please contact me as soon as possible.

Respectfully submitted,

David G. Richards

Enclosures

[18] *See* Lead Application, Exhibit 1; *see also* Cingular Opposition to Petitions to Deny, WT Docket No. 03-217 at 14-24 (Nov. 17, 2003).

Enclosure 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of:	Case No. 98-21529
NEXTWAVE PERSONAL COMMUNICATIONS, INC.,	
Debtor.	300 Quarropas Street White Plains, New York August 21, 2003

TRANSCRIPT OF HEARING ON BIDDING
BEFORE THE HONORABLE ADLAI S. HARDIN, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: DEBORAH SCHRIER-RAPE, ESQ.

For the U.S. Trustee: PAMELA LUSTRIN, ESQ.

For the FCC: DAVID KENNEDY, ESQ.

Court Transcriber: DONNA K. CHERTKOW
TypeWrite Word Processing Service
356 Eltingville Boulevard
Staten Island, New York 10312

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

1 THE CLERK: Nextwave Personal Communications, Inc.
2 THE COURT: Appearances, please.
3 MS. SCHRIER-RAPE: Good morning, Your Honor. Deborah
4 Schrier-Rape on behalf of the Debtors. I also have with me
5 Frank Cassou, the Executive Vice-President and General Counsel.
6 I also believe in -- either in the courtroom or joining us are
7 Allen Fromrothy [Ph.], the Chief Executive Officer, and George
8 Alex, the Senior VP of Finance.
9 THE COURT: Okay.
10 MR. FRIEDMAN: Your Honor, good morning. David
11 Friedman [inaudible] Capital [inaudible] on behalf of
12 [inaudible].
13 THE COURT: Mr. Friedman.
14 MS. LUSTRIN: Good morning, Your Honor. Pamela
15 Lustrin for the U.S. Trustee.
16 MR. KENNEDY: Good morning, Your Honor. David
17 Kennedy, U.S. Attorney's Office, appearing for the FCC, and
18 also in the courtroom today is Mr. David Eaton of the law firm
19 of Kirkland Deneaux [Ph.].
20 THE COURT: All right.
21 MS. WALKER: Good morning, Your Honor. Wendy Walker,
22 Morgan, Lewis, Bockius for L.G. Infocom [inaudible].
23 THE COURT: Okay.
24 UNIDENTIFIED SPEAKER: Your Honor, Bill [inaudible -
25 away from microphone] on behalf of Cingular Wireless.

1 THE COURT: Okay.
2 MS. BELL: Good morning, Your Honor. [Inaudible -
3 away from microphone.]
4 THE COURT: I couldn't hear your last name.
5 MS. BELL: [Inaudible - away from microphone.]
6 THE COURT: Okay, Ms. Bell.
7 MR. GELLER: [Inaudible - away from microphone.],
8 Gottlieb [inaudible] on behalf of the DIP lenders.
9 THE COURT: Okay, Mr. Geller.
10 MS. SCHRIER-RAPE: I also believe for the record,
11 Your Honor, that Rob [inaudible], chairman of the creditors
12 committee is also with us in the court today.
13 THE COURT: Okay. Well, fire away.
14 MS. SCHRIER-RAPE: Your Honor, we have three things
15 on the docket this morning if we have appropriately reconciled
16 the calendar. The order I would suggest is that first we have
17 a -- what we call a global claims stipulation. It's a -- it's
18 a rather substantial claims allowance motion. The second thing
19 we have is a regularly continued status conference --
20 THE COURT: Mm-hmm (affirmative).
21 MS. SCHRIER-RAPE: -- and then the last thing we have
22 is a request for the Court to enter an order approving certain
23 bidding procedures --
24 THE COURT: Right.
25 MS. SCHRIER-RAPE: -- relating to a transaction

1 between the Debtors and Cingular.
2 THE COURT: All right.
3 MS. SCHRIER-RAPE: So if that order is acceptable to
4 the Court.
5 THE COURT: Yes, it is.
6 MS. SCHRIER-RAPE: With respect to the global claim
7 stipulation, Your Honor, if I may approach, I have a blacklined
8 copy.
9 THE COURT: Sure.
10 [Pause in proceedings.]
11 MS. SCHRIER-RAPE: I have additional copies of the
12 blackline if anyone needs one as well.
13 Your Honor, there were two what I would call
14 responsive pleadings filed to this motion, one by L.G. Infocom
15 and then an objection by WES Simon. Both of those have been
16 resolved --
17 THE COURT: Uh-huh (affirmative).
18 MS. SCHRIER-RAPE: -- and the resolution is shown in
19 the blacklined -- I actually believe, Your Honor -- I
20 apologize, I think I just changed that to the printed copy.
21 THE COURT: Oh, all right. Do you need this back?
22 MS. SCHRIER-RAPE: The resolution, Your Honor, of --
23 of the responsive pleading by L.G. and the objection by WES
24 Simon is really just to insert the language that tracks the
25 original L.G. documents which describes the purported security

1 interest that they had either in, to the extent that's
2 permitted by law, the feedback licenses, or the proceeds
3 thereof to the extent that wasn't, and also provides for a
4 reservation of rights with respect to -- if at some point they
5 want to make a claim against the estate for attorney's fees.
6 In the case of L.G. either they are as an additional secured
7 creditor or a member of the creditors' committee, and just --
8 just with respect to Simon with respect to being a secured
9 creditor.
10 THE COURT: All right.
11 MS. SCHRIER-RAPE: So there's no resolution -- the
12 debtors reserve their rights, obviously, with respect to those
13 matters as well, but those are really the -- the only
14 substantive changes. And with that, I was authorized to
15 represent on behalf of Simon that their objection is withdrawn,
16 and I believe L.G.'s counsel is -- is with us.
17 MS. WALKER: That is correct, Your Honor.
18 THE COURT: All right. Well, then are there any
19 objections here and now to the order approving the settlement?
20 [Pause in proceedings.]
21 THE COURT: Hearing none, I shall sign it.
22 MS. SCHRIER-RAPE: And I do, Your Honor, have a -- if
23 I may approach, I have a revised disk.
24 THE COURT: Oh, good. All right. Thank you very
25 much.

1 [Pause in proceedings.]
2 THE COURT: All right. What's next?
3 MS. SCHRIER-RAPE: The next thing, Your Honor, is we
4 had our continued status conference which was originally
5 noticed for August 19th, but we did serve a notice of
6 continuance some weeks back on all parties in interest
7 continuing it to today since we were going to be in court on
8 other matters. So if I could just proceed with the general
9 overview for the status conference.
10 The global stipulation that I just -- that Your Honor
11 just signed with respect to claims takes us quite -- quite far
12 down the road.
13 THE COURT: If I can just interrupt for a moment.
14 I'm not sure I can find the place to sign it. Is there a
15 signature block?
16 MS. SCHRIER-RAPE: It's on -- I can -- I can hand it
17 up this way, Your Honor.
18 THE COURT: Is there a page number?
19 [Pause in proceedings.]
20 THE COURT: Ah. All right. You may proceed.
21 MS. SCHRIER-RAPE: With respect to the general status
22 of the cases, Your Honor, the first significant matter that has
23 occurred since our last status conference is that the debtors
24 have filed a motion for approval of a transaction with Cingular
25 Wireless.

1 I thought I would at this point just briefly review
2 that and then leave any additional questions to when we discuss
3 the bidding procedures motion following the status conference.
4 THE COURT: All right.
5 MS. SCHRIER-RAPE: But in general terms, Your Honor,
6 the -- the agreement between the Debtors and Cingular provide
7 for a sale by the Debtors of thirty-four of the Debtors'
8 licenses. That number is a little bit confusing because the
9 Debtors have ninety-five licenses; thirty-two of those are F-
10 block licenses which are ten megahertz of [inaudible] and
11 sixty-three are C-block which are thirty megahertz.
12 Involved in the sale to Cingular are fourteen F-
13 blocks and twenty C-blocks, but with respect to the C-block
14 licenses, only two of those are twenty megahertz in Tampa and
15 El Paso. All the others are just ten. So even following the
16 sale with respect to even those twenty C-block markets, the
17 Debtors still have twenty megahertz left in those markets.
18 THE COURT: I see.
19 MS. SCHRIER-RAPE: So this is a -- and we have, as I
20 think Your Honor is aware from the documents filed, report on
21 that transaction of the creditors' committee, the FCC. We have
22 discussed it with the U.S. Trustee's Office as well as our
23 existing --
24 THE COURT: You can split a license that's for thirty
25 megahertz into twenty and ten then?

1 MS. SCHRIER-RAPE: Well, I think I'll tread a little
2 lightly here, Your Honor, but there is an agreement including
3 the FCC term sheet --
4 THE COURT: Yes.
5 MS. SCHRIER-RAPE: -- that does provide that the FCC
6 has agreed to the conditions of the sale.
7 THE COURT: All right.
8 MS. SCHRIER-RAPE: So there are negotiations ongoing,
9 obviously, with the FCC as to a global resolution of these
10 cases, but there is support by the FCC and the Department of
11 Justice for this particular sale --
12 THE COURT: All right.
13 MS. SCHRIER-RAPE: -- and the ten megahertz and in
14 the two cases twenty megahertz license with respect thereto.
15 The transaction is subject to higher and better
16 offers if Your Honor signs the bidding procedures order later
17 this afternoon, and the timing that is contemplated would be a
18 sale hearing which your chambers has given us a date of
19 September 25th at 10:30, to -- and then the agreement itself
20 provides that we do need to have approval no later than a
21 couple of weeks thereafter for the agreement to remain binding.
22 The markets vary, Your Honor, and they are attached.
23 There are some that are small -- Joplin, Missouri, and then
24 Dallas is included. And so the Debtors and their
25 constituencies are comfortable that this is -- is really in no

1 way a substantial [inaudible] assets of the estate, and rather
2 just an isolated transaction that commits the Debtor to proceed
3 with the rest of the reorganization in a way that would benefit
4 all its constituencies.
5 The deal with Cingular itself, Your Honor, really is
6 two -- has two aspects to it. One is the actual purchase
7 agreement and the second is what is called the FCC term sheet.
8 As we can discuss further but is clear both in the bidding
9 procedures motion and in the sale motion itself, we are asking
10 the Court to make it explicit that approval of the sale is
11 conditioned upon approval of the FCC term sheet. It is
12 attached thereto.
13 That FCC term sheet provides a couple of things. It
14 deals with the proceeds of the sale, which are before any
15 higher or better offers $1.4 billion. Of that amount, the FCC
16 would be paid $714.9 and the estate would receive the remainder
17 of the proceeds other than a $20 million indemnity escrow that
18 would be funded for a specific period of time.
19 The agreement with the FCC has, I think counsel will
20 represent later, received DOJ approval at this point. There
21 were two conditions, one was DOJ approval and then if the
22 transaction is approved by this Court, subsequently there would
23 be regulatory approval of the actual assignment transfers. So
24 the first step of that condition has now been achieved.
25 With respect to the other aspects of the sale, Your

1 Honor, there are specific provisions -- two other provisions,
2 the FCC term sheet that are significant. One is that if there
3 are higher bids following the 1.4, the next hundred million
4 comes to the estate, and then following that if there were bids
5 above $1.5 billion, the FCC gets an additional 34 percent of
6 proceeds up to $20 million.
7 THE COURT: Mm-hmm (affirmative).
8 MS. SCHRIER-RAPE: So the FCC could get from the sale
9 of these licenses on a higher, better offer $734 million.
10 I believe, Your Honor, those are the significant
11 aspects of the FCC term sheet other than it does provide that
12 the FCC and the Debtors and the constituencies on both sides,
13 which would include all of Nextwave's creditors, would be, with
14 respect to these licenses, giving each other complete releases
15 so that any claims either would have against the other or
16 constituencies would have as being creditors of Nextwave
17 against the FCC, or the FCC vice versa, are -- we'd -- we would
18 be asking the Court to enter an order asking -- at the sale
19 hearing that would guide comprehensive mutual releases on this
20 segment of licenses, though not on any of the others.
21 THE COURT: All right. Any comments or questions
22 before we -- with regard to the statement that you just made
23 before we get to the actual --
24 MR. KENNEDY: Yes, Your Honor. David Kennedy from
25 the U.S. Attorney's Office representing the FCC.

1 Your Honor, as Ms. Schrier-Rape has indicated, we've
2 all worked very hard to present a consensual resolution of many
3 of the issues pertaining to these licenses, and that is
4 reflected in the term sheet. And I think that if anyone wants
5 to understand that's what the term sheet says, they should
6 simply look at it. And of course, that's been attached to the
7 motion.
8 Ms. Schrier-Rape is correct that the Department of
9 Justice has signed off on the term sheet; that was one of the
10 conditions.
11 THE COURT: Mm-hmm (affirmative).
12 MR. KENNEDY: The other condition goes to the FCC
13 regulatory approval. That is something that the Debtors or
14 perhaps in this case Cingular are not sure what the regulatory
15 process is, will have to work on after the sale.
16 THE COURT: Mm-hmm (affirmative).
17 MR. KENNEDY: So Your Honor did ask a question that I
18 think went to the regulatory issue, which is the splitting up
19 of megahertz. That is sort of more of a regulatory kind of
20 question that the FCC will have to address later. And once the
21 sale is complete, then the FCC regulatory approval can be
22 sought. Nothing that we are doing here kind of requires the
23 FCC to make particular regulatory decisions.
24 THE COURT: All right.
25 MR. KENNEDY: But other than those two significant

1 caveats, we would agree with the statement of Ms. Schrier-Rape.
2 The FCC's consent to the sale is conditioned upon approval of
3 the term sheet, and we very much appreciate Your Honor's
4 consideration on that.
5 THE COURT: All right.
6 MR. KENNEDY: That's all I have on that point. Thank
7 you.
8 THE COURT: All right. Thank you.
9 MS. SCHRIER-RAPE: Your Honor, with two
10 clarifications with respect to that. One, which I was going to
11 come back to on the bidding procedures, but I'll -- I'll
12 mention now for what -- counsel for [inaudible] is coming when
13 we get to that motion, is we do have a clarification on -- on
14 language, but I'll leave it there.
15 With respect to what is called this aggregation,
16 which Mr. Kennedy was just mentioning, the can you take ten
17 megahertz of a C, the FCC regulations in fact do allow that on
18 their terms, so we are quite optimistic that we wouldn't have
19 constructed something that at least the Debtors and Cingular
20 don't believe is appropriate to submit to the FCC for approval.
21 THE COURT: All right. Good.
22 MS. SCHRIER-RAPE: With respect to the other status
23 of the case, Your Honor, with respect to the plan of the
24 reorganization process, we obviously have been continuing to
25 try to resolve all the claims. I think we are down to filing

1 an eleventh omnibus which should be filed in the next day or
2 so, and a couple others that have been filed this week and next
3 week. We would be down to, I believe, subject to one caveat,
4 probably less than ten claims that we think at this point we
5 probably are going to have to file objections to.
6 THE COURT: All right.
7 MS. SCHRIER-RAPE: They are -- the one exception to
8 that is there are quite a number of claims still on the docket
9 that are duplicative of what was called the bridge note
10 stipulations that we did a couple of years ago. So we would be
11 planning on -- on submitting one matter -- quite large
12 objection again, but that's really not a substantive objection
13 because 98% of the bridge note folder is actually signed
14 stipulations which this Court approved, and so these claims in
15 a lot of instances are double, triple, quadruple protections
16 with respect to that stipulation.
17 THE COURT: All right.
18 MS. SCHRIER-RAPE: So once those are done over the
19 next week or so, I do believe that there will be, you know,
20 less than a dozen claims against the Debtors we'll be filing
21 objections.
22 THE COURT: All right.
23 MS. SCHRIER-RAPE: With respect to the plan process,
24 Your Honor, in addition to obviously the negotiations the
25 parties have been having over the Cingular agreement, there are

1 ongoing discussions trying to -- with all the constituencies,
2 including the FCC and the committee, about resolving the entire
3 case.
4 Now at this point, exclusivity is set to expire on
5 September 30th. We have received the consent of the committee
6 to seek a 90-day extension, and we'll be further discussing
7 that with the other constituencies.
8 But we believe, given the timing of the Cingular sale
9 and the hearing and that, that we would be hopeful that we
10 would get everyone and ultimately the Court to agree that a --
11 a 90-day extension following what would be a sale hearing at
12 the end of September would keep everyone on track to try to get
13 a plan on file following the -- the sale before the end of the
14 year.
15 THE COURT: All right.
16 MS. SCHRIER-RAPE: We are -- as Your Honor may be
17 aware, the Debtor's DIP was scheduled to expire on July 31st.
18 We have negotiated an extension with our existing DIP lender
19 which I expect will be filed today or tomorrow. That provides
20 for a continuation of that DIP while we are in the process and
21 which the Court and parties are aware of trying to negotiate a
22 replacement DIP.
23 The current status of the negotiations on the
24 potential replacement DIP is the Court has signed an order
25 which would permit us to file the documents by tomorrow and

1 hold the hearing next week. Informally, we have solicited
2 to -- we have circulated to the major constituencies drafts of
3 the documents. We are going to be working, you know,
4 throughout the day and night to see if we can make that
5 deadline tomorrow.
6 If we can't either because there are some minor
7 outstanding issues or because of internal processes, that the
8 potential lender would then be seeking a short extension of
9 that, and that is contemplated by the request of extension we
10 would be seeking with our existing DIP lender.
11 THE COURT: All right.
12 MS. SCHRIER-RAPE: So we believe both of those
13 processes are approving well.
14 On other financial aspects, Your Honor, we are
15 current on our operating reports, other than August which I
16 believe is being filed -- I'm sorry, July, which I believe is
17 being filed today. We did recently, earlier in the week, file
18 amendments to the January through June operating reports.
19 Those were really just designed to tie into the audit --
20 audited financial statements which were -- which are being
21 finalized as we speak, but to reconcile those. So they -- all
22 those operating reports have been filed previously and these
23 are really amendments to track the audit.
24 As of August 1st, the Debtors have approximately $21
25 million in cash and are current on all of their ongoing

1 administrative expenses.
2 With respect to the business operations, Your Honor,
3 the Debtors are continuing, as Your Honor is aware. The --
4 we've received regulatory approval of the initial build out
5 earlier this year. The network is continuing to operate, and I
6 was quite impressed to find out that even during their recent
7 blackout, the -- the CEO informed me that the Nextwave network
8 did not go down. So those operations are continuing and the
9 business people are continuing in their negotiations on the
10 funds that we have discussed in -- in prior status conferences.
11 I believe, Your Honor, that is the Debtors' overview
12 of the current status of the cases at this point.
13 THE COURT: Any comments or questions with regard to
14 the status?
15 [Pause in proceedings.]
16 THE COURT: Hearing none, let's turn to the last
17 point.
18 MS. SCHRIER-RAPE: The last thing we have on the
19 docket today is a request for entry of a bidding procedures
20 order. There have been no objections filed to the order -- to
21 -- to the motion. We have -- the only change that I've made
22 to the order itself was to fill in the September 25th date that
23 we received from the Court.
24 One clarification, Your Honor, with respect to the
25 bidding procedures order that actually won't be -- come up

1 until the sale order, but the parties have agreed to -- to
2 explain it on the record.
3 The sale order was very heavily negotiated by all the
4 parties and received literal approval by the Cingular board and
5 their respective boards of their parent. It was also approved
6 pursuant to the -- the FCC term sheet. Therefore, the parties'
7 agreement was obviously other than anything at an ultimate sale
8 hearing that Your Honor might have that there would not be
9 changes once the negotiation was finally resolved.
10 As we were going through the process with the other
11 constituencies, a clarification was requested by one of them.
12 There is a provision in both the sale order and in the purchase
13 agreement that says that any party other than the existing DIP
14 or replacement DIP which is to be paid out of the proceeds and
15 with the authorization we sought or the FCC direct payment, but
16 any other parties who has an encumbrance on the licenses, that
17 encumbrance would transfer to the proceeds and every one has
18 reserved their rights and it would ultimately be resolved
19 before this Court or in a consensual fashion.
20 The language itself said literally encumbrance on the
21 licenses. It was the parties' intent, everyone's party --
22 everyone's intent in the deal that that meant the licenses or
23 the proceeds thereof. FCC regulations actually say outside
24 parties should not seek a lien on the licenses but instead on
25 the proceeds thereof. The three words "or the proceeds

1 thereof" were not literally put into the sale order, but it was
2 all the parties' understanding that any encumbrance by any
3 party other than the two I mentioned, the FCC and an existing
4 or replacement DIP would, in fact, transfer in the same, and
5 the language goes on to be [inaudible] clear, validity,
6 priority, et cetera --
7 THE COURT: Right.
8 MS. SCHRIER-RAPE: -- to the proceeds. So I believe
9 everyone is in agreement that that is the intent on the
10 clarification we've agreed to make with L.G.'s counsel.
11 THE COURT: All right. And has that been made?
12 MS. SCHRIER-RAPE: The clarification that we've
13 agreed to be -- to make, Your Honor, is the one I just made on
14 the record --
15 THE COURT: Yeah.
16 MS. SCHRIER-RAPE: -- that we are not going to change
17 the text.
18 THE COURT: I see. Okay.
19 MS. WALKER: L.G. is fine with the representation on
20 the record.
21 THE COURT: All right. Very good. Well, in court,
22 are there any objections to the proposed order for bidding
23 procedures?
24 [Pause in proceedings.]
25 UNIDENTIFIED SPEAKER: Your Honor, I -- we

1 [inaudible] to object. I would like to very briefly articulate
2 the basis for the creditors' committee support of the
3 transaction itself.
4 THE COURT: Uh-huh (affirmative).
5 UNIDENTIFIED SPEAKER: And this would be with respect
6 to [inaudible - away from microphone] procedures in particular.
7 The committee certainly supports the transaction. We think
8 that it is in the best interest of the estate and certainly
9 subject to higher and better offers, but [inaudible - away from
10 microphone] transaction is certainly something that we applaud
11 the Debtors for having achieved.
12 The bidding procedures themselves [inaudible - away
13 from microphone] the process where the Debtors will solicit
14 bids only on the thirty-four licenses that are subject to the
15 Cingular contract. In other words, it should be apples to
16 apples or [inaudible - away from microphone] participate in the
17 auction, they've got to bid on the thirty-four licenses.
18 The question is what happens if -- notwithstanding
19 the Debtors' solicitation of bids on thirty-four licenses, what
20 happens if somebody responds with a bid that either is
21 [inaudible] less than the thirty-four licenses or extends
22 beyond the thirty-four licenses, perhaps to as many as ninety-
23 five licenses, which is the total asset for all of the estate?
24 And Your Honor, subject [inaudible - away from
25 microphone] in the Cingular contract as a, quote, competing

1 proposal. So the question is what happens if there is a
2 competing proposal which arises, which although it's not
3 solicited, [inaudible - away from microphone] anyway, and it
4 turns out that based upon everyone's fiduciary obligations,
5 conclude that it is in fact better than the Cingular proposal?
6 That is today [inaudible] hypothetical issue has not
7 [inaudible - away from microphone]. But that issue was the
8 subject of some intensive dialogue between the creditors'
9 committee and Cingular arising primarily in the context of a
10 support letter that Cingular asked the creditors' committee to
11 sign in support of the bid.
12 And what [inaudible] that support letter is a
13 relevant part of this one sentence, is that "The committee
14 supports sellers entering into the agreement subject to the
15 submission and consideration of higher and better offers and
16 [inaudible] proposals and the committees [inaudible - away from
17 microphone] fiduciary duties."
18 And so, you know, what does that mean? In plain
19 English it means that if a competing proposal comes in as
20 defined in the contract, it means that competing proposal will
21 not be considered in the context of the auction with the
22 procedures contemplated at auction based upon thirty-four
23 licenses, but if a competing proposal comes in nonetheless, the
24 Debtors and the creditors' committee, based upon their
25 respective fiduciary obligations, have the right on September

1 25th when we come to you to have a hearing on this, to say that
2 the auction is no longer the vehicle which the highest and best
3 for the estate. And, in turn, we would seek to embrace the
4 competing proposal.
5 Now, that eventuality is also dealt with in the
6 agreement because if a competing proposal is endorsed by the
7 Debtor, Cingular, subject to the terms of the agreement or
8 [inaudible], so they could be protected in that eventuality and
9 be compensated for that -- that departure from the procedures,
10 but that is -- that entire structure is a critical structure
11 for the creditors' committee. I believe it should be a
12 critical structure for all those who exercise fiduciary
13 [inaudible - away from microphone] because we just don't know
14 what's going to come out of the woodwork as a result of this
15 process.
16 So the solicitation that we have contemplated for
17 thirty-four licenses, but as the process develops, we think
18 [inaudible] flexibility [inaudible - away from microphone]
19 fiduciary [inaudible].
20 THE COURT: I appreciate that clarification. That's
21 helpful.
22 Well, hearing no objection, I shall approve the
23 bidding procedures order.
24 MS. SCHRIER-RAPE: Thank you, Your Honor.
25 [Pause in proceedings.]

1 THE COURT: Are we done then?
2 MS. SCHRIER-RAPE: That is all I have, Your Honor.
3 THE COURT: Anything else? Well, thank you all very
4 much.
5 MS. SCHRIER-RAPE: Thank you.
6 MR. KENNEDY: Thank you, Your Honor.
7 THE COURT: Thank you.
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2 I certify that the foregoing is a court transcript from an
3 electronic sound recording of the proceedings in the above-
4 entitled matter.
5
6 _____
7 Donna K. Chertkow
8 Dated: November 15, 2003
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Enclosure 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of NEXTWAVE PERSONAL COMMUNICATIONS, Debtor.	Case No. 98-21529 300 Quarropas Street White Plains, New York September 25, 2003

TRANSCRIPT OF HEARING RE APPROVAL OF SALE
BEFORE THE HONORABLE ADLAI S. HARDIN, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: DEBORAH SCHRIER-RAPE, ESQ.

For the U.S. Trustee: PAMELA LUSTRIN, ESQ.

For the Creditors:

/FCC	DAVID KENNEDY, ESQ.
/Official Committee	RICHARD STATURE, ESQ.
/L.G. Electronics	JEFF T. SHAPIRO, ESQ.
/Inaudible	MANUEL PREVO, ESQ.
/Singular	PHIL BLUNE, ESQ.

Court Transcriber: DONNA K. CHERTKOW
TypeWrite Word Processing Service
356 Eltingville Boulevard
Staten Island, New York 10312

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE CLERK: Nextwave Personal Communications.
2 THE COURT: Okay. Appearances, please.
3 MS. SCHRIER-RAPE: Good morning, Your Honor. Deborah
4 Schrier-Rape on behalf of Nextwave. I always -- also have with
5 me Frank Kasu [Ph.], the Executive Vice-President and General
6 Counsel, and Jonathan Herpst [Ph.] of UBS, and in the courtroom
7 is Allen Somazi [Ph.], the Chief Executive Officer of Nextwave.
8 THE COURT: All right.
9 MR. KENNEDY: As before, Your Honor, David Kennedy,
10 U.S. Attorney's -- U.S. Attorney's Office representing the FCC,
11 and with me in the courtroom today is David Eaton from the law
12 firm of Kirkland and [inaudible].
13 MR. STATURE: Good morning, Your Honor. Richard
14 Stature [Ph.] from [inaudible] for the official committee.
15 THE COURT: Sir.
16 MS. LUSTRIN: Good morning, Your Honor. Pamela
17 Lustrin, U.S. Trustee.
18 MR. PREVO: Good morning, Your Honor. Manuel Prevo
19 [inaudible] on behalf of [inaudible].
20 MR. BLUNE: Good morning, Your Honor. Phil Blune and
21 Jacob Watson [inaudible] on behalf of Singular.
22 MR. SHAPIRO: Good morning, Your Honor. Jeff T.
23 Shapiro from [inaudible] on behalf of L.G. Electronics.
24 THE COURT: Mr. Shapiro, all right. All right. Ms.
25 Schrier-Rape?

1 MS. SCHRIER-RAPE: Good morning, Your Honor.
2 Hopefully, I'll -- actually, I'll be -- the appearances are
3 longer than the actual matter set today.
4 THE COURT: Okay.
5 MS. SCHRIER-RAPE: We only have one matter on the
6 calendar this morning, Your Honor. It is the motion to approve
7 the proposed transaction with Singular Wireless and the
8 attendant FCC turn sheet.
9 The motion itself, Your Honor, was filed on August
10 5th. There was a -- a first hearing on August 21st to approve
11 bidding procedures, which was an uncontested hearing.
12 Objections to the actual motion were due on September 12th. No
13 objections were filed. Under the bidding procedures, qualified
14 bids were due by September 15th. They were to be delivered to
15 me and to UBS.
16 I can represent to the Court, and we did file a
17 notice on Monday, advising the Court and parties in interest
18 that no qualified bids as defined in the bidding procedures
19 order were received. Accordingly, while there had been an
20 auction scheduled for Tuesday, the 23rd, because there were not
21 qualified bid, that auction was not held. And as I indicated,
22 the notice of that was filed with the Court on Monday.
23 As I indicated, there have been no objections to the
24 proposed transaction. We do have a proposed form of order that
25 we have previously submitted, and at the conclusion of the

1 hearing, I will identify to the Court a few minor changes.
2 We can proceed as -- obviously as the Court would
3 prefer. I can address any questions the Court has in advance
4 or if any other parties have statements they need to make. I'm
5 also prepared, Your Honor, to proffer testimony of Mr. Kasu and
6 Mr. Herbst for the record and make those witnesses available to
7 the Court for any questions as well, if that's how the Court
8 would like to proceed.
9 THE COURT: I assume that you -- you would need to
10 make a very brief proffer for your record.
11 MS. SCHRIER-RAPE: The proffer that we actually -- we
12 can do it one of two ways, Your Honor, if there are no
13 objections. I have a fairly extensive proffer of Mr. Kasu's
14 testimony that actually walks through all of the various
15 elements and a relatively brief proffer of Mr. Herbst that
16 really talks just about the process and that our investment
17 bankers were involved to make and have advised Nextwave of the
18 accuracy of the process. Or I can do a shortened version or
19 address, as I said, proffer responses to specific questions or
20 other parties, however the Court would prefer.
21 THE COURT: Are there any questions or statements or
22 issues that anyone wants to raise with regard to this
23 transaction?
24 MR. BLUNE: Your Honor, Phil Blune, on behalf of
25 Singular. We don't have any questions, but we do think it's

1 appropriate for the proffer to be entered of record to make
2 everything complete and proper.
3 THE COURT: All right.
4 MR. KENNEDY: Good morning, Your Honor. David
5 Kennedy. We have no objection to however the Court and Ms.
6 Schrier-Rape wish to proceed. We should simply say -- to put
7 on the record that our consent to the sale is, of course,
8 embodied in the FCC term sheet and attached to the documents,
9 and we refer any interested parties to that sheet.
10 An important part of that sheet on releases contain a
11 paragraph three which is a crucial factor in the term sheet,
12 permits the transaction to go forward to provide a substantial
13 benefit to the estate. [Inaudible] we all hope to be a
14 consensual plan of reorganization, and as such these
15 [inaudible].
16 And one of the other conditions in the term sheet.
17 One is the obtaining of DOJ approval [inaudible] been obtained.
18 THE COURT: Mm-hmm (affirmative).
19 MR. KENNEDY: With that said on the record, again, we
20 have no objection of proceeding as this Court and Ms. Schrier-
21 Rape [inaudible].
22 THE COURT: Anyone else?
23 [Pause in proceedings.]
24 THE COURT: I leave it to you to make the proffer you
25 deem appropriate.

1 MS. SCHRIER-RAPE: [Inaudible] no-win situation, Your
2 Honor. I have, Your Honor, run past the parties in interest a
3 proposed set of exhibits. All of these exhibits with the
4 exception of two that I'll identify are already in the record
5 and I'll identify the docket numbers that if I could approach
6 for the --
7 THE COURT: Sure.
8 MS. SCHRIER-RAPE: -- Court's convenience, I have
9 collected them.
10 THE COURT: Absolutely.
11 [Pause in proceedings.]
12 THE COURT: Thanks.
13 [Pause in proceedings.]
14 THE COURT: I think the -- I think an abbreviated
15 proffer would be appropriate.
16 MS. SCHRIER-RAPE: Thank you, Your Honor. I would,
17 Your Honor -- would Your Honor like to swear in both Mr. Kasu
18 and Mr. Herbst before I make the proffer or after?
19 THE COURT: I don't think it's necessary. I think
20 they would be sworn in if anyone has any questions for them,
21 how about that? They are here.
22 MS. SCHRIER-RAPE: Thank you, Your Honor. Your
23 Honor, the first witness we would call and the testimony we
24 would proffer now would be Frank Kasu, who is the Executive
25 Vice-President.

1 I would like to make clear on the record and have
2 made clear to the other parties in this matter that Mr. Kasu
3 has two roles in the company; he's Executive Vice-President,
4 he's also General Counsel in both, and his testimony he would
5 have given live, and the proffer I would make we have been
6 quite careful and would represent to the Court and the other
7 parties that he is testifying only in his capacity as Executive
8 Vice-President and is in no way waiving the privilege or
9 proffering any privileged matters.
10 Mr. Kasu would testify to the Court that he is the
11 Executive Vice-President and he has been with Nextwave since
12 1996, having joined Nextwave from his position as outside
13 general counsel. He would then give the Court a brief overview
14 of the actual licenses that Nextwave holds that the Court is
15 familiar with. They're both C, D, E and F.
16 Under the exhibit list, Your Honor, Exhibit 1 is a
17 list of all of the licenses that Nextwave currently holds, and
18 Mr. Kasu would -- would testify that that is an accurate
19 listing of the licenses and, therefore, I would ask the Court
20 to admit that into the record.
21 THE COURT: Received.
22 MS. SCHRIER-RAPE: Mr. Kasu would then testify that
23 he is familiar basically with the qualifications to hold those
24 licenses and believes that both with respect to ownership and
25 [inaudible] requirements, Nextwave has satisfied there have

1 been [inaudible] -- reference to the Court what has already
2 been referenced earlier, that the orders have been entered by
3 the FCC earlier in the year with respect to both foreign
4 ownership and with respect to the billed out requirements.
5 Mr. Kasu would then identify for the Court the actual
6 licenses that are the subject of the Singular transaction.
7 Those are both attached to the motion that's filed with the
8 Court, which is -- and the Singular purchase agreement is under
9 Docket Number 1640, and I would ask the Court to incorporate
10 that in the record, and the list of designated licenses as
11 they're defined are under tab two and referenced here as
12 Exhibit 2.
13 Mr. Kasu would testify in that regard that following
14 the Supreme Court decision and even before, Nextwave has
15 received numerous inquiries and numerous proposals regarding
16 financing, acquisitions, other things from third parties, and
17 that throughout these proceedings, as we have notified the
18 Court during various status conferences, while remaining
19 focused on building out this nationwide broadband wireless
20 network, Nextwave has also considered every opportunity that
21 has come to it and can discuss those with its constituencies.
22 Mr. Kasu would testify that he did receive as one of
23 the principals along with UBS, Mr. Somazi [Ph.] and the other
24 advisors of the company, inquiries following the Supreme Court
25 decision, and one of those was from Singular Wireless.

1 He would testify that he reviewed that [inaudible]
2 transaction with the creditors' committee, with the FCC, and
3 with other large constituents of the Nextwave estate, and that
4 ultimately it was determined that an offer that had presented
5 -- been presented by Singular and then negotiated between the
6 parties was in the best interest of the estate.
7 As Exhibit 1 and Exhibit 2 indicate, Your Honor, and
8 then under Exhibit 6, there is a listing of the licenses that
9 would remain after the Singular transaction. Mr. Kasu would
10 testify that he does not believe that the thirty-four licenses
11 represented in this transaction are [inaudible] substantially
12 all of the assets of the estate, and in fact are not close to
13 that threshold.
14 The actual licenses, Your Honor, for the record, the
15 thirty-four, are eighteen C-block licenses -- I apologize, Your
16 Honor -- fourteen C-block licenses, eighteen D -- I'm sorry --
17 eighteen F-block licenses, and then -- Your Honor, I absolutely
18 massacred that. If I could back up. There are fourteen F-
19 block licenses, eighteen C-block licenses, and an additional
20 two C-block licenses in Tampa and El Paso that are 20 megahertz
21 as opposed to the others which are 10.
22 THE COURT: Mm-hmm (affirmative).
23 MS. SCHRIER-RAPE: So as Your Honor would see in
24 Exhibit 6, in most of the markets where there are C-block
25 licenses, Nextwave still retains substantial stature.

1 THE COURT: Mm-hmm (affirmative).

2 MS. SCHRIER-RAPE: Mr. Kasu would go on to testify,
3 Your Honor, that he has been one of the principals involved
4 both in the Singular negotiations and then in the negotiations
5 both back in 2001 and then when those negotiations resumed
6 following the Supreme Court with the FCC.

7 He would give the Court an outline of the provisions
8 of this -- of the Singular agreement and the FCC term sheet,
9 both of which are attached in the exhibit binder. The Singular
10 purchase agreement is at Exhibit 3 and as I referenced earlier,
11 Docket 1640. The FCC term sheet is at Exhibit 4 in your binder
12 and is as Exhibit G-2 to Docket Number 1640, and I would ask
13 the Court to include both of those in the record.

14 THE COURT: Done.

15 MS. SCHRIER-RAPE: Mr. Kasu would testify that he was
16 personally involved in the negotiations and that they were
17 ongoing, made in good faith, both the Singular and the FCC, and
18 that he believes ultimately that both the Singular transaction
19 and the FCC term sheet are in the best interest of the estate.

20 With respect to the negotiations with the FCC, Your
21 Honor, he would probably reference Mr. Kennedy's opening
22 remarks and say that he does believe that in addition to the
23 actual FCC direct payment of $714 million, that the releases
24 are a critical part of the negotiations and a critical part of
25 the FCC term sheet, without which the term sheet would not be

1 approved and would not have been agreed to by the parties.
2 These are, Your Honor, as language is specific
3 partial releases. The FCC believes, and the parties have
4 discussed each other's claims throughout the negotiations, that
5 they have other claims against the estate and would have had
6 greater claims with respect to these licenses than have
7 resulted in the settlement.
8 Similarly, Nextwave and its independent [inaudible],
9 Mr. Kasu would testify that he's been advised by constituencies
10 that Nextwave and its constituencies believe they have claims
11 against the FCC.
12 The purpose of these releases, Your Honor, are to
13 resolve all claims with respect to the designated licenses
14 between the parties. And it [inaudible] in what Mr. Kasu would
15 testify is a reasonable and fair -- fair process that does not
16 fall below the range of reasonableness and does avoid the cost
17 and the expense of litigation, which has been significant in
18 this case.
19 The releases themselves, Your Honor, do not release
20 claims that are non-license specific, but they do provide
21 specifically that if they are non-license specific claims,
22 there would be [inaudible] damage award or otherwise a
23 proportionate reduction relating to these licenses.
24 So Mr. Kasu would testify that the documents speak
25 for themselves and that they would be the best evidence, but

1 subject to that, his description to the Court would be that the
2 designated licenses are going free and clear to Singular and
3 all claims between Nextwave or any of its creditors and the FCC
4 with respect to these licenses are being resolved and released.
5 With respect to these proceeds, he would briefly
6 describe that of $1.4 billion, seven hundred and fourteen under
7 the term sheet goes to the FCC, that the $20 million goes into
8 an indemnity escrow, and that the remaining $666 million comes
9 to the Nextwave estates.
10 Of the $660 million, Your Honor, the sale order
11 provides as does the purchase agreement and the FCC term sheet
12 contemplates, that the first proceeds would be used to pay off
13 either of the existing DIP [Ph.], or as the Court may be aware,
14 we have a motion set next week for a replacement DIP. The next
15 proceeds from the Nextwave --
16 THE COURT: How much is the existing DIP presently
17 outstanding?
18 MS. SCHRIER-RAPE: As of September 30th, Your Honor,
19 it would be two -- approximately $231 million.
20 THE COURT: Mm-hmm (affirmative).
21 MS. SCHRIER-RAPE: The motion that has been filed
22 requests a new line that would be used to pay that and could
23 have additional funds drawn down for various operating expenses
24 throughout until [inaudible] maturity or closing of the
25 Singular transaction.

1 The sale order is specific, Your Honor. There are
2 certain parties other than the FCC and the DIP lender, both of
3 who will be satisfied out of the Singular proceeds that would
4 claim encumbrances. Those include, but are not limited to, the
5 bridge note holders and L.G.
6 There is, as the Court may be aware in the record,
7 a -- an out-of-protection stipulation with the bridge note
8 holders. Last night, one was also filed, and Mr. Kasu would
9 testify he had reviewed it and L.G. out of a protection
10 stipulation that is set with the DIP -- at the replacement DIP
11 hearing next week.
12 The orders provided, Your Honor, and Mr. Kasu would
13 testify that all other encumbrances, while Nextwave is not
14 agreeing that there are [inaudible] claims or encumbrances,
15 whatever they are, they are attaching to the proceeds to be
16 resolved by this Court under the plan or otherwise, and that
17 Singular is getting the licenses free and clear, and that --
18 that the FCC is getting the FCC directment -- direct payment
19 free and clear.
20 Mr. Kasu would then review I think all the other
21 things that are in the record, and I would ask the Court to
22 take judicial notice of the bidding procedures and so on, and
23 testify that he believes after going through the process, that
24 this is a fair and reasonable deal.
25 He would also tell the Court that he was -- he -- in

1 addition to being Executive Vice-President, he is corporate
2 secretary, that he was present at a board meeting where the
3 full Nextwave board attended, and that the Singular transaction
4 was unanimously approved by the Nextwave board of directors.
5 He would then, obviously, be available to address any
6 other questions the Court or other parties may have.
7 THE COURT: Any questions for Mr. Kasu?
8 MR. KENNEDY: Your Honor, Dave Kennedy for the FCC.
9 I don't think I really have questions for Mr. Kasu, but the
10 only thing I would point out from Ms. Schierey's recitation of
11 the important conditions of the FCC term sheet is that the
12 transaction is subject to FCC regulatory [inaudible], and I
13 think Mr. Kasu would probably agree with me on that.
14 MS. SCHRIER-RAPE: Mr. Kasu would acknowledge that in
15 his testimony.
16 THE COURT: All right. Well, the proffer is
17 accepted. Thank you.
18 MS. SCHRIER-RAPE: Your Honor, with -- with respect
19 to the record, the -- the remaining exhibits that I would ask
20 the Court to include in the record are under -- Exhibit 5 is a
21 copy of the proposed sale order that has been on file. We've
22 already referenced -- referenced Exhibit 6. Exhibit 7, Your
23 Honor, and actually at Docket Number 1712, is a copy of an
24 Affidavit of Service and a notice that was in the Wall Street
25 Journal for three days noticing the potential auction and the

1 bidding procedures.

2 I would also ask the Court to include in the record

3 Docket Numbers 1645, 1655, 1656, 1664, and 1702, and the only

4 thing that is longer than that list of docket numbers is the

5 certificates of service that all of those docket numbers

6 represent. And I believe, Your Honor, that Mr. Kasu would

7 testify, and Mr. Herbst would as well, during the limited

8 proffer I'll give from him, that they have both reviewed those

9 and that to their knowledge, all parties who have ever

10 expressed an interest in any of the Nextwave licenses did

11 receive those notices and are on those certificates of service,

12 as well as all other parties in interest in these cases.

13 The last thing I would ask the Court to include is --

14 as Exhibit 9 would be Docket Number 1696, which is the actual

15 notice of sale.

16 THE COURT: All right. All those exhibits and

17 documents that you referred to will be included in the record

18 -- deemed included.

19 MS. SCHRIER-RAPE: With respect to Mr. Herbst, Your

20 Honor, I believe I will limit his proffer and ask the Court and

21 other parties in interest to take -- take notice of his

22 qualifications. He is currently employed as the director in

23 the Global Telecommunications Group of UBS Investment Bank's

24 Corporate Finance Division. And as the Court and the parties

25 are aware, UBS Bank has been the financial advisor of Nextwave

1 since 2001, and Mr. Herbst has been one of the primary contacts
2 for Nextwave since that time.
3 Mr. Herbst would give a recitation of his experience
4 which include over $5 billion of various -- $5 billion value of
5 various transactions. He would then tell the Court that he is
6 familiar both with the bidding procedures order, with the
7 Singular purchase agreement, with the FCC term sheet, that he
8 and his colleagues at UBS throughout the process provided
9 Nextwave with various analysis both with the FCC term sheet and
10 of the Singular transaction, and that they assisted Nextwave in
11 analyzing the transaction, and that they [inaudible] that
12 analysis and on both their experience and the contacts that
13 they both received and made in the industry with respect to
14 this transaction.
15 That they believe that any party that wanted to make
16 a qualified bid for this transaction was aware of it, and that
17 they were -- believed based on the analysis in the context that
18 they've had, that Nextwave's position, that this was in the
19 best interests of the estate and is a fair and reasonable
20 transaction, that they would have no reason to tell the Court
21 that they believe that there is anything out there that would
22 be higher or better or not in the best interest of the estates.
23 He would testify so the record is clear that there
24 were contacts both to Nextwave directly and to UBS during the
25 bidding procedure, but that ultimately there were no qualified

1 bids; therefore, an auction was not held. He would then
2 obviously be available to the Court and any party -- other
3 parties in interest for any questions about the process.
4 THE COURT: Any questions?
5 [Pause in proceedings.]
6 THE COURT: Hearing none, I will accept the proffer.
7 MS. SCHRIER-RAPE: Your Honor, I believe that the
8 Court can take also judicial notice of the record of these
9 proceedings which have the various status conferences and
10 various other elements, so that even though I have abbreviated
11 in a rather haphazard fashion the proffers, that the record
12 should suffice to support the Nextwave request, and I believe I
13 can represent for the record the FCC, the creditors' committee,
14 the existing DIP lender, L.G., and the potential replacement
15 DIP lender are all supported by the transaction and request
16 that the Court approve it.
17 THE COURT: All right. Anything further from anyone?
18 [Pause in proceedings.]
19 THE COURT: Hearing no objection and being satisfied
20 with the proffer -- by the proffers, I will approve the
21 transaction. Do you have an order?
22 MS. SCHRIER-RAPE: I do, Your Honor. And for the
23 record, I would ask the Court's indulgence. We have this
24 morning made -- though Your Honor has a copy of an order on a
25 disk, but we have this morning made changes on page two which I

1 have handwritten in --
2 THE COURT: All right.
3 MS. SCHRIER-RAPE: -- and on paragraph 13. So I
4 would have to ask the Court if chambers would so kind as to put
5 those changes on the disk before the actual order is entered.
6 If I could approach -- if I could approach, I'll show the Court
7 the copy of [inaudible] marked --
8 THE COURT: Sure. If you have a signature
9 [inaudible] for me, I have one here, but --
10 [Pause in proceedings.]
11 THE COURT: Okay, good.
12 MS. SCHRIER-RAPE: Those two sets of changes, Your
13 Honor, we have this morning reviewed them with Ms. Lustrin on
14 behalf of the U.S. Trustee, counsel for the DIP lender, counsel
15 for the potential replacement DIP lender, L.G., Singular, the
16 FCC, and the creditors' committee, and everyone is in agreement
17 with the changes that are hand-marked on that order.
18 THE COURT: Okay. Now on pages --
19 MS. SCHRIER-RAPE: Page two and then paragraph 13.
20 THE COURT: All right. I have initialed those, and
21 we have a disk, I take it.
22 THE CLERK: Yes.
23 MS. SCHRIER-RAPE: Yes, Your Honor.
24 THE COURT: The order is signed. Thank you very
25 much.

1 MS. SCHRIER-RAPE: Thank you very much, Your Honor.
2 THE COURT: Splendid. Thanks.
3 UNIDENTIFIED SPEAKER: Thank you, Your Honor.
4 THE COURT: Thank you.
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2 I certify that the foregoing is a court transcript from an
3 electronic sound recording of the proceedings in the above-
4 entitled matter.

5

6 Donna Chertkow

7 Donna K. Chertkow

8 Dated: October 21, 2003

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CERTIFICATE OF SERVICE

I, Joy Taylor, do hereby certify that on this 26th day of November 2003, a copy of the foregoing letter (with enclosures) was sent by U.S. Mail, first-class postage prepaid (unless otherwise indicated), to the following:

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