

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
Department of Justice )  
Antitrust Division )  
325 7th Street, N.W., Suite 500 )  
Washington, D.C. 20530, )

Plaintiff,

v.

OMNIPOINT CORPORATION, )  
2000 North 14th Street, Suite 550 )  
Arlington, VA 22201, )  
Defendant. )

CASE NUMBER 1:98CV02750

JUDGE: Paul L. Friedman

DECK TYPE: Antitrust

DATE STAMP: 11/10/98

COMPLAINT

The United States of America, through its attorneys, acting under the direction of the Attorney General of the United States, brings this civil antitrust action under Section 1 of the Sherman Act, to obtain equitable and other relief against Omnipoint Corporation.

I. NATURE OF THIS ACTION

1. In August 1996, the Federal Communications Commission ("FCC") commenced an auction (the "DEF auction") to award licenses of broadband radio spectrum to be used for the development and operation of personal communications services ("PCS"). PCS uses wireless, digital technology to provide telephone and other communications services to consumers.

2. Defendant Omnipoint Corporation (“Omnipoint”), through, its affiliate Omnipoint PCS Entrepreneurs Two, Inc., was among the successful bidders in the DEF auction. Omnipoint bid on several licenses and sometimes submitted bids that ended with three-digit numerical codes. Omnipoint used the coded bids to communicate with rival bidders during the auction. By using the codes, Omnipoint created links between two or more specific markets and thereby proposed to competing bidders that they not bid against each other in the linked markets.

3. Through the use of the coded bids during the auction, Omnipoint and one of its rivals reached an agreement to refrain from bidding against one another for PCS licenses in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. As a consequence of this agreement, Omnipoint and its rival paid less for PCS licenses, depriving the Treasury of the United States of revenues.

## II. JURISDICTION, VENUE AND DEFENDANT

4. This complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. § 4, in order to prevent and restrain violations by Omnipoint of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

5. Omnipoint is a Delaware corporation with headquarters in Maryland. Omnipoint constructs and operates PCS systems in numerous geographic areas in the United States pursuant to licenses granted by the FCC. Omnipoint provides communications services to businesses and individuals across the United States. Omnipoint is engaged in interstate commerce and its activities substantially affect interstate commerce.

6. A substantial number of the events that gave rise to this complaint occurred in this District. Venue is proper under 28 U.S.C. § 1391(b)(2). Omnipoint consents to jurisdiction and venue in the District of Columbia pursuant to 15 U.S.C. § 22 and 28 U.S.C § 1391(c).

### III. THE FCC AUCTION OF PCS LICENSES

7. In 1993, Congress enacted legislation providing for auction of licenses by the FCC for the use of radio spectrum. The legislation required the FCC to promulgate rules for ensuring that auctions would be competitive. One of the uses for the spectrum to be auctioned by the FCC is PCS.

8. The FCC divided the spectrum available for broadband PCS into 6 bands: A, B, C, D, E and F. The A, B and C licenses were for 30 MHZ each, while the D, E and F licenses were for 10 MHZ each.

9. The FCC also divided the country into 51 geographic areas called Market Trading Areas ("MTAs"), which were each allotted an A and a B license. The FCC further subdivided these 51 MTAs into 493 smaller geographic units, which it called Basic Trading Areas (BTAs), which were each allotted a C, D, E and F license. Each BTA was assigned a number between 1 and 493.

10. The FCC adopted a simultaneous, multiple-round, open format for the PCS auctions. Under this format, numerous licenses are offered in a single auction, staged over several rounds, with all licenses remaining open for bidding until the auction closes. Auction participants can observe all of the bidding activity in each round. An auction ends only when a round passes in which no bidder submits a bid on any license.

11. One goal of the FCC was to ensure the efficient allocation of the licenses, that is, that each license should go to the bidder who valued it most highly. The PCS auction format helped achieve this goal by awarding each license to the highest bidder.

12. The first broadband PCS auction was held from December 1994 to March 1995 for all A and B licenses. From December 1995 to May 1996, the FCC conducted a second auction, this time for all C licenses.

13. The auction of the D, E and F licenses for all 493 BTAs began in August 1996. As in the earlier auctions, each round of the DEF auction began with a bid submission period during which participants could submit bids electronically or by telephone for any of the licenses in which they were interested. Because there were three bands, the DEF auction involved a total of 1479 licenses.

14. After each bid submission period, the FCC published electronically to all bidders the results of the bidding for each license, including the name of each company bidding, the amount of each bid, and the time each bid was submitted. The high bidder for a license in a round became the "standing high" bidder for that license; in the case of a tie, the highest bid received earliest by the FCC during that round was the standing high bid.

15. Following publication of the results of each bid submission round, there was a bid withdrawal period. During this period, bidders were permitted to withdraw standing high bids from any market, subject to a bid withdrawal penalty specified by the FCC. The FCC then published the results of the withdrawal period.

16. An auction round was comprised of the bid submission and bid withdrawal periods. At the beginning of the auction, the FCC held one round per day. As the auction progressed, the

FCC increased the number of rounds held in a single day. Where there were multiple rounds in a day, the FCC provided a period of time between rounds for auction participants to analyze the bidding of the prior round and to plan for the next round.

17. Before the auction, bidders analyzed which licenses (or group of licenses) would best enable them to provide effective and competitive PCS service, assessed the value they placed on those licenses, and developed strategies to obtain the licenses. As the auction proceeded, bidders often adjusted their market valuations and business strategies in light of other participants' bids.

18. The DEF auction lasted 276 rounds, ending in January 1997.

#### IV. VIOLATION ALLEGED

19. In the course of the DEF auction, Omnipoint sometimes placed bids in which the final three digits intentionally corresponded to the numerical designator for a BTA (a "BTA end code"). Omnipoint knew the BTA end codes were visible to other bidders and that it could use the BTA end codes to signal or communicate with its competitors. Omnipoint used these signals to, among other things, link the bidding of licenses in two (or more) specific BTA markets, highlight the licenses Omnipoint wanted, and convey offers to allocate the licenses. Omnipoint's use of the BTA end codes did not serve any legitimate purpose of the auction.

20. During the course of rounds 167 to 172, Omnipoint reached an agreement with NextWave Telecom Inc. ("NextWave") to allocate between them the F-band licenses for Toledo (BTA# 444), Salisbury, MD (BTA# 398), and Lancaster, PA (BTA# 240). Omnipoint agreed to

stop bidding for the Salisbury and Lancaster-F licenses in exchange for NextWave's agreement to stop bidding for the Toledo-F license. Their agreement is evidenced by, among other things:

- a. Prior to round 167, Omnipoint had the high bid in Salisbury-F and had bid intermittently in earlier rounds for the F license in Lancaster and Toledo;
- b. Prior to round 167, NextWave had the standing high bids for the Lancaster and Toledo-F licenses;
- c. In round 167, NextWave placed the high bid for Salisbury-F;
- d. After Omnipoint placed the high bid for Toledo-F in round 168, NextWave won back the license in round 169;
- e. In round 170, Omnipoint placed bids for Salisbury-F and Lancaster-F and attached the Toledo BTA end code to these bids;
- f. In round 170, Omnipoint withdrew its Salisbury and Lancaster bids that same round;
- g. In round 171, Omnipoint again bid for the Salisbury and Lancaster licenses, this time for lower prices than it had bid in round 170;
- h. Omnipoint's use of the BTA end codes established a link between the Salisbury and Lancaster-F licenses and the Toledo-F license;
- i. NextWave saw the BTA end codes and understood that Omnipoint proposed to stop bidding in Salisbury and Lancaster in exchange for NextWave ceasing to bid for the Toledo-F license;
- j. NextWave stopped bidding for the Toledo-F license, even though it was willing to pay more than Omnipoint's standing high bid for that license;

and

k. Omnipoint then stopped bidding for Salisbury-F and Lancaster-F.

21. The purpose and effect of the agreement was to allocate licenses between Omnipoint and NextWave and to suppress the prices for PCS licenses by eliminating competing bids. The agreement had the following effects, among others:

- a. competition between Omnipoint and NextWave in the auction of PCS licenses was restrained, suppressed, and eliminated; and
- b. the Treasury of the United States received less revenue for certain PCS licenses.

22. The agreement between Omnipoint and NextWave was not authorized by the FCC rules governing the auction.

23. Unless permanently restrained and enjoined, Omnipoint will continue to engage in conduct in future FCC auctions that unreasonably restrains trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

#### V. PRAYER FOR RELIEF

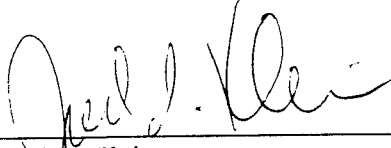
WHEREFORE, plaintiff prays:

24. That the Court adjudge and decree that Omnipoint entered an agreement to restrain interstate trade and commerce of licenses for PCS in violation of Section 1 of the Sherman Act.

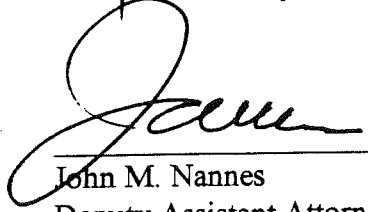
25. That Omnipoint, its officers, directors, agents, employees and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the agreement alleged, or

from engaging in any other agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

Dated:



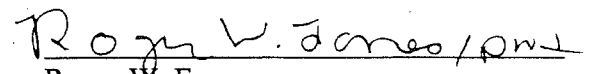
Joel I. Klein  
Assistant Attorney General



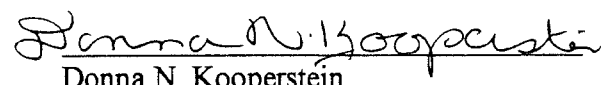
John M. Nannes  
Deputy Assistant Attorney General



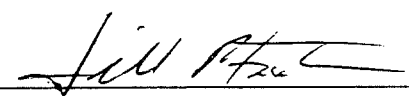
Rebecca P. Dick  
Director, Civil Non-Merger  
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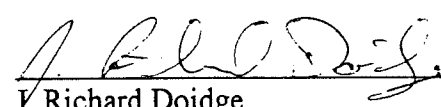
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