

107TH CONGRESS  
1ST SESSION

# H. R. 3484

To resolve administrative disputes regarding certain spectrum licenses; and  
for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2001

Mr. TAUZIN (for himself, Mr. SENSENBRENNER, Mr. THOMAS, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, Ways and Means, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To resolve administrative disputes regarding certain  
spectrum licenses; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prompt Utilization of  
5 Wireless Spectrum Act of 2001”.

6 **SEC. 2. SETTLEMENT OF LITIGATION AND PROMPT UTILI-**  
7 **ZATION OF WIRELESS SPECTRUM.**

8 (a) RESOLUTION OF LITIGATION.—

1           (1) APPROVAL OF SETTLEMENT.—Congress  
2 hereby authorizes and approves the decision by the  
3 Federal Communications Commission and the De-  
4 partment of Justice to settle the case entitled  
5 NextWave Personal Communications Inc. and  
6 NextWave Power Partners Inc. v. Federal Commu-  
7 nications Commission and the United States of  
8 America, D.C. Cir. Nos. 00–1402 and 00–1403, pe-  
9 titions for certiorari filed, Nos. 01–653, et al. (Octo-  
10 ber 19, 2001), and their claims in the case entitled  
11 In re NextWave Personal Communications Inc.,  
12 Bankr. S.D.N.Y. No. 98 B 21529 (ASH), in accord-  
13 ance with the terms of the settlement agreement.

14           (2) AUTHORIZATION.—There are hereby au-  
15 thorized to be appropriated \$9,550,000,000, to re-  
16 main available until expended, to carry out this sec-  
17 tion.

18           (3) APPROPRIATION.—There is appropriated to  
19 the Commission, out of any money in the Treasury  
20 not otherwise appropriated, the sum of  
21 \$9,550,000,000, to remain available until expended,  
22 to carry out this section.

23           (4) PAYMENT OBLIGATION.—In accordance  
24 with the terms of the settlement agreement, subject  
25 to the conditions set forth therein (including the

1 condition that the final bankruptcy settlement ap-  
2 proval date shall have occurred, on or before Decem-  
3 ber 31, 2002), and in consideration for NextWave's  
4 complete relinquishment of any and all claims re-  
5 lated to the designated licenses or the covered spec-  
6 trum, the Commission shall pay to or on behalf of  
7 NextWave the sum of \$9,550,000,000 no later than  
8 December 31, 2002. The Commission will make a  
9 \$6,498,000,000 payment directly to NextWave and  
10 will make a \$3,052,000,000 nonrefundable advance  
11 tax payment on behalf of and for the benefit of  
12 NextWave for the taxable period. This advance pay-  
13 ment of \$3,052,000,000 can be used by NextWave  
14 only toward satisfaction of its Federal income tax li-  
15 ability for the taxable period and not on a subse-  
16 quent claim for refund; and it cannot be carried for-  
17 ward or carried back to any other tax period and is  
18 not available for use or tax benefit in any year other  
19 than the taxable period. Notwithstanding any other  
20 provision of law, the United States is authorized and  
21 directed to retain all of NextWave's advance pay-  
22 ment, irrespective of the total Federal income tax li-  
23 ability of NextWave.

24 (5) NEXTWAVE RELINQUISHMENT OF  
25 CLAIMS.—In accordance with the terms of the settle-

1       ment agreement, on or before the 10th business day  
2       after the final bankruptcy settlement approval date  
3       occurs, NextWave shall completely relinquish any  
4       and all claims related to the designated licenses and  
5       the covered spectrum.

6           (6) NEXTWAVE TAX LIABILITY.—NextWave  
7       shall pay to the Internal Revenue Service its full and  
8       complete tax liability with respect to the transaction  
9       that is the subject of the settlement agreement.  
10       Nothing in this section is to be construed as deter-  
11       mining NextWave’s Federal tax liability for the tax-  
12       able period or any other tax year, and nothing in  
13       this section restricts the Internal Revenue Service’s  
14       rights to determine NextWave’s Federal income tax  
15       liability for the taxable period or any other tax year.  
16       Payment of its full and complete tax liability shall  
17       not permit NextWave to avoid payment to the  
18       United States of any other amounts it is obligated  
19       to pay the United States pursuant to the terms of  
20       the settlement agreement or otherwise.

21           (7) PAYGO PROVISION.—Notwithstanding Rule  
22       3 of the Budget Scorekeeping Guidelines set forth in  
23       the Joint Explanatory Statement of the Committee  
24       of Conference accompanying Conference Report No.  
25       105–217, any provision of this section that would

1 have been estimated as changing direct spending or  
2 receipts under section 252 of the Balanced Budget  
3 and Emergency Deficit Control Act of 1985 were it  
4 included in an Act other than an appropriations Act  
5 shall be treated as direct spending or receipts legis-  
6 lation, as appropriate, under section 252 of the Bal-  
7 anced Budget and Emergency Deficit Control Act of  
8 1985.

9 (b) IMPLEMENTATION OF AUCTION 35.—

10 (1) DISPOSITION OF LICENSE APPLICATIONS.—

11 Notwithstanding any other provision of Federal,  
12 State, or local law, the Commission shall grant auc-  
13 tion 35 licenses to each participating auction 35  
14 winning bidder that the Commission determines is  
15 qualified to hold the licenses. Any such grant of li-  
16 censes pursuant to this subsection shall be subse-  
17 quent to the final bankruptcy settlement approval  
18 date, and shall be governed by the terms of auction  
19 35 and the rules of the Commission, except insofar  
20 as those terms and rules of the Commission are  
21 modified by this section or by the terms of the set-  
22 tlement agreement.

23 (2) WITHDRAWAL OF BIDS.—Any auction 35  
24 winning bidder whose total winning bids for auction  
25 35 licenses did not exceed \$10,000,000 may elect to

1 withdraw all of its bids for such auction 35 licenses  
2 without penalty and shall be entitled to a refund of  
3 its monies on deposit with the Commission associ-  
4 ated with such auction 35 licenses, provided that  
5 such a winning bidder that elects to withdraw its  
6 bids must file with the Commission no later than  
7 January 30, 2002, a notice of election to withdraw  
8 accompanied by a waiver and release, acceptable to  
9 the Commission, of all rights and claims relating to  
10 such auction 35 licenses, auction 35, or the settle-  
11 ment agreement. Nothing in this section shall be  
12 construed to permit any auction 35 winning bidder  
13 to withdraw some, but not all, of its bids for auction  
14 35 licenses.

15 (3) LETTERS OF CREDIT AND PARTIAL RETURN  
16 OF CERTAIN AMOUNTS ON DEPOSIT.—A partici-  
17 pating auction 35 winning bidder that provides let-  
18 ters of credit to the United States in accordance  
19 with the terms of the settlement agreement shall be  
20 entitled to a refund totaling 50 percent of its auc-  
21 tion 35 deposits for winning bids for auction 35 li-  
22 censes submitted by that auction 35 winning bidder.  
23 The Commission shall pay such refund upon instruc-  
24 tions from the payor of record, in accordance with  
25 and within the time prescribed in the settlement

1 agreement. Nothing in this paragraph shall prevent  
2 the United States from recouping the value of the  
3 refunded deposits at a later time, to the extent au-  
4 thorized by the settlement agreement.

5 (4) NONPARTICIPATING AUCTION 35 WINNING  
6 BIDDERS.—Except as provided in paragraph (2),  
7 any auction 35 winning bidder that is not a partici-  
8 pating auction 35 winning bidder shall remain sub-  
9 ject to the full terms of auction 35, including but  
10 not limited to all payment and default obligations.

11 (5) PAYMENT BY PARTICIPATING AUCTION 35  
12 WINNING BIDDERS.—In accordance with the terms  
13 of the settlement agreement, subject to the condi-  
14 tions set forth therein (including the condition that  
15 the final bankruptcy settlement approval date shall  
16 have occurred, on or before December 31, 2002),  
17 and subject to paragraph (6), any participating auc-  
18 tion 35 winning bidder that the Commission deter-  
19 mines is qualified to hold any license or licenses bid  
20 on in auction 35 shall pay the amount due on re-  
21 ceipt for each auction 35 license with respect to  
22 which the Commission has made such determination,  
23 as specified and by the time provided in the settle-  
24 ment agreement, and, in exchange, shall receive all  
25 such licenses.

1           (6) EARLY PAYMENT.—Any participating auc-  
2           tion 35 winning bidder may choose, in accordance  
3           with the terms of the settlement agreement, to make  
4           earlier payment for, and in exchange receive at the  
5           time of payment, all auction 35 licenses that the  
6           Commission is prepared to grant to it.

7           (7) QUALIFICATION REQUIREMENTS.—In the  
8           event the Commission determines that any auction  
9           35 winning bidder is not qualified, under the rules  
10          of the Commission or the Communications Act of  
11          1934, to hold an auction 35 license for which it sub-  
12          mitted the winning bid, that auction 35 winning bid-  
13          der remains subject—

14                 (A) to the rules of the Commission that  
15                 would apply in the absence of the settlement  
16                 agreement, including without limitation any and  
17                 all payment and default obligations and refund  
18                 rights; and

19                 (B) to the settlement agreement.

20          (8) REFUNDS FOR PARTICIPATING AUCTION 35  
21          WINNING BIDDERS.—In accordance with the terms  
22          of the settlement agreement, a participating auction  
23          35 winning bidder that has previously been granted  
24          auction 35 licenses shall be entitled to receive from  
25          the Commission, and the Commission shall pay from

1 the budget accounts that received the payments from  
2 such bidder, a refund of amounts previously paid by  
3 such bidder for such auction 35 licenses as follows—

4 (A) any and all amounts due on receipt  
5 previously paid by such auction 35 winning bid-  
6 der, if an order is entered by any court in a  
7 proceeding under subsection (c) that denies or  
8 has the legal effect of denying a participating  
9 auction 35 winning bidder's right to use the  
10 spectrum covered by one or more auction 35 li-  
11 censes that were previously granted to such  
12 participating auction 35 winning bidder, subject  
13 to the provisions set forth in the settlement  
14 agreement with respect to repayment on res-  
15 toration of rights; and

16 (B) any and all amounts due on receipt  
17 and auction 35 deposits previously paid by, and  
18 not previously refunded to, such auction 35  
19 winning bidder for such licenses, under the fol-  
20 lowing circumstances—

21 (i) if an order entered by any court in  
22 a proceeding under subsection (c) is in ef-  
23 fect on or after December 31, 2002, that  
24 denies or has the legal effect of denying a  
25 participating auction 35 winning bidder's

1 right to use the spectrum covered by one  
2 or more auction 35 licenses that were pre-  
3 viously granted to such participating auc-  
4 tion 35 winning bidder;

5 (ii) if a final court order precludes or  
6 has the legal effect of precluding the Com-  
7 mission from paying all or part of the  
8 amounts set forth in subsection (a); or

9 (iii) if, on December 31, 2002, the  
10 Commission has not released an order with  
11 respect to one or more auction 35 licenses  
12 for which a participating auction 35 win-  
13 ning bidder submitted the winning bids de-  
14 termining either that the Commission is  
15 prepared to grant such auction 35 license  
16 or that such participating auction 35 win-  
17 ning bidder is not qualified to hold such  
18 auction 35 license.

19 (9) RULE OF CONSTRUCTION.—Nothing in this  
20 section shall be construed to expand or limit any  
21 right to a refund set forth in the settlement agree-  
22 ment.

23 (c) JUDICIAL REVIEW.—

24 (1) EXCLUSIVE REVIEW.—Subject to the limita-  
25 tions and preclusions in subsection (d), any pro-

1 ceeding for review within the scope of this subsection  
2 may be brought only in the United States Court of  
3 Appeals for the District of Columbia Circuit, which  
4 shall have exclusive jurisdiction over any such pro-  
5 ceeding.

6 (A) Any—

7 (i) appeal of an order disposing of the  
8 motion filed by NextWave for approval of  
9 the settlement agreement; or

10 (ii) petition seeking judicial review of  
11 the procedures provided by this section for  
12 the resolution of issues presented by such  
13 motion;

14 shall be commenced by the filing, within 10  
15 days after entry of the order disposing of such  
16 motion, of a notice of expedited appeal or notice  
17 of expedited petition, as appropriate, which  
18 shall include a reference to the review provi-  
19 sions of this section. Nothing in this section  
20 shall affect the standard of review or sub-  
21 stantive law applicable in any such proceeding.  
22 Except in a proceeding under this subpara-  
23 graph, no court shall have jurisdiction to con-  
24 sider any issue that could have been raised in  
25 a proceeding filed under this subparagraph.

1 (B) Any petition seeking judicial review of  
2 an order of the Commission approving the set-  
3 tlement agreement shall be commenced by the  
4 filing, within 10 days after the later of—

5 (i) the date on which public notice is  
6 given of the order of the Commission; or

7 (ii) the effective date of this section;  
8 of a petition for expedited review, which shall  
9 include a reference to the review provisions of  
10 this section.

11 (C) Any challenge to any aspect of the con-  
12 stitutionality of this section, except for a chal-  
13 lenge that must be brought pursuant to sub-  
14 paragraph (A), shall be commenced by the fil-  
15 ing, within 10 days after the effective date of  
16 this section, of a petition for expedited review,  
17 which shall include a reference to the review  
18 provisions of this section.

19 (2) EXPEDITED TREATMENT.—The Court of  
20 Appeals shall advance on its docket any and all pro-  
21 ceedings brought under paragraph (1) and shall ex-  
22 pedite them to the greatest extent possible, with a  
23 view to deciding the cases within 55 days after the  
24 filing of the last timely filed petition or notice of ap-  
25 peal, if practicable. Such expedited procedures shall

1 apply to all such cases, including those that are be-  
2 fore the court following any remand to the Commis-  
3 sion or to the lower court with jurisdiction over fur-  
4 ther proceedings related to the motion filed by  
5 NextWave for approval of the settlement agreement.  
6 Any petition for rehearing or rehearing en banc of  
7 an order by the Court of Appeals in a case under  
8 paragraph (1) shall be filed within 10 days after the  
9 entry of judgment. The Court of Appeals shall expe-  
10 dite its consideration of any such petition to the  
11 greatest extent possible, with a view to resolving the  
12 petition within 20 days after it is filed, if prac-  
13 ticable.

14 (3) CERTIORARI.—Any petition for a writ of  
15 certiorari seeking review by the Supreme Court of  
16 the United States of a judgment or order by the  
17 Court of Appeals under this subsection shall be filed  
18 within 10 days after the entry of the judgment or  
19 order. Any opposition shall be filed within 10 days  
20 after the filing of the petition. The Supreme Court  
21 shall advance any such petition on its docket and ex-  
22 pedite its consideration of the petition to the great-  
23 est extent possible, with a view to acting on the peti-  
24 tion within 30 days after it is filed, if practicable.

25 In the event the petition is granted, the Supreme

1 Court shall expedite consideration to the greatest ex-  
2 tent possible, with a view to issuing an order within  
3 70 days of the grant of the writ of certiorari, if  
4 practicable.

5 (4) LIMITS ON INTERLOCUTORY RELIEF AF-  
6 FECTING LICENSES.—In adjudicating matters aris-  
7 ing under subparagraph (B) or (C) of paragraph  
8 (1), no court shall have jurisdiction to enter an  
9 order that would require an auction 35 winning bid-  
10 der to surrender or relinquish an auction 35 license,  
11 or that would deny or have the legal effect of deny-  
12 ing a licensee’s right to use the spectrum covered by  
13 such a license, due to the invalidity of the settlement  
14 agreement, of an order of the Commission approving  
15 the settlement agreement, or of this section, at any  
16 time before there is a final judgment in a proceeding  
17 under such subparagraph that is no longer subject  
18 to further review.

19 (5) EXCLUSION OF BIDDER-SPECIFIC LITIGA-  
20 TION AND ENFORCEMENT PROCEEDINGS.—The fol-  
21 lowing proceedings shall be excluded from the scope  
22 of this subsection:

23 (A) Any proceeding seeking judicial review  
24 of any decision or order of the Commission spe-  
25 cific to an auction 35 winning bidder’s license

1 application, including, but not limited to, a pro-  
2 ceeding pursuant to subparagraph (A) or (B) of  
3 subsection (d)(1) concerning the bidder's quali-  
4 fications to hold a license.

5 (B) Any proceeding to enforce the terms of  
6 the settlement agreement, including, but not  
7 limited to, a proceeding pursuant to subpara-  
8 graph (C) of subsection (d)(1).

9 (6) LIMITATION ON JURISDICTION.—Except in  
10 a proceeding filed under paragraph (1), no court  
11 shall have jurisdiction to consider any issue that  
12 could have been raised in an action filed under such  
13 paragraph.

14 (d) LIMITATION AND PRECLUSION OF ACTIONS.—

15 (1) LIMITATION ON ADMINISTRATIVE OR JUDI-  
16 CIAL REVIEW.—Neither the settlement agreement  
17 nor an order of the Commission approving the settle-  
18 ment agreement, granting a license, or taking any  
19 other action pursuant to this section or to the settle-  
20 ment agreement, shall be subject to administrative  
21 or judicial review, except that—

22 (A) administrative and judicial review of a  
23 decision of the Commission disposing of any pe-  
24 tition to deny applications of an auction 35 win-  
25 ning bidder, which petition was timely filed on

1 or before March 9, 2001, in accordance with  
2 the requirements of section 1.2108(b) of title  
3 47, Code of Federal Regulations, and “C and F  
4 Block Broadband PCS Auction: Applications  
5 Accepted For Filing,” Public Notice, DA 01–  
6 520 (released February 27, 2001), is not pre-  
7 cluded;

8 (B) administrative and judicial review of a  
9 decision of the Commission determining that an  
10 auction 35 winning bidder is not qualified to  
11 hold a license, initiated by that auction 35 win-  
12 ning bidder, is not precluded;

13 (C) any party to the settlement agreement  
14 may initiate a proceeding to enforce the terms  
15 of the settlement agreement;

16 (D) subject to subsection (c)(1)(A), this  
17 section does not affect jurisdiction to rule on  
18 the motion filed by NextWave for approval of  
19 the settlement agreement; and

20 (E) this section, the settlement agreement,  
21 and any Commission order approving the settle-  
22 ment agreement, shall be subject to review sole-  
23 ly for constitutionality and solely as provided in  
24 subparagraphs (A), (B), and (C) of subsection  
25 (c)(1).

1           (2) LIMITATION ON INJUNCTIONS REGARDING  
2           LETTERS OF CREDIT.—No court shall have jurisdic-  
3           tion to enjoin the United States or the Commission  
4           from exercising its rights to draw on the letters of  
5           credit that have been provided by a participating  
6           auction 35 winning bidder in accordance with the  
7           terms of the settlement agreement.

8           (3) PRESERVATION OF COMMISSION AUTHOR-  
9           ITY.—Nothing in this subsection affects the jurisdic-  
10          tion or authority of the Commission, consistent with  
11          the Communications Act of 1934, the rules of the  
12          Commission, and the settlement agreement, to with-  
13          draw authorization to use spectrum or enforce li-  
14          cense conditions applicable to the affected spectrum.  
15          Except as otherwise provided in this section or the  
16          settlement agreement, auction 35 winning bidders  
17          remain subject to the rules of the Commission and  
18          the Communications Act of 1934.

19          (e) FRIVOLOUS ACTIONS.—Any person who files an  
20          action in derogation of limitations or deadlines set forth  
21          in subsections (c) and (d), or who is found to have acted  
22          without substantial justification in filing such action, shall  
23          be subject to sanctions under section 1927 of title 28,  
24          United States Code, and Rule 11 of the Federal Rules  
25          of Civil Procedure.

1 (f) DEFINITIONS.—As used in this section:

2 (1) AMOUNT DUE ON RECEIPT.—The term  
3 “amount due on receipt” means the amount equal to  
4 the balance due to the Commission, under the rules  
5 of the Commission, as of the applicable payment  
6 date under the settlement agreement for an auction  
7 35 license. The amount due on receipt for an auc-  
8 tion 35 license does not include the auction 35 de-  
9 posit for such license.

10 (2) AUCTION 35.—The term “auction 35”  
11 means the Commission-conducted spectrum auction  
12 number 35 that commenced on December 12, 2000,  
13 for Personal Communications Services licenses to  
14 operate covered spectrum and other spectrum.

15 (3) AUCTION 35 DEPOSIT.—The term “auction  
16 35 deposit” means any monies on deposit with the  
17 Commission paid by a participating auction 35 win-  
18 ning bidder for an auction 35 license. The auction  
19 35 deposit for an auction 35 license does not include  
20 the amount due on receipt for such license.

21 (4) AUCTION 35 LICENSES.—The term “auction  
22 35 licenses” means those licenses to use covered  
23 spectrum for which auction 35 winning bidders sub-  
24 mitted winning bids in auction 35.

1           (5) AUCTION 35 WINNING BIDDER.—The term  
2           “auction 35 winning bidder” means those entities  
3           that submitted winning bids in auction 35 for cov-  
4           ered spectrum.—

5           (6) BANKRUPTCY SETTLEMENT APPROVAL  
6           ORDER.—The term “bankruptcy settlement approval  
7           order” means an order authorizing and directing  
8           NextWave to enter into the transactions con-  
9           templated in the settlement agreement on the terms  
10          specified therein, to relinquish any and all claims to  
11          the covered spectrum and the designated licenses,  
12          and to return the designated licenses to the Commis-  
13          sion in exchange for the payments provided in the  
14          settlement agreement.

15          (7) BUSINESS DAY.—The term “business day”  
16          means any day, other than Saturday or Sunday, on  
17          which commercial banks in New York City and the  
18          Commission’s offices are open for the general trans-  
19          action of business.

20          (8) COMMISSION.—The term “Commission”  
21          means the Federal Communications Commission.

22          (9) COVERED SPECTRUM.—The term “covered  
23          spectrum” means spectrum that NextWave had been  
24          authorized to use under the designated licenses.

1           (10) DAYS.—The term “days” means calendar  
2 days, including weekends and holidays.

3           (11) DESIGNATED LICENSES.—The term “des-  
4 igned licenses” means the C Block and F Block li-  
5 censes for which NextWave was the winning bidder  
6 at auctions concluded in 1996 and 1997 by the  
7 Commission under section 309(j) of the Communica-  
8 tions Act of 1934.

9           (12) FINAL.—The term “final” means with re-  
10 spect to any order that such an order has not been  
11 reversed, modified or stayed and—

12           (A) the time to appeal such order has ex-  
13 pired and no appeal or petition for review, re-  
14 hearing or certiorari is pending; or

15           (B) any appeal has been fully decided and  
16 no further appeal or petition for review, rehear-  
17 ing, or certiorari can be timely taken or grant-  
18 ed.

19           (13) FINAL BANKRUPTCY SETTLEMENT AP-  
20 PROVAL DATE.—The term “final bankruptcy settle-  
21 ment approval date” means the date on which all of  
22 the following conditions have been satisfied:

23           (A) The bankruptcy settlement approval  
24 order has become final.

1           (B) Any proceeding pursuant to paragraph  
2           (1)(A) of subsection (c) has been resolved by an  
3           order that has become final.

4           (C) Either Verizon Wireless has caused let-  
5           ters of credit to be issued in accordance with  
6           the terms of the settlement agreement, or, in  
7           the absence of the required letters of credit, the  
8           United States has not, within the time provided  
9           by the settlement agreement, exercised its right  
10          to terminate the settlement agreement.

11          (14) MOTION FILED BY NEXTWAVE FOR AP-  
12          PROVAL OF THE SETTLEMENT AGREEMENT.—The  
13          term “motion filed by NextWave for approval of the  
14          settlement agreement” means the motion filed by  
15          NextWave on November 30, 2001, including any  
16          supplements, amendments, or modifications thereto,  
17          in the case entitled In re NextWave Personal Com-  
18          munications Inc., Bankr. S.D.N.Y. No. 98 B 21529  
19          (ASH), for approval of the settlement agreement, or  
20          any subsequent motion filed by NextWave for ap-  
21          proval of the settlement agreement.

22          (15) NEXTWAVE.—The term “NextWave”  
23          means NextWave Personal Communications Inc. and  
24          its affiliates, NextWave Telecom Inc., NextWave

1 Partners Inc., NextWave Power Partners Inc., and  
2 NextWave Wireless Inc.

3 (16) PARTICIPATING AUCTION 35 WINNING BID-  
4 DER.—The term “participating auction 35 winning  
5 bidder” means an auction 35 winning bidder that is  
6 a party to the settlement agreement on January 10,  
7 2002, provided that any auction 35 winning bidder  
8 whose total winning bids for auction 35 licenses did  
9 not exceed \$10,000,000 may become a party by exe-  
10 cuting the settlement agreement no later than Janu-  
11 ary 30, 2002.

12 (17) RULES OF THE COMMISSION.—The term  
13 “rules of the Commission” means any and all rules,  
14 regulations, policies, procedures, public notices, and  
15 orders of the Commission that are in effect at the  
16 time an action, event or matter in question occurs.

17 (18) SETTLEMENT AGREEMENT.—The term  
18 “settlement agreement” means the settlement agree-  
19 ment dated November 15, 2001, entered into by  
20 NextWave, the Commission, the United States, and  
21 participating auction 35 winning bidders.

22 (19) TAXABLE PERIOD.—The term “taxable pe-  
23 riod” means the tax period in which NextWave relin-  
24 quishes any and all claims related to the designated

1 licenses and the covered spectrum, as provided in  
2 paragraph (5) of subsection (a).

3 (g) EFFECTIVE DATE.—This Act shall take effect on  
4 the date of the enactment of this Act and shall supersede  
5 any other Federal, State, or local law to the contrary.

6 (h) SEVERABILITY.—If a provision of this Act is held  
7 invalid, all valid provisions that are severable from the in-  
8 valid provision shall remain in effect.

○