Express does not advocate continuation of the random selection allocation process as it is currently conducted by the FCC. In our testimony, we are proposing significant and needed changes to this process. Instead of the provision for auctions of spectrum set forth in the amendment to S. 218, Express favors the adoption of a rational random selection allocation process limited to applicants with both the demonstrated capability and intent to operate any awarded spectrum to realize its fullest and best use. Although we believe our proposal is the superior approach, we encourage the Senate to further amend its trial auction provisions to S. 218 to call for a comparison test of auctions and a reformed random selection allocation process incorporating our proposals.

Express clients are serious, yet usually small entities, local or regional communications concerns, and entrepreneurs who wish to continue to be afforded the opportunity to participate on an equal basis in the allocation of radio spectrum. We believe that it is important for the Committee to remember that communications companies such as MCI, McCaw Cellular, Cellular Communications, Inc., Vanguard Cellular, Cellular, Inc., and Metro Mobile Communications, among others, would have been excluded from the communications industry if the competitive bidding process proposed by Senator Stevens' amendment to S. 218 had been in effect since 1983, instead of the random selection allocation process.

Express' Concerns. Express and its clients are concerned about the increasing numbers of speculative applications filed with the FCC for several reasons. First, such applications unduly burden the FCC's limited resources and greatly slow the process of spectrum allocation and commercial development of new communications technologies. Second, many licenses are awarded to applicants who lack the financial and technical resources and the desire to develop the spectrum. These licenses either have been resold to companies or individuals, in some cases for considerable profit or, in the absence of buyers, warehoused or forfeited and returned to the FCC for reallocation. In the case of certain frequency allocations, we are aware of numerous licenses that have been warehoused for several years until a buyer comes forward. Finally, due to the atmosphere created by the FCC's present rules, the random selection process for certain communications services not only dilutes the chances of capable sincere entrepreneurs and small companies of being awarded a license but also, in many cases, raises the purchase price of licenses in the secondary marketplace to a level which can be afforded only by the largest and most well-financed communications firms.

Express agrees with Senator Stevens and others that "private auctions" already occur. Where we disagree with Senator Stevens and the proponents of spectrum auctions is how best to address

the problems with the present spectrum licensing process and to achieve what we believe are shared policy goals. We strongly oppose the institution of auctions as a means to remedy the current abuses of the lottery process and as a means to provide additional revenues to the Treasury. Instead, we offer other alternatives that would address these concerns in a much more equitable fashion than the competitive bidding proposal.

COMMON GOALS

Express sets forth below what we perceive to be the common goals and interests of all parties in this process. Indeed, Express believes these are worthy and attainable goals and we appreciate the opportunity to address each area and to propose viable solutions to the Committee. Express intends to set forth our common goals and then outline its alternative proposals to auctions. We will then proceed with analyses of how each goal can be better met through our proposed alternative procedures than through the implementation of a competitive bidding system.

It would appear that both auction proponents and opponents have the following goals in mind for the allocation of spectrum:

I) To reduce the cost of spectrum assignment, in terms of time and money, by discouraging speculative applications;

II) To increase the efficiency and effectiveness of the assignment process by awarding licenses to those with the greatest desire and ability to provide the service;

III) To encourage the efficient use of spectrum by licensees through (a) the delivery of improved services to the public; (b) the introduction of new services; and (c) the development of new communications technologies;

IV) To compensate the government and the taxpayers for the use of a scarce public resource; and

V) To compete effectively in the global telecommunications arena.

PROPOSAL TO REFORM RANDOM THE SELECTION ALLOCATION PROCESS

A. **Increase filing fees** for license applications significantly. Some specific recommendations include:

(1) Increase the Cellular Unserved Area application filing fee from $235 per market to $1,000 per market.

(2) Increase the 900 MHz SMR Nationwide application filing fee from $3,000 per application to $10,000 per application.

(3) Increase the filing fee for SMR local systems from $30-$35 per market to $200 per market.

(4) Institute a filing fee for PCS of $25,000 per application.

B. **Implement stricter entry requirements** for accepting license applications. In addition to the increased filing fee, Congress and the FCC should require that the following items be included as exhibits to an application in order for it to be considered qualified:

(1) **Actual engineering** that would be used in the design and construction of the proposed system. An applicant would not be allowed to significantly modify its engineering after being awarded a license except to expand its coverage area as prescribed by the FCC.

(2) A **business plan** which would set out the applicant's plans for construction, management and operation of the proposed system including its plans for marketing, its construction timetable and pro forma financial projections.

(3) A **firm financial commitment letter** that must be drawn upon immediately should the applicant be awarded a license. We would propose that Congress and the FCC adopt generally the requirement set forth in the Cellular Unserved Area application rules that a licensee must execute a non-cancelable equipment purchase order within 90 days of the authorization grant date or automatically forfeit the license. Such a purchase order typically requires a considerable cash down payment. This requirement forces an applicant to obtain a funding commitment from a recognized financial institution, either already participating in providing financing to the communications industry or genuinely interested in funding established or new communications firms engaged in developing commercially improved technologies.

C. **Implement construction and operation requirements** for those awarded licenses.

(1) Congress and the FCC should implement strict minimum timetables for systems to be constructed by a licensee to avoid forfeiture of the license. Such timetables were adopted by the FCC in the 220-222 MHz Nationwide SMR and Cellular Unserved Area application rules and we would propose the FCC use such standards as a model for all future license application rulemaking.

(2) The applicant should be required to construct and operate the system it is awarded for a minimum of one year before the sale, transfer or other disposition of greater than a 25% interest is allowed. Such limitation also should include the prohibition found in the Cellular Unserved Area application rules against execution of an agreement prior to the expiration of the minimum operating period to effect such a sale or transfer even if the sale or transfer would not occur until following such minimum operating period. Such limitation therefore would preclude the grant of purchase options.

We would encourage that Congress and the FCC define the word "interest" to encompass any or all present, or future or contingent ownership or financial interests, and to include specifically options and rights of first refusal.

(3) The applicant should be precluded from the sale, transfer or disposition of control of 50.01% of the license until it has constructed and operated the system for a minimum of five years.

D. **Impose a transfer fee upon all sales and resales of licenses.** The fee would be paid to a newly created communications research and development agency and calculated as a percentage of the gross sales price. This percentage would be greater in the earlier years to deter both speculative applications and purchases of licenses. Upon each resale of the license, the clock would begin again with regard to the applicable transfer fees. If Congress and the FCC decline to adopt the "anti-trafficking" provisions set forth immediately above in C (2) and (3), we would propose that Congress and the FCC impose transfer fees along the following guidelines:

Year	% of Gross Sales Price Paid to Govt.
1	25%
2	21%
3	18%
4	15%
5	12%
6	10%
7	7%
8	5%
9	2%
10	0%

If Congress and the FCC enact stringent anti-trafficking provisions we would propose that Congress and the FCC impose transfer fees along the following guidelines:

Year Following Expiration of Anti-trafficking Restrictions	% of Gross Sales Price Paid to Govt.
1	10%
2	9%
3	8%
4	7%
5	6%
6	5%
7	4%
8	3%
9	2%
10	1%

HOW OUR COMMON GOALS CAN BE MET MORE EFFECTIVELY THROUGH THE ABOVE PROPOSAL THAN THROUGH AUCTIONS

I
DISCOURAGE SPECULATIVE APPLICATIONS/REDUCE THE COST OF SPECTRUM ASSIGNMENT

The FCC Should Return To Its Roots. The "Lotto America" mentality did not always exist in the FCC license application process. After the initial 30 cellular markets were assigned pursuant to comparative hearings and the FCC instituted a random selection allocation process, it also set forth in Section 22.20 a rule prohibiting the sale or transfer of a license prior to the construction and operation of the cellular system for a minimum of one year. Applicants in the early FCC lottery days knew that they would be required to fund, build and operate for a minimum of one year any systems they were awarded. However, in Madison Cellular Telephone and Bill Welch, McCaw Cellular, through successful lobbying efforts, convinced the FCC to waive this requirement so that it would be allowed to purchase the license or construction permit prior to construction and operation of the system by the selected licensee or permittee. Some of the very companies complaining about lottery abuses today were integral in the formulation of application rules which in large part have shaped the speculative outlook of many applicants.

Express strongly encourages the FCC to return to its roots, only this time to include stricter requirements for applicants. By increasing filing fees, speculators would be deterred from purchasing what in the past has been a very inexpensive "lottery ticket" for them. Additionally, speculators will not commit the funds and resources necessary to prepare detailed system design and engineering, to complete business plans and to obtain funding commitments from recognized financial institutions.

Speculation also is deterred because those interested in a quick profit certainly will not desire to build, operate and maintain ownership of the license for an extended period of time. Nor will they wish to share profits of their sales price with the government as would be required under our transfer fee proposal.

Benefits of Establishment of Higher Entry Requirements. By establishing entry requirements such that speculators are essentially barred from the process, the number of applications filed will be diminished significantly. Therefore, the administrative burden, both in terms of time and money, will be reduced drastically, if not virtually eliminated. However, the gross amount of

monies raised through filing fees should remain high due to the increase in the individual application fees per market or system.

A recent example of how this process could work is the relatively small number of applications the FCC received for its allocation of 220-222 MHz SMR Nationwide System applications. The filing fee for these applications was $12,250 and only 174 applications were received in total for three different types of a total of eight Nationwide licenses. We are convinced that this number would have been reduced significantly had the FCC required evidence of funding and a business plan with the initial filing of the applications.

On the other hand, due to low filing fees and no financial showing requirements for local trunked systems, some 57,000 applications were filed in individual cities. It is readily apparent where speculation was occurring in the 220-222 MHz SMR filings and how a different approach by the FCC similarly could have limited the number of applicants for the local trunked system licenses.

Difficulties To Be Encountered In Making Subjective Decisions For Auction Bids. If auctions are implemented, it is our belief that allocation of licenses through this method will create additional burdens upon the FCC's time and expense. Essentially, it will be necessary for the FCC to conduct a type of comparative hearing to make a determination with regard to which applicant's bid is best. For example, the bids often will differ both in the timing and method of payment. A large RBOC may offer to pay the FCC a specified amount immediately to acquire the license, whereas another sincere yet less well-financed applicant may propose to fund its bid out of the operating revenues of the system over a number of years. The combinations imaginable for the funding of bids are endless. We believe that the FCC will have a difficult task ahead in determining which is the "best" offer and in evaluating the present and future monetary values of those bids.

Additionally, due to the subjective decisions the FCC will be forced to make in awarding licenses, this process will invite Section 309 petitions to deny from disgruntled "lower" bidders and endless litigation among applicants, who almost by definition would be well-financed and determined to obtain a particular license. In the MSA cellular lotteries, the FCC's Section 309 processing of petitions was a licensing bottleneck. The FCC avoided this problem in the RSA lotteries by eliminating the ranking of lottery runners-up that filed those petitions. Auctions inherently would restore this ranking system, and the Section 309 bottleneck likely will reappear. The public interest will not be served if spectrum is not expeditiously made available to applicants who can begin the prompt deployment of service.

Auctions - A New Form of Speculation. We also believe that Congress and the FCC may be encouraging a new form of speculation by the institution of auctions. For example, if the FCC allowed deferred financing, a company could bid X for a license to be paid in 12 or 24 months. If the successful bidder found someone to pay it 2X or 3X for the license within the relevant time period a windfall profit would be realized. If no buyer appeared before its first payment was due, the licensee simply would forfeit the license claiming the traditional "changed circumstances".

Likewise, if the FCC accepts up-front bids rather than deferred financing, there is a real danger of the small number of companies financially able to participate in this process entering into pre-bid negotiations. "Rigged bidding" inevitably will occur as these companies make side agreements to enter low bids. There is no incentive for these parties to bid up the purchase price among themselves on the front end thereby providing all financial benefits to the U.S. Treasury. Moreover, PCS, the communications service generally advocated by auction proponents as the ideal candidate for allocation by competitive bidding, ironically is the service least likely to lend itself successfully to this approach.

If PCS is allocated spectrum in the 1.85-2.2 GHz frequency band, as presently envisioned by the FCC, auctions are unlikely to prove attractive or raise considerable revenue. Prospective PCS applicants will be confronted not only with paying the government for the use of spectrum for a limited period prior to the initiation of service to the public but also with the uncertainty of negotiating the amount and method of compensating the incumbent fixed microwave licensees to migrate to a different and, in certain cases, less desirable part of the radio spectrum. PCS auction participants likely will seek to negotiate arrangements in advance with the incumbent fixed microwave licensees regarding who ultimately will retain the license for this particular frequency band and the compensation for migrating to a different spectrum prior to submitting "up front, all cash" bids. This process would encourage the incumbent fixed microwave licensees to demand considerable compensation for their eventual spectrum migration. If the PCS auction participants were required to accept such terms, their "up front, all cash" bids would be much less than expected. Under this scenario the government and the public would receive minimal compensation for the use of extremely valuable radio spectrum which certainly would be less than that generated by adoption of the transfer or transaction fee proposal set forth in this testimony. If trial auctions are utilized for PCS licenses granted for the 1.85-2.2 GHz frequency band earmarked by the FCC, then it would appear that only a deferred finance bidding process would meet the often expressed goal of generating considerable revenue to the

government. However, as set forth elsewhere in this testimony the deferred finance approach presents its own problems.

To paraphrase a Washington, D.C. communications attorney, "Instead of Aunt Millie reaping a windfall profit through private auctions, Gordon Gekko may be arbitrating spectrum." Since there is no requirement for the winning bidder to hold onto his license or construct and operate, it would be very easy for the winning bidder immediately to resell the license to a third party. Instead, by implementing our proposals regarding technical and financial showing as part of an application, the necessity of construction and operation of the system within a specified timetable and the introduction of transfer fees, the FCC and the government will be able to prevent speculation, to provide the public with expedited service and to continuously participate in the revenues generated in the sale of licenses.

Summary. In summary, Express firmly believes that the FCC and Congress can deter speculative applications and thus reduce the cost of spectrum assignment both in the amount of time necessary to process applications and the amount of money the FCC must spend on administering the application process. If the FCC and Congress once again begins treating spectrum as the valuable and scarce public resource that it is, the public will regain respect for the allocation process. By implementing stricter standards both pre and post license grant date, speculators virtually will be prohibited from filing applications with the FCC.

On the other hand, if competitive bidding is instituted, the public will correctly view this development as excluding all but the largest corporations such as the RBOCs and other large communications or data processing concerns from further participation in the wireless communications industry.

II
INCREASE EFFICIENCY & EFFECTIVENESS OF ASSIGNMENTS
AWARD LICENSES TO THOSE WITH THE MOST DESIRE & ABILITY

Qualify the Applications Prior to Holding a Lottery. Express believes that by implementing some or all of the increased filing requirements we have proposed, the licenses will be awarded to those applicants with both the ability and desire to develop the spectrum awarded to them promptly and fully. Only those with ability and desire will have filed a qualified application. Chairman Sikes argues in his October testimony that windfall gains have not been based upon an applicant's business acumen, superior planning, diligence or customer responsiveness. The

FCC should require through stricter rules, such as those we have suggested, that these traits be demonstrated during the application qualification process. The problem of windfall payouts then would be eliminated and parties genuinely interested in participating in the industry would be awarded licenses and would build and operate systems.

Effect of Auctions on Public Interest. Express wholeheartedly agrees with Mr. Fritts of the National Association of Broadcasters ("NAB") that by reducing the allocation process to merely a financial transaction, all involved lose the idea of the value the spectrum affords to the public. To carry this thought further, an applicant may indeed have the ability and desire, but in order to fund the winning bid it made, the new licensee will have to recover the cost of its bid by either charging higher prices or reducing the quality of the service it provides to the public, or both. This clearly is not an effective or desirable way to assign spectrum. A smaller percentage of the public will be able to afford the new services than would be able to if the licensee did not have to pay the government its bid through operating revenues. However, if auctions are instituted and the FCC does not allow deferred financing, very few companies will possess the financial resources to submit a bid. Either way the public suffers. Without a variety of service providers, price competition is non-existent. Additionally, operators will increase the costs of the service provided to the public in order to fund their bids.

Adoption of the auction proposal will preclude minorities, small companies, rural and local companies, women, and entrepreneurs from any opportunity to receive a license. They may have the same desire and ability to provide wireless communications service to the public as a McCaw Cellular or RBOC. However, since they do not have the "deep pockets" of established companies, they will be excluded from the industry. We agree with the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") that the RBOCs will have the economies of scope and scale to more easily recover their bids. Additionally, the RBOCs will have the ability to subsidize their new wireless operations through the funds of another subsidiary or division. This opportunity to subsidize is not available to most applicants. Therefore, Express firmly believes that if auctions are implemented, bid payments should be allowed to be paid only from the actual operations of the business of that particular license.

Summary. We believe that our proposals would result in a much more effective assignment process. The only fees paid to the government other than filing fees, come out of the purchase price of the license in the form of a transfer fee. If fees come through transfers of interest, the money is paid after the license is awarded and essentially by a third party. All those with desire

and ability will have the opportunity to compete in the allocation process on an equal footing. Only if they later choose to sell, will funds be paid to the government as part of the transfer.

III
ENCOURAGE EFFICIENT USE & DEVELOPMENT OF SPECTRUM

Encourage Competition To Foster Technology Advances Such As PCS. We believe that effective competition fosters the most rapid and efficient development of technological advances. Therefore, it is important that the Committee carefully consider which proposal before it encourages such competition. We already have explained how the introduction of auctions would result in the inevitable decrease in number and variety of service providers. By reducing the public spectrum to the status of a market commodity affordable only to the largest and most well-financed corporations, the Committee and the FCC create a real risk of delaying rather than expediting technological developments of wireless communications systems competitive to the landline telephone network and wire cable television systems.

For example, the RBOCs and cellular operators have no real interest in developing a Personal Communications System ("PCS") that would compete with a profitable service they are already providing. To do this would result in a loss of revenue from their current operations. Additionally, these operators have a considerable investment in their existing, outdated analog systems and are currently faced with even greater expenditures in converting these systems to digital technology. If their current operations are delivered to the public via outdated technology, why would Congress and the FCC conclude that these entities are the most capable of bringing new generations of mobile communications technology to the public? Yet, the competitive bidding proposal would preclude most applicants other than RBOCs and large existing operators from participating in the spectrum allocation process. Express would argue that a new service provider, without the burden of replacing old equipment, can begin service with the latest in technological advancements and thus can provide greater benefits to the public's individual needs and the country's global needs. The Committee should choose the allocation process which affords a wide variety of capable applicants the opportunity to operate a license. We believe our proposals meet this need.

Both Secretary of Commerce Mosbacher and FCC Chairman Sikes have stated that a portion of the 200 MHz of spectrum proposed to be reallocated pursuant to the procedures set forth in S. 218 will be devoted to PCS. If Senator Stevens' auction proposal is adopted the companies with

the least desire to develop this communications technology will be the most likely purchasers of the spectrum. These companies will in effect warehouse the spectrum to keep it from being utilized by potential competitors. Indeed, such operators would develop the spectrum more slowly than would entrepreneurs whose primary focus and business is this new wireless communications service.

Summary. If our proposals are implemented, the Committee no longer need be concerned with the Department of Commerce's warnings about the warehousing of spectrum. By implementing strict financial requirements, business plans and construction timetables, spectrum warehousing will not be practical or possible.

Express disagrees with AT&T that research and development is discouraged because there is no guarantee that the innovator will receive a license for its efforts. If the innovator is unable to obtain a Pioneer's Preference license grant from the FCC, we see no reason why it cannot still profit from the new technology or equipment through the sale of services, information or products to the licensees. The innovator also could use its knowledge to improve upon its internal operations through the utilization of leased spectrum.

Express is of the firm belief that maintaining a lottery process with strict pre and post license grant requirements will be the best way for the United States to see the widest possible delivery of new and improved services. We do concur with AT&T that the FCC should examine the possibility of allowing for the sharing of spectrum through allocation or through coordination agreements, as long as no harmful frequency interference results. Through these methods as well as through the granting of Pioneer's Preferences for all spectrum, not just PCS, the FCC can provide encouragement to the growing communications industry to be innovative.

IV
COMPENSATE GOVERNMENT & TAXPAYERS

Revenue Generation Through Increased Filing Fees and Implementation of Transfer Fees. We estimate filing fee revenues to the FCC or the U.S. Treasury to be approximately $50-75 million in 1992-1993 if the FCC implements new fee structures for Cellular Unserved Area market and SMR market applications and issues these licenses pursuant to a random selection process.

The imposition of transfer fees would serve the purpose of raising considerably more funds than the auction process and it imposes the fees after a license is awarded thereby allowing for payment to occur out of proceeds from the sale or transfer. Since all licensees are on an equal basis post allocation, this procedure would not tip the balance up front in favor of only the largest corporations as would the auction proposal.

The Value of Spectrum Increases Over Time. It is unreasonable to assume that auctions will realize $2.5 billion from 1994-1996 when the spectrum will only then be allocated. Wireless communications licenses require considerable capital investments and typically do not break even and experience positive cash flow profit until after two to four years of operation. The only way we foresee the government receiving the funds it has estimated is by the payment of lump sum, up front bids. As stated before, this procedure causes great harm to other sincere applicants without other resources to fund their bids except the operating revenues of the license itself.

The big money in selling FCC licenses is in the resale of existing properties, whether cellular, broadcasting or otherwise. However, Senator Stevens proposes to generate government income through the use of auctions for unlicensed spectrum even though these licenses have no "going concern" value. To illustrate this difference, in the early 1980s a substantial piece of the combined A-system San Francisco/San Jose, California, cellular system sold for $1.50 per pop. This was regarded as a top dollar sale at the time. In 1991 this system was transferred to a joint venture between McCaw Cellular and Pactel for approximately $320 per pop. The expensive sales of cellular properties, or any FCC licensed station, are resales of existing systems. Auctioning new licenses will not tap those sales proceeds.

Tax Revenues. Express would like to take this opportunity to remind the government that the billions of dollars paid for spectrum in private auctions has brought about a corresponding massive influx of tax dollars being paid on these proceeds. It is unfair for the U.S. Treasury and the Office of Management and Budget to require the FCC to come up with new money making propositions to fund its own budget, when it already generates billions of dollars in filing fees and in taxes paid by sellers of spectrum. It also is not fair for Congress to attempt to mold the FCC into a fund raiser to solve all of the government's spending problems such as health care, education and unemployment. Congress and the FCC always should keep foremost in their minds the public interest factor and not be swayed solely by temporary political and market demands. If auctions are instituted, these pressures will only tend to increase and it will be more difficult for the FCC to return to a different and more equitable spectrum allocation approach.

Oil and Gas Industry Comparison. Various proponents of competitive bidding have stated that the government already holds auctions with respect to the granting of oil and gas drilling rights and that the auctioning of spectrum is no different. This analogy is seriously flawed. Express would argue that the management of oil and gas properties does not require the "licensee" to consider, beyond environmentally, public interest rights. The operators of communications properties provide a basic service and fulfill a fundamental need of the public by making it possible for people to offer and receive information and ideas. We could not survive in our personal or business lives without the means provided by technology to communicate. It is imperative that these public rights and needs continue to be met without compromising our access to service, quality and fair pricing. We reiterate that the public interest would be compromised by auctioning spectrum for many reasons already set forth in our testimony.

On the other hand, Express has commenced analysis of the oil and gas lease bidding process in order to glean ideas which would be beneficial to the FCC's reform of its current lottery procedures. For example, we believe a strong argument could be made that Congress and the FCC should impose "royalty" payments upon FCC license holders as well as revoke a lease from a license holder who does not drill his well (ie. build his communications system in a timely manner.) Express will submit additional testimony and comments regarding these types of improvements when it has completed its analysis later this month.

Summary. It is important to Express and its clients that the FCC be able to meet its public interest mandate without a corresponding reduction in public services or an increase in prices charged to the public. In order to prevent any deterioration of public interest services provided by the spectrum, it is Express' position that the only equitable way to reimburse the government and the taxpayers for the use of valuable spectrum is through the implementation of higher application fees and the imposition of transfer fees.

V

COMPETE EFFECTIVELY GLOBALLY

Express' main concerns with auctions as they would effect our global competitiveness are twofold. First, by limiting the number of entities capable of participating effectively in a bidding process, the government is essentially limiting competition within the United States. Competition in the communications marketplace is crucial for the development and implementation of new

technologies. Newcomers must be encouraged, whether or not they presently possess considerable financial resources. Only by encouraging innovation and experimentation can we remain competitive globally. And secondly, Express is concerned about the possibility of RBOCs and other large companies obtaining licenses and not being sufficiently motivated to develop them rapidly to their fullest potential because the new service or technology competes with an already existing service of the company. For example, companies other than phone companies and cellular companies should be encouraged to develop PCS. These outsiders will be more likely to bring these services rapidly to the public and our communications technologies rapidly to the world.

We feel that our proposal offers the best alternative for maintaining a level of nationwide competitiveness that allows us to compete effectively on a global level.

IMPLEMENTATION OF DUAL TRACK TEST

Results in Multiple Benefits. If the Senate is determined to adopt trial auctions through an amendment to S. 218, Express urges the Senate adopt a test whereby competitive bidding is being tested in tandem with a reformed random selection allocation process. Express sees multiple benefits and no harm resulting from this approach.

Of foremost concern is that as long as the auctions are conducted on a trial basis or until 1996 at the earliest, the FCC will need to continue to allocate licenses pursuant to the methods currently at its disposal, namely comparative hearings, lotteries and first come, first serve procedures. There appears to be very little argument that the current allocation methods are subject to serious abuses. We believe that our proposed reforms should be enacted now and tested against the trial auction proposal currently before the Senate Subcommittee on Communications.

Implement Test Benchmarks. Additionally, we are concerned that if trial auctions are to be conducted that a series of meaningful benchmarks or standards be established to compare the effectiveness of auctions against the reformed lottery process described in detail herein. We feel that this will afford Congress and the FCC with valuable information upon which rational decisions can be made concerning which allocation method better achieves their respective goals and objectives. Express suggests auctions be tested against a reformed lottery process in the following way.

A. For each service subject to trial auctions pursuant to S. 218, as amended, the FCC and Congress would allocate two licenses, one chosen by auction and one chosen by the reformed random selection procedures. Both the licensee chosen by auction and the reformed random selection allocation process would be subject to the same post-selection requirements such as construction and operation of the system, anti-trafficking rules and transfer fees upon "premature" disposition of the license. We strongly believe that if a true trial is to be conducted then both the auction licensee and the random selection licensee be subject to the same operating conditions and requirements.

B. Each method of allocation would be evaluated upon its ability to meet the "Common Goals" of (1) reducing the cost of spectrum assignment and discouraging speculative applications; (2) increasing the efficiency and effectiveness of the assignment process; (3) delivering improved and or new services to the public in a timely fashion; (4) compensating the government and the taxpayers for a valuable public resource; and (5) improving the United States' ability to compete effectively on a global basis.

C. Each licensee would be required to submit quarterly reports regarding the status of the implementation of its communications business including such information as (1) when the licensee began providing services to the public; (2) what coverage it has been able to provide within certain time frames such as one, three and five years; (3) what the capital and operating cost is calculated to be per subscriber; and (4) what features are being provided to the public at what "retail" cost.

D. An Advisory Panel would be created to assist Congress and the FCC in evaluating the results of these tests and to make needed changes and recommendations during the testing period. This panel would include representatives of the Commerce Department representing government spectrum interests, representatives of the FCC representing overall allocation issues, representatives of Congress to provide oversight and additional legislation as needed, and representatives from the private sector involved in communications businesses that can provide much needed assistance in practical and real world implementation issues.

Summary. Express would welcome the opportunity to assist the FCC in reforming its current system as well as providing Congress with a well-managed and informative test bed for providing us with a superior way to enhance our country's implementation of new technologies and

competitiveness in the marketplace. A very possible scenario we see occurring from the adoption of the dual test approach is that the FCC and Congress may come up with a number of allocation solutions from which the FCC may choose to introduce new services to the public.

CONCLUSION

In conclusion, Express wishes to leave the Committee with these final thoughts.

We fail to see how auctions or competitive bidding represents any improvement over the present admittedly flawed spectrum licensing process. We believe that our proposals best meet the common goals of (1) reducing the cost of spectrum assignment and discouraging speculators; (2) efficiently and effectively allocating licenses to capable service providers; (3) providing new and improved wireless communication services rapidly to the public while encouraging the development of new communications technologies; (4) compensating the government and the taxpayers for use of a valuable public resource; and (5) competing on a global basis effectively. For the numerous reasons stated throughout our testimony, we do not feel that these goals would be most expeditiously met in a superior manner if the competitive bidding proposition is incorporated as part of S. 218.

However, Express does recognize a very real and urgent need for reform of the process for allocation of spectrum. We urge the Committee to seriously consider the alternative proposals we have set forth as a way to reduce speculation and provide new communications services to the public through as many new and competing providers as possible. We believe that the institution of a dual track test approach could provide multiple benefits so that Congress and the FCC may determine the approach or approaches which best meet the commonly shared goals and objectives of allocating radio spectrum licenses rapidly and efficiently so that new communications services may be introduced for the benefit of businesses and consumers. In this way we will be able to enter into the 21st century as innovators that are generating additional revenues for the taxpayers but not at the expense of public interest or the stagnation of technological developments.

Thank you for affording us the opportunity to speak on behalf of small businesses and entrepreneurs who wish to continue to be able to participate in the FCC allocation process. If any of you have questions or would like further clarification, we would be delighted to hear from

you. Please feel free to contact Pendleton Waugh, President, or Connie Kern, Vice President of Regulatory Affairs, in writing at 12222 Merit Drive, Suite 350, Dallas, Texas 75251, by telephone at (214) 661-1200 or (800) 886-2777, or by fax at (214) 960-9908.