

BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Implementation of Section 309(j) )  
of the Communications Act )  
Competitive Bidding )

PP Docket No. 93-253

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OCT 29 1993

**EX PARTE PRESENTATIONS**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Pursuant to Section 1.1206 of the Commission's rules and regulations, TRW Inc. ("TRW") hereby reports that ex parte presentations were made by the undersigned attorneys for TRW on October 28 and 29, 1993 to the persons identified in the attached list. The subject matters discussed during these presentations are reflected in the materials attached as Attachment A hereto, copies of which were given to the listed persons. Copies of this ex parte notice are being filed with the Secretary of the Commission and are being sent to the persons identified on the attached list.

Respectfully submitted,

TRW INC.

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Dated: October 29, 1993

Its Attorneys

No. of Copies rec'd  
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List of Persons Attending Presentations

Byron Marchant  
Commissioner Barrett's Office

October 28, 1993

Brian Fontes, Jonathan Cohen  
Chairman Quello's Office

October 29, 1993

Randy Coleman  
Commissioner Duggan's Office

October 29, 1993

**ATTACHMENT A**

## **IMPACT OF SPECTRUM AUCTIONS ON THE MOBILE SATELLITE SERVICE**

For more than 25 years the US has maintained that the ITU Convention and the Outer Space Treaty prohibit the ownership of the spectrum resource and that all countries must be provided equitable access to the spectrum to meet their requirements. The US has specifically opposed proposals by lesser developed countries to institute the use of auctions as a means of providing access to the orbital spectral resource.

The US-inspired Open Skies Policy has made possible the most developed and economically robust commercial communications satellite industry in the world. This world preeminence has allowed the US to export its policies such that today the international satellite regulatory regime is based on accommodation and comity and is guided by flexible rules which promote maximum exploitation of the spectral orbital resource without claims to proprietary interests, intrinsic economic value or exclusivity of use.

If the US were to initiate auctions as a means of allocating the use of spectrum and orbits, we would effectively undermine the international regulatory regime, and in essence, the US would be classed with Tonga -- with its plan to exploit, commercially, orbital slots and spectrum for its own pecuniary gain.

The impact of auctions on LEO MSS would likely be the imposition of similar charges and revenue generating structures by many nations. This would likely lead to a prohibitively expensive service, chill US technological enterprise, and possibly render US LEO MSS initiatives economically inviable. Auctions would thus undermine the U.S. satellite industry which has greatly enhanced U.S. global trading and competitiveness.

It is doubtful that the US could require Comsat to bid competitively for INMARSAT spectrum (which is the same spectrum US MSS applicants plan to use). The ability of US systems to compete globally would be significantly diminished if they had to pay for the use of spectrum which INMARSAT and Comsat access for free.

- The impetus for the auction legislation is the selection of competing applicants seeking to provide Personal Communications Services ("PCS"), a new domestic terrestrial mobile service, and more importantly, to generate revenues for the Treasury. The purpose and objectives of the legislation do not accomplish the same results in the context of mobile satellite services.
  - The mutual exclusivity in the LEO MSS service is between one applicant and all the others which are not mutually exclusive among themselves. Mutual exclusivity would evaporate if the one applicant would agree to modify its service concept;
  - LEO MSS services are international in scope, not domestic only as in PCS; and
  - Auction may work to undermine economic viability LEO MSS with the Treasury not necessarily recouping franchise fees or royalties.
- If the U.S. starts auctioning the use of spectrum allocated internationally for mobile satellite applications, the U.S. in effect will be acting no different from Tonga's much publicized and chastised plan to exploit commercially orbital slots and spectrum for its own pecuniary gain.
- The problem with use of competitive bidding to gain access to MSS spectrum is best explained through an example.
  - The American Mobile Satellite Corporation resulted from 12+ applicants to provide MSS in the United States. If spectrum auctions had been required when AMSC was formed, the entities comprising the forced consortium undoubtedly would have been subject to an auction. The spectrum which the FCC licensed AMSC to use is the same spectrum that INMARSAT uses. Given the nature of mobile satellite technology, AMSC and INMARSAT satellites overlap in their service coverage areas. And, even though the FCC has blocked the use of INMARSAT for

strictly domestic services in the US, AMSC and INMARSAT will compete in many markets.

- The INMARSAT Agreement can be construed to prohibit the US from forcing Comsat to enter into a competitive bidding contest in order to access INMARSAT. Thus, if Comsat were exempted from auction requirements, would it be fair to require AMSC to pay for the use of spectrum that INMARSAT and its signatories (including Comsat) access for free? The result could be higher prices for US customers of AMSC, while worldwide INMARSAT could provide lower cost services (without added cost of payments to U.S. Treasury).
- Auctions will similarly have a negative impact on LEO MSS. INMARSAT, Russia and France have each advanced published the use of the spectrum which the US-based LEO MSS applicants plan to use to provide domestic, international and foreign domestic services. If the US applicants were to have to obtain access to their spectrum through an auction, they would be severely disadvantaged in competing with systems developed by INMARSAT, Russia or France. In addition, they would be even more disadvantaged if they had to compete with Comsat who can access INMARSAT without an auction. Would the U.S. require foreign-based systems to enter the U.S.-market through an auction? And, wouldn't all other nations levy "auctions" or taxes for LEOs to access spectrum from their countries? Undoubtedly they would, and the likely result would be that the world market would then be closed to U.S.-based systems or fatally non-competitive.
- Several US-licensed "fixed" satellites provide "mobile" services. E.g., Spacenet has the RDSS package, PAS provides maritime Ku-band services, Qualcomm provides radiolocation by means of a Ku-band satellite, and many INMARSAT mobile services are provided through packages on INTELSAT satellites. In addition, the Mexican Solidaridad satellites will provide MSS through a package on a satellite primarily intended to provide fixed services. Would these commercial mobile services

also be subject to an auction and regulatory parity?

- This will result in substantially increased costs for all system operators, resulting in higher consumer charges, which in turn may make the service prohibitively expensive to rural areas. Studies have shown that price elasticity of mobile services is very high, particularly in rural areas where mobile services may provide a basic telecommunications function and where price sensitivity is most acute.
- As a revenue generator, the auction bill is understandably appealing. However, its broad-brush approach -- based on PCS as a model -- is not appropriate for mobile satellites.



FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

June 23, 1993

OFFICE OF

*Sent to relevant  
members of Congress*

I write to offer some thoughts concerning pending legislation authorizing the Federal Communications Commission to use a system of competitive bidding for spectrum allocations. First and foremost, let me emphasize that I recognize the importance and great benefits that can be derived from competitive bidding, and I fully support its use as a means of raising significant revenue for the U.S. Treasury. I regard competitive bidding as an efficient tool for management of this valuable national resource, and look forward to implementing the law as ultimately adopted by the Congress.

There are, however, two potential problem areas to which I wish to draw your attention. First, it is vitally important that any competitive bidding legislation provide the Commission with sufficient flexibility in determining how to implement this new licensing scheme, especially with respect to spectrum that has already been allocated to specific telecommunications services and for which the Commission has already commenced licensing processes. Please be assured that the Commission will work to utilize competitive bidding wherever practicable. However, a sudden mandatory change to competitive bidding from existing licensing procedures could impede the development and, ultimately, the viability of these services. In some services in which licenses are currently awarded by lottery, the Commission has tentatively selected winning applicants, but will not be in a position to grant licenses until later this year. To change our licensing rules midstream for these services would greatly complicate our licensing procedures and likely give rise to legal challenges.

Indeed, requiring the Commission to use competitive bidding across the board could have unintended consequences. For example, the wireless cable industry, which may provide effective competition to cable television, has developed using a complex process of acquiring multiple licenses and leasing capacity from

June 23, 1993

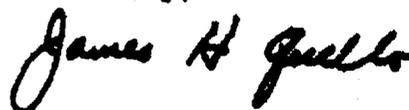
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other licensees. A change in the licensing procedure in this service could render wireless cable prohibitively expensive, thereby reducing its potential as a competitor to cable. For these and other reasons, it is crucial that the Commission be allowed the flexibility to determine the best means of awarding licenses so as to ensure efficient use of the spectrum and encourage the development of competitive and innovative communications systems.

In addition, in your consideration of competitive bidding legislation, I would also urge you to be mindful of the potential ramifications on international telecommunications service providers who utilize spectrum in other countries as well as in the United States. For example, requiring use of competitive bidding for low earth orbiting satellite system licenses in this country might subject those licensees to exorbitant payment requirements for access to spectrum in other countries. I am particularly concerned that some foreign governments opposed to the use of our international telecommunications accounting and auditing standards could use our competitive bidding requirement as a justification for retaliatory measures.

I greatly appreciate your attention to these concerns, and I welcome the opportunity to provide any assistance you may need in considering this important legislation.

Sincerely,



James H. Quello  
Chairman