

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

NOV 5 8 1993

FCC MAIL ROOM

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

PP Docket No. 93-253

To the Commission:

**COMMENTS OF EDWARD M. JOHNSON**

The Federal Communications Commission (Commission) on October 12, 1993 issued a Notice of Proposed Rule Making (NPRM) in the above matter, and requested comments. Edward M. Johnson, comments on the following.

Congress and the Commission indeed are entering new and uncharted territory (NPRM 176) in the auctioning of spectrum and will likely make arbitrary decisions that will be challenged in the Courts for years to come. Bid winners/licensee holders will experience difficulty in financing proposed construction while their license remain in question. For this reason auction procedures should be as simple as possible.

**Treatment of Designated Entities**

The Commission proposes to set aside Block C and D of broadband Personal Communications Service (PCS) to designated

No. of Copies rec'd 0+3  
List A B C D E

groups, and permit these entities to pay 80% of their bid "over time" (NPRM 4, 71 and 121) with interest added at prime plus 1%. Favorable payment plans only increase the basic bid price, and will give the designated groups none of the relief required by congress, in fact these groups would pay more.

For these designated entities the auction bid might be simply a royalty fee, i.e. a percentage of the gross operating profit calculated annually pursuant to the Internal Revenue Service requirement to file tax returns. Any future owner(s) would be subject to the same royalty fee to maintain its license. A bid of 30%-60% would be expected. This would permit the designated entity to use its capital resources to build and operate its system and bring service to the public quickly. Windfall profits on future sales would be eliminated.

#### **Collusion Among Bidders**

The Commission envisions oral bidding for 102 Major Trading Area (MTA) license at one time, and then accepting sealed bids on the two separate blocks (NPRM 119), however requiring that each oral bidder have available 3% of the expected winning bid on hand or deposited with the Commission prior to the auction (NPRM 102, Footnote 96).

An applicant for each of the 102, 30 MHz MTA license would have to bring to the auction over 100 Million Dollars (NPRM Footnote 98). The number of entities that would have the ability, and would take the business risk might be counted on one hand.

If only the 100 Million Dollar "cash in hand" people can bid,

then collusion is assured, and the congressional mandate to disseminate licenses among a wide variety of applicants is lost.

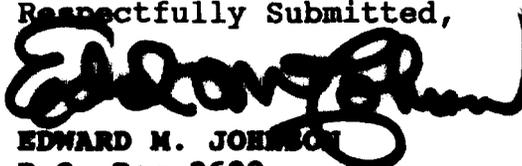
A \$10,000.00 flat refundable deposit for each bidder for such licenses seems suitable i.e. instead of 100 Million Dollars, the all license bidder would bring around 1 Million Dollars to the auction.

**The Commission May Not Be Able to Justify  
Its "Auction List" Filing Fee**

The Commission has proposed a Section 8 filing fees for PSC Services (NPRM 97 N 85) and FCC Form 401 and/or Form 574 with certain filing fees to be included in an auction list compiled by the Commission. Congress required that each party in order to participate in the auction submit information and assurances to the commission. Congress does not require or permit the collection of charges of auction applications. The filing fees established by Congress in 47 U.S.C. 158 is a means of recouping the expense incurred by the FCC in processing an application. See H.R. Conf. Rep. No. 99-300, 99th Congress 2d Sess. 506 (1986), U.S. Code Cong. & Admin. News 1986, p. 1021; H.R. Rep. No. 101-247, 101st Congress 1st Sess. 546 (1988), U.S. Code Cong. & Admin. News 1988, p. 2267. However, in an auction situation, the FCC does not process any application, i.e., examine the technical, financial, character and other qualifications set forth in 47 U.S.C. Section 308(b); 309(a), until it is the highest bidder. See 47 U.S.C. Section 309(i) and H.R. Conf. Rep. No. 765, 97th Congress 2d Sess. 37; 39-40 (1982), U.S. Code Cong. & Admin. News 1982, pp. 2281; 2283-84. Consequently, to charge a substantial fee ostensibly for processing

which the FCC only process if the applicant is successfully, may constitute an unlawful taking of property without just compensation. As such, the imposition of the filing fee that only establishes a list of possible bidders may be unconstitutional.

Respectfully Submitted,



EDWARD M. JOHNSON  
P.O. Box 2688  
Crossville, TN 38557  
615-484-3521

November 2, 1993