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Middleberg Riddle & Gianna

Richard S. Wilensky
Of Counsel

Attorneys and Counselors

Suite 1600
2323 Bryan Street
Dallas, Texas 75201
(214) 220-6300
(214) 263-6423 (Metro)
(214) 220-3189 (Telecopier)
(214) 220-6334 (Direct Dial)

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Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Sir or Madame:

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, enclosed herein is an original and five (5) copies of the Comments of ComTech Associates, Inc.

If you need any additional information, please feel free to call me at the telephone number referenced above.

Sincerely,

Richard S. Wilensky

Richard S. Wilensky

RSW:wnm
Enclosures

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	§	
	§	
Implementation of Section 309(j) of	§	PP Docket NO. 93-253
the Communications Act	§	
Competitive Bidding	§	

COMMENTS OF COMTECH ASSOCIATES, INC.

Richard S. Wilensky
Middleberg, Riddle & Gianna
2323 Bryan Street
Suite 1600
Dallas, Texas 75201
214-220-6334

Its Attorneys

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In the Matter of	§	
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Implementation of Section 309(j) of the Communications Act Competitive Bidding	§ § §	PP Docket NO. 93-253

To: The Commission

COMMENTS OF COMTECH ASSOCIATES, INC.

ComTech Associates, Inc. ("CTA"), through undersigned counsel, hereby submits its Comments in response to the above-referenced Notice of Proposed Rule Making, released October 12, 1993 in connection with the requirements of the Omnibus Budget Reconciliation Act of 1993 (the "Act") that the Commission prescribe regulations to implement Section 309(j) of the Act within 210 days after enactment, or by March 8, 1994.

CTA's primary concern is that the adoption of a system of competitive bidding not result in the concentration of licenses in the hands of a small number of media companies. Section 309(j)(3)(B) of the Act specifically directs the Commission to design a system of competitive bidding that meets the objective of "promoting economic opportunity and competition ... by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." In view of the recent spate of mergers between cable companies and telephone companies, which will create monolithic economic and technological concentration within the communications industry, and which to a large extent was unforseen by Congress at the time Section 309(j) of the Act was adopted, the Commission should be extra vigilant with respect to any auction procedures which tend to increase such concentration.

SUMMARY OF COMMENTS

1. Combinational bidding should be used only for services such as PCS where nationwide licenses are more efficient than individual licenses.

2. The Commission should experiment with sealed bid auctions for individual licenses to determine whether that method will reduce concentration in the industry.

3. Diversity considerations are appropriate for the LMDS service, where editorial and programming decisions will directly affect the services that a consumer will receive.

4. Deferred payment terms for small business applicants is preferable to a royalty reservation or tax certificate.

5. Where a substantial concentration of delivery services is already available to a company, such as a telephone-cable combination, the company should be restricted from bidding on new delivery service licenses within areas it already serves.

6. Restricting classes of applicants to those groups with no economic incentive to warehouse licenses will be more efficient than prescribing performance requirements.

DISCUSSION

1. The Commission should determine prior to an auction the most efficient market area for the award of a license, and in general auction licenses only for those individual market areas. Combinational bidding may result in capital requirements exceeding the resources available to small business. In addition, small business may be discouraged from the expense of analyzing individual market areas if they perceive there is a probability that the license will be awarded to a bidder for a larger market area. For certain services where a nationwide license is desirable, as in the case of PCS, combinational bidding should be allowed.

2. It is possible that heavily capitalized telecommunications companies may enter an oral auction with the objective of obtaining the winning bid at any cost. While the oral auction may maximize revenues to the Treasury, this may be at the cost of concentrating desirable licenses in a few firms. The

Commission should conduct sealed-bid, sealed second-bid and Dutch auctions referenced in the notice of proposed rule making on an experimental basis to determine which method will result in the greatest amount of diversity of ownership.

3. The Commission notes that PCS licensees will probably not engage in services that involve the exercise of editorial control. However, the LMDS service, in its earliest stages, will probably carry programming similar to existing broadcast and cable operations. Accordingly, it is important in the LMDS service to consider diversity factors as a matter of public interest.

4. The Commission has considered deferred payment terms, royalties and tax certificates as different methods for reducing the lump sum payment requirement for small businesses. A deferred payment mechanism, together with a distress sale provision, should be the preferred alternative. Inasmuch as many of the contemplated services involve new technologies or uses, it may be difficult to determine the value of a tax certificate or the cost of a royalty. These types of uncertainties may increase the cost or reduce the capital available to small business, which is exactly the opposite of the intended result.

5. The telecommunications industry has recently witnessed an unprecedented consolidation, with many telephone companies, cable companies and wireless companies merging in order to provide consumer one-stop shopping. Concomitant with such consolidation has been a concentration of delivery services in fewer and fewer hands. No company, no matter how large, should be foreclosed from bidding on new delivery technology. However, the Commission could provide that for certain large service providers, the cost of acquiring the license for a competing new service in a territory already serviced by the company is that the company must divest over a period of time any competing delivery services.

6. If a company does not have a competing delivery service in a territory, it will have no economic incentive to warehouse licenses. Performance requirements will be unnecessary, since a winning bidder will either develop the territory or sell the license. Restrictions on competing delivery services by winning

bidders would be a simple and more efficient means to insure system development than performance requirements.

Respectfully submitted,

ComTech Associates, Inc.

By: Richard S. Wilensky

Richard S. Wilensky
Middleberg, Riddle & Gianna
214/220-6334

November 9, 1993 **Its Attorneys**