



November 9, 1993

Mr. William F. Caton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street N.W.  
Washington, D.C. 20554

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NOV 10 1993

RE: Notice of Proposed Rule Making;  
Competitive Bidding;  
PP Docket #93-253

FCC - MAIL ROOM

Dear Mr. Caton:

Pursuant to the above-referenced N.P.R.M., The Richard L. Vega Group herewith submits an original and ten (10) copies of its "Comments" to the N.P.R.M.

Should the Commission have any questions on the enclosed material, please contact the undersigned.

Very truly yours,

Richard L. Vega

RLV:sp  
Enclosures

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**The Richard L. Vega Group**

Telecommunications Engineers/Consultants

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

DOCKET FILE COPY ORIGINAL

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

PP Docket No. 93-253

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NOV 10 1993

COMMENTS

FCC-MAIL ROOM

The Richard L. Vega Group ("RLV"), Telecommunications Engineers/Consultants, 235 Hunt Club Blvd., Longwood, FL 32779, by its President, Richard L. Vega, herein submits its Comments relative to the above-captioned proceeding.

At the outset of these Comments, we believe it to be important that the Commission focus on the objective described in Section 309(;)(3) which is highlighted as follows:

Promote "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." (Emphasis added).

Clearly, it is the intent of Congress for the Commission to create an auction process which permits open entry. It is easier to create Rules to ensure that the Treasury benefits monetarily from the licensing of spectrum than it is to ensure open entry to the spectrum by the Public. The Commission must take care to examine each Rule it now proposes to assure that access to the spectrum is equal to all members of the American Public either in or out of the communications

industry. The only way to satisfy this goal is for the Commission to accept some risk by permitting entrepreneurs who lack the financial resources, in the eyes of some R.B.O.C.'s and other vested interests, equal access to the spectrum. Much is written in the N.P.R.M. relative to maximizing the monies to be received by the Government by the auction process, as well as safeguards, bidder qualifications, eligibility, etc. These types of constraints on bidding and acquiring spectrum will only serve to concentrate licenses within a few parties, thereby serving to defeat competition. The Public's interest is better protected by the adoption of Rules which promote open entry but enhance quick service to the Public by requiring the completion of construction in one year and prohibiting the transfer of the license until one year thereafter.

Without the prospect of an immediate "flip" of the license by the highest bidder, the speculator is deterred from entering the bid process; hence, a major concern of the Commission is greatly minimized.

Relative to financial capability, the emphasis upon the bidder possessing substantial financial resources is misdirected. If the spectrum is put to a use that has obvious value, such as PCS, then the winning bidder can expect to be able to obtain the necessary financing. Cellular is an example of how the financial system works. There were many, hundreds, of winners of Cellular licenses who "won" a license through the lottery process without prior telecommunications experience and/or financial resources equal to the amount required to implement their business plan. However, with at least five (5) equipment manufacturers eager to establish market share, equipment and working capital was available from the selected manufacturer, often without personal guarantee and/or other types of collateral. Similarly, with SMR/ESMR, manufacturer's financing, as well as institutional and Public money has been acquired by relatively thinly-capitalized companies. Over the decade, the advantages of wireless communications has been brought to the attention of the financial community and the Public as a whole.

## SPECIFIC COMMENTS

RLV submits the following specific comments to the N.P.R.M.:

Pg.10; ¶.29 & Footnote 11

The prevalent use of point-to-point microwave licenses, inclusive of CARS, involves the transport of information by, and/or, to carriers and/or other distributors of information to end users. Since the end user is usually not the direct receiver of the information transported via the point-to-point link, the link itself has value only to the carrier and/or other distributor who usually has other, less cost efficient, methods of internally transporting the same information. By auctioning this portion/use of the spectrum, the Commission risks substantially higher costs to the end user as a result of an artificial disruption of competitive pricing by forcing a carrier/distributor to pay predatory prices for the transport of information via point-to-point microwave where there may be no other cost-effective alternative. Either exclude point-to-point microwave from the auction process, or establish a set-aside where eligible Applicants would have access to the spectrum.

Pg.16; ¶.47

RLV supports sealed bids and encourages the Commission to experiment with electronic bidding systems. RLV further supports the Commission's proposal to accept sealed bids for licenses as part of a combinatorial bid which would not be opened until the conclusion of oral bidding. RLV opposes a second round of bids since it would serve no purpose other than to unjustly enrich the Government at the eventual expense of the consumer. Second round bidding would also work against the smaller business entity, as does oral bidding.

Pg.17; ¶.51

RLV supports the proposal that licenses be offered sequentially, with the markets having the greatest

population being offered first.

Pg.18; ¶.54 RLV supports the proposal to offer the licenses having the greatest population in the markets with the widest bandwidth first. As an example, for PCS, all 30 MHz blocks would be offered first, proceeding sequentially from the M.T.A. with the greatest population through to the smallest M.T.A. The auction process would then continue with the 20 MHz block in a like manner, then the 10 MHz blocks, with the 10 MHz for Designated Entities offered last.

Pg.19; ¶.61 Combinatorial bidding should be prohibited in the two blocks set-aside for Designated Entities. Combinatorial bidding has the greatest potential to produce carriers exhibiting anti-competitive conduct as well as denying access completely to the small businessman. Its a bad idea! Only one network would need to succeed through the combinatorial bid process, which would force the remaining six (6) licenses to affiliate and/or aggregate among themselves and/or with the Cellular Licensees in order to compete effectively; the goal of PCS being operated by a wide variety of Licensees would never be realized without this prohibition.

Pg.21; ¶.67 RLV supports the conclusion that there should be no minimum bid. First, the Commission lacks the time to determine probable value and, therefore, set a minimum bid. Second, the value changes from New York to Joplin and from Group to Group thereby further complicating and delaying the process.

Pg.21; ¶.68 RLV supports full payment in one lump sum for all winners except Designated Entities. Further, it is important that the Commission develop Rules which preserve the financial resources of the nation for the Designated Entities. Hence, Applicants other than the

Designated Entities should be able to demonstrate their ability to construct and operate the proposed facility from their own Balance Sheet; third party and/or public financing of their winning bids and operations should be specifically prohibited.

Pg.22; ¶.70-71 Payment methods for Designated Entities should be liberal. Unlike oil and gas leases, the spectrum cannot be depleted or wasted by a defaulting Licensee. The Commission merely cancels the license and conducts another auction. For furtherance of its objective by "... disseminating licenses among a wide variety of Applicants ...", RLV urges the Commission to adopt the following bidding procedures for Designated Entities:

- \*\* Their bid can consist of any single component or combination of cash, installment payments inclusive of interest, credits and tax certificate, and royalties;
- \*\* For the purpose of judging their bid, the Commission shall consider the cumulative value of all payments, inclusive of interest, expected within six years from the grant of the license, to be the same as cash up-front.
- \*\* Designated Entities proposing royalty payments must reduce their royalty payment to a precise amount to be paid to the Government within the six-year period in order for the royalty component of their bid to be judged the same as cash up-front by the Commission.
- \*\* The procedures set forth in 1.1911 and other parts of 47 CFR Part 1, Sub-Part O are sufficient to assure collection.

**\*\* RLV favors the employment of Bid Multipliers for each Designated Entity bidding within the set-aside groups or other groups and services as well. For example, a black female having 50.1% ownership of a small business Applicant might earn a Bid Multiplier of 4, as follows:**

- \* A basis of 1 for each Applicant is given.**
- \* A Bid Multiplier of 1 is added for the Applicant being a small business as defined by the S.B.A.**
- \* A Bid Multiplier of 1 is added for the controlling entity of the Applicant being black.**
- \* A Bid Multiplier of 1 is added for the controlling entity being a woman.**
- \* If any party, stockholder, member or other members of interest in the Applicant have a net worth in excess of the S.B.A.'s monetary definition of a small business, either individually or collectively, all Bid Multipliers are null and void.**

**\*\* Hence, an Applicant having a Bid Multiple of 4 would entitle the Applicant to submit a bid of \$1,000,000, as an example, and, for the purpose of determining the winning bid, the Commission would value the bid at \$4,000,000. All other payment alternatives, described above, would still apply.**

**\*\* Another example would be a rural telephone company with a net worth in excess of the S.B.A.'s definition but having female ownership in excess**

of 50.1%. This Applicant would earn Bid Multipliers as follows:

- \* A basis of 1 for each Applicant is assigned.
- \* A Bid Multiplier of 1 is added for the Applicant being a rural telco.
- \* A Bid Multiplier of 1 is added for the controlling entities of the Applicant, collectively, being female.
- \* Hence, this example Applicant would earn a Bid Multiplier of 3, permitting this Applicant to submit a bid of \$1,000,000., as an example, and, for the purpose of determining the winning bid, the Commission would value the bid at \$3,000,000.

Pg.25; ¶.77

RLV supports the definition of rural telephone companies as those carriers exempt from 63.58. Rural telephones should be entitled to preferential treatment by the assignment of a Bid Multiplier of 1 where the license open for bid encompasses a significant portion (i.e. 30% of more) of their franchised area. The rural telco, if it is to use its eligibility as a Designated Entity, should be prohibited from using any source of financing within its bid package which would not be available to another Designated Entity bidder, such as financing from the R.E.A.

For bidders seeking preferences, as a minimum, women and minority-backed Applicants must own and control at least 50.1% of the business and no other stockholder, partner, or other equity partner consisting of the remaining 49.9% ownership should, either individually or in combination with the other parties of interest, have a

net worth in excess of the S.B.A.'s monetary definition of a small business.

Pg.27; ¶.83

By requiring the Licensee to construct the system prior to the Commission permitting any consideration of a transfer, eliminates to a significant degree the potential for "unjust enrichment". The Licensee would have not only spent significant time and money preparing his bid, but, having won a license, the Licensee would have spent additional time and money to design his system, prepare a Business Plan for potential Lenders, select a Vendor, and construct his system, as well as prepare to operate the system. While the Government's risk and damage is zero, the Licensee has spent time and money to get to the post-construction, operational phase. If, in fact, the spectrum through the effort of the winning bidder, becomes valuable, just as it did in the case of Cellular for those original Applicants who gained a license for a Top 30 market and are no longer players in Cellular, such as The Washington Post, Graphic Scanning, Metromedia, Contel, to mention only a few, these entrepreneurs are entitled to a profit on their involvement and substantial risk without any additional payments to the Government of a transfer fee or any similar anti-trafficking mechanism. Any prohibition or limitation on resale will only serve the interests of the deeper pockets who look forward to monopolizing PCS.

Pg.31; ¶.93

RLV supports full disclosure of all parties comprising the Applicant and all partners within a bidding consortia. A corporation must disclose its stockholders having 5% or more ownership interest. In the case of PCS, the Rules should be constructed to further assure strict compliance by the bidder to obtain only a single block of spectrum to a market through the auction processes. Aggregation later, in any form, would be permissible.

Pg.31; ¶.94 RLV supports the enforcement of severe penalties for the violation of anti-collusion Rules.

Pg.31; Footnote 78

To maintain the integrity of anti-collusion Rules, post-application and/or pre-auction Settlement Agreements should be banned.

Pg.33; ¶.98 RLV supports the proposal to require a simultaneous submittal of both a short-form and long-form Application.

Pg.34; ¶.101 RLV supports the conclusions contained herein for the reasons given.

Pg.35; ¶.103 & Footnote 98

Commission effectively eliminates small businesses from bidding on the M.T.A.'s simply by the creation of payment in the amount contemplated prior to the auction. An up-front payment for any market of \$8M. is ludicrous. For the 51 M.T.A.s, over Five Billion Dollars would be tied up for months while the Commission conducts its auctions; Five Billion Dollars out of the economy at a point in time when the economy needs a jolt, not a drag.

Up-front payments substantially lower than \$8M. can ensure the seriousness of qualified bidders. As an example, filing fees of \$1,400. dramatically reduced the number of applications received for the top nine I.V.D.S. markets in 1992. Hence, a minimum up-front payment of \$10,000., if up-front payments are to be required at all, to gain access to the auctions should work just as effectively without denying access to the Public.

Pg.37; ¶.109 While opposed to a material up-front payment or deposit as mentioned herein (see comments to Pg.35; ¶.103

immediately above), RLV believes that the Commission can only retain the filing fee since the Commission suffered no damage other than the conduct of the auction itself, which costs would be covered by the filing fees submitted by an Applicant and retained by the Commission.

Pg.40; ¶.120 RLV supports stricter construction schedules for combinatorial bidders since there is great risk of abuse by the potential winning bidder delaying his build-out in order to control his expenses and, in effect, warehouse his assigned spectrum, thereby denying quick service to the Public. RLV recommends that combinatorial winning bidders be required to build-out twenty-five percent (25%) of each market within their combinatorial bid in an eighteen month period.

Pg.41; ¶.121 The Commission's proposal does not provide Designated Entities with access to capital, but merely a mechanism to gain spectrum which would be the key element of any financial proposal. A better division of the available spectrum for PCS would be as follows:

- Group A: 1850 - 1865 MHz; 1930 - 1945 MHz
- Group B: 1865 - 1880 MHz; 1945 - 1960 MHz
- \*Group C: 1880 - 1890 MHz; 1860 - 1970 MHz
- \*Group D: 2130 - 2145 MHz; 2180 - 2195 MHz
- Group E: 2145 - 2150 MHz; 2195 - 2200 MHz
- \*Designated Entity Set-Aside

The above division provides for three (3) 30 MHz groups, one of which is reserved for a Designated Entity. Further, such a division does not burden the Designated Entity with the most difficult group to relocate existing users. The Designated Entity should not be assigned the least amount of bandwidth within the most difficult portion of the spectrum to utilize. An

additional benefit of the above grouping structure is the administrative efficiency for the Commission that would result from the auctioning of five (5) licenses rather than seven (7).

- Pg.42; ¶.123 RLV opposes combinatorial bidding, both by blocks and by markets, in the set-aside blocks in order to assure diversity of ownership.
- Pg.42; ¶.126 While RLV opposes up-front payments of any amount in excess of \$10,000. per license/bid, it should be noted that the Commission over-estimates the present value of the PCS spectrum.
- Pg.42; ¶.129 RLV supports the simultaneous submittal of either the Form 574 or 401 under "letter perfect" Rules. However, the financial demonstration requirement should be identical for those Applicants filing either form.
- Pg.43; ¶.130 RLV supports a one-day filing window.
- Pg.48; ¶.143 RLV opposes auctioning the IVDS licenses; the Public will be ill-served by auctions.

The IVDS was defined as a subscriber service largely due to the visions of those at TV Answer (now EON) as they went through the process of pioneering this service. At the time, it seemed reasonable that a consumer would pay for the opportunity to interact with programming or to shop at home. However, shop-at-home services are now available from broadcasters and cable operators in many areas and have since been determined by the Commission to be in the public's interest. These existing shop-at-home services provide toll-free telephone lines for ordering. Self-generated interactive programming is an impossibility for an IVDS operator, as detailed below. For IVDS to be viable with the current competitive

services available to the Public, IVDS must be offered on a "free" basis in order to capture market-share.

The IVDS faces major competition from cable, mass media facilities, video dialtone, direct broadcast satellite, and wireless cable. Since the inception of IVDS, the communication industry has made several quantum leaps in technology. The major competition for the IVDS will come from two-way fiber optic cable services offered by both the cable and telephone industries. The Bell Laboratories has, in 1993, announced they have solved some of the interim problems of broadband signal delivery through the existing copper network with the technology termed Asymmetric Digital Subscriber Line (ADSL). This technology allows one-way broadband services (i.e. video programming) to coexist with the normal two-way telephony service on the copper wire network that exists today. Digital Equipment Corporation has also developed a new Ethernet protocol that enables video services, as well as others, to be delivered via the coaxial cable that now exists.

Because of the advent of these, and other, broadband services, IVDS faces an uphill battle as a subscription service. It is extremely important to remember that no matter what an IVDS operator does, he can never provide the same services as these broadband operators are now providing or, in the future, will provide. Broadband operators have the ability to provide a total interactive platform due to the availability of bandwidth (i.e. video and data), while the IVDS operator can, at best, provide only an overlay for existing video/data material. The IVDS has only 8.5% the bandwidth necessary to provide a single channel of video programming. Thus, the IVDS operator is at a technological disadvantage to those services that are not subject to an auction.

The IVDS operator faces a major disadvantage with capitalization as well. One must remember that the IVDS competitors are some of the largest corporations in the world, with relatively few, if any, problems with capitalization. These operators must only fund the improvements on their existing equipment and physical plant. While these investments are seemingly huge on the surface, these companies have the customer base and, therefore, positive cash flow to support such investment. The IVDS operator, under the auction proposal and with no customer base, will have to attain capital for auction participation, equipment and programming after which his service will seem to be a precursor, rather than a competitor, of broadband interactivity. It is going to be extremely difficult for the IVDS operator to find the capital necessary to build and operate his market.

Because of the nature of the IVDS (i.e. wireless point-to-point communication), it is a natural ally of the broadcaster. The IVDS operator will have to provide an "overlay" to an existing program for interactivity, and this requires a level of cooperation equivalent to FM Simulcasting of televised events. The IVDS operator will have to know prior to the broadcast of his signal just what that programming will be. This cooperation is conceivable from broadcasters, but not from the IVDS's competitors: primarily, the evolving cable and telephone complex. As evidence of the potential anti-competitive strength of this combine, one need only observe the success of the cable industry blocking the flow of programming to the Multi-Channel Multipoint Distribution Service (MMDS) industry for ten years. The result - a minuscule MMDS industry which is not a competitive threat to the cable industry's onerous pricing schemes.

IVDS will have all of the natural barriers to

successfully penetrate the marketplace. The Commission need not create another piece of the spectrum destined to be warehoused by market forces more interested in the elimination of competition, rather than innovation. At a point in time when there is no "head-start" by the cable/telco complex, the Commission has the opportunity to classify IVDS as a mass media service, establish a one-day filing window for the applications for all 733 markets (i.e. both MSAs and RSAs), and thirty (30) days therefrom, conduct a lottery. In this manner, IVDS could be expected to be operational throughout the U.S.A. by the end of 1994, thereby offering a valid choice to the consumer rather than taking only what the cable/telco complex has to offer which, without competition, won't be much.

Pg.54; ¶.160

RLV opposes the relegation of unserved cellular area applications filed prior to July 26, 1993, to the auction process. The case for the necessity of auctions for unserved areas is specious at best. There are two fundamental arguments that the Commission uses to justify their conclusion.

The Commission states that "... the rapid deployment of new service, especially to rural areas, would be accomplished because insincere Applicants who do not intend to build out their proposed systems but, rather, assign their authorization for profit, would be discouraged from competing in an auction.". The arguments against this conclusion are as follows:

\*\* Contained within the Commission's Rules on the subject of unserved area applications and ownership are safeguards against the very behavior that the Commission feels may hinder service to the unserved areas. In 47 CFR 22.920(c), the Commission prohibits any assignments or transfers

of control during the first year of operation except in cases of death or incapacitation. This rule also forbids the Licensee from entering into any option agreements or management contracts that transfer control of the license before or during the first year of operation, even if the transfer will not take place until after the first year (see 47 CFR 22.920(c)(1)).

In the Commission's First Report and Order and Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 6185 (1991) (First Report), the Commission states in paragraph 91 (page 39) "However, the economic viability of unserved areas is speculative from the outset and, therefore, there will be no 'changed circumstances' between filing and building, as existed in the MSA and RSA filing rounds." There has been no change in the viability of unserved areas since 1991. One may, in fact, argue that with the advent of PCS and its subsequent impact on the competitiveness of mobile telephony, cellular in unserved areas is now economically more speculative than was previously thought. In most cases, if these areas were viable, they would be served by the existing licensees. Placing the added burden of financing the participation in an auction for unserved areas on potential applicants will not enhance the value of winning the license nor will it expedite the provision of service to rural areas. Rather, the opposite will be true: there will be fewer participants in the licensing process, fewer proposals to serve these unserved areas, and the possibility that the majority of the unserved areas will remain that way. This runs counter to the Commission's intention of serving the public interest by laying the necessary groundwork for providing "seamless" nationwide cellular service.

Pg.56; Footnote 179

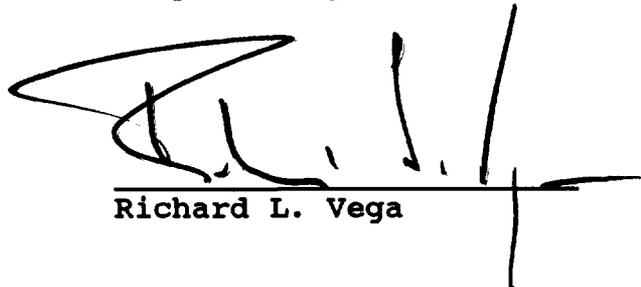
Microfiche creates the greatest burden on the Applicant. RLV recommends the Commission reconsider its microfiche requirements.

Pg. 59; ¶.175 As mentioned previously (see Pg. 9 herein), the Commission can only retain the filing fee. There has been no damage to the Government in order for the Commission to justify the retention of a deposit and/or up-front payment. The filing fee is more than an adequate payment to cover the Commission's costs associated with the initial, and subsequent, if necessary, auction(s).

#### C O N C L U S I O N

The Commission has a heavy cross to bear in order to meet Congress's timetable and to create Rules which place all entities on an equal basis to acquire spectrum. The Commission is urged to protect the interests of the smaller entities and those of minority groups in acquiring spectrum or else face the possibility of service being even further delayed to the Public as a result of potential litigation which may be brought by others seeking to assure that the rights of all segments of the population are protected.

Respectfully Submitted,



Richard L. Vega