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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

INITIAL COMMENTS
OF
UNIQUE COMMUNICATIONS CONCEPTS

Unique Communications Concepts ("Unique") acting through counsel and in accordance with the Commission's Notice of Proposed Rule Making, FCC 93-455 released October 12, 1993 (the "NPRM"), hereby files its Initial Comments in this proceeding.

I. ALLOCATION OF SPECTRUM AND FINANCING ISSUES

Setting aside blocks of spectrum specifically for small businesses, rural telephone companies, and women and minority-owned businesses permits the Commission to fulfill the requirements of this law by allocating spectrum in such a way that these designated groups would have an opportunity to provide PCS. By allocating additional spectrum to blocks C and D, the Commission would achieve the parity which the law was intended to create, ensuring the survival of the rural telephone companies and the success of small businesses and minority-owned companies.

The Commission must resist the temptation to address each of these groups, and their needs, as one. Block C should be reserved

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for small businesses and minority-owned businesses exclusively. These entities will need to rely on outside financial institutions to provide funding necessary to deploy service and to pay the auction monies, should they be granted a license to provide service. In order to obtain financing, the small businesses and minority-owned organizations must demonstrate the ability to provide equal, if not superior, services to those offered by their competition. This is of greater importance because small businesses and minority-owned companies may have no operating history and will be entering a new, capital-intensive technology. In some cases, these small businesses may have little or no current revenue streams to justify required capital to seize the opportunity afforded them. The questions regarding the suitability of a small business, as defined by the Small Business Administration (SBA), would be of less concern if the licensee of block C had 30MHz of spectrum to effectively compete within the Basic Trading Area ("BTA"). The risk for the lending institutions is diminished exponentially if enough spectrum is allocated to compete with existing and new technologies in a given market. If spectrum is allocated for a state of the art, high-capacity system with equal services, the intrinsic value of the lincenses can act as collateral and virtually guarantee funding for this new technology. Although it will not be impossible to receive funding with less than 30MHz of spectrum, the terms and conditions of that funding may not allow for rapid deployment, expansion of coverage area, and reasonable debt service. A lack of favorable funding was

a problem for many RSA licensees, thus slowing deployment of service and severely hindering the licensee's ability to compete. Additional spectrum in these set-aside blocks would promote competition in the BTA markets and expedite growth and deployment of this new technology. Therefore, it is the opinion of Unique that the public would be better served by allocating 10 MHz of additional spectrum to block C from the unlicensed isochronous PCS in 1890-1900 MHz range.

II. PAYMENT OPTIONS

As for payment policies, small businesses, unlike women and minority-owned companies, must qualify as such by meeting the requirements of a small business as defined by the SBA. Women and minority-owned companies, on the other hand, can be of any size, without limitation. Therefore, small businesses should be allowed to defer auction payments, saving their resources for deployment of service. This can be done by taking a percentage of the gross profits over a ten year period, with a balloon payment of the outstanding balance at the end of that period. Interest would be assessed on the unpaid balance, and should be a fixed rate determined by the prime rate at the time the bid is submitted. In the event, as in many capital-intensive businesses, gross profits do not exist, the licensee will be responsible for interest payments on the outstanding balance. If the licensee desires to sell majority interest in the license, the remaining balance would have to be placed in escrow, payable to the Commission, prior to submission of documentation for approval for transfer of ownership.

Furthermore, transfer fees should be very high in year one, decreasing over time, in order to deter speculation.

Previously, we noted that there are no size limitations, or constraints, placed on bidders which qualify as women and minority-owned companies. Therefore, to give a deferred payment schedule to those entities based solely on their protected status would be unfair to other participants and could cost the Commission millions of dollars in revenues unnecessarily. In light of this fact, we support the Commission's proposal to grant tax certificates to these licensees. This would facilitate growth, and contribute to greater competition in the licensee's marketplace. Should an entity qualify under both scenarios (meaning a woman or minority-owned small business) the entity must declare, prior to submission of bids, which option they intend to exercise.

In the opening paragraph of this section, it was suggested that both set-asides be issued additional spectrum. Unique proposes that block D be given 10MHz of additional spectrum from the unlicensed isochronous PCS in the 1900-1910MHz range. The D block should be exclusively reserved for rural telephone companies and those entities that were granted PCS experimental licenses, conducted tests, submitted documentation to the Commission regarding test results, and petitioned the Commission for a pioneer's preference and were denied, or were tentative selectees for a pioneer's preference.

Allocating additional spectrum to the D block will ensure the survival of rural telephone companies. Otherwise, PCS will

cannibalize their existing market and threaten or, in some instances, terminate their existence. With additional spectrum, operating history, and current revenue streams, the rural telephone companies will meet with no difficulties in obtaining financing to deploy services rapidly. This will facilitate competition and bolster the local economy, rather than losing local jobs to distant entities. With only 10MHz of spectrum, the D block licensee would be very limited in the services they could provide and therefore could not compete with the other service providers in their market. In most cases, the capital required to deploy PCS would be too great to warrant developing a 10MHz system. Unless the intention of the Commission is for the rural telephone companies to only provide service for a specialized niche, then additional spectrum is essential. With their valuable operating experience, the rural telephone companies could get a running start a deployment, thus stimulating competition and forcing the deployment of competing services.

Allowing experimental licensees to bid for the D block would provide an opportunity to reward those that completed the research and development for this technology. If the experimental licensees were given tax certificates equal to the testing expenditures pertinent to this technology, they would be compensated for their efforts. If the experimental licensees' testing expenditure were not acknowledged, it would hinder the development and testing of further technologies by the private sector and result in endless legal battles. There should be incentives such as this set-aside

for those who assist the Commission with the testing and standardization of new technologies. Granting a few commercial licenses from hundreds of worth applicants will not work. Although the promise of license grant is a bigger carrot to dangle, setting aside a block of spectrum and limiting entry is a realistic alternative to broken promises, contentious actions, and delays in deployment of services.

All licensees in block D should receive tax credits to lighten the financial burden of auctions and facilitate deployment. Those experimental licensees that submitted results to the Commission, and can document reasonable expenditures, should get tax certificates over and above those given for participation in the auction, provided no allowance was made during the bidding process. If applicants qualify both as an experimental licensee and as rural telephone company, they should receive the same tax certificates. In instances were multiple experimental licenses were issued, the licensee may only apply the overall cost of testing in one market.

III. BIDDING PROCEDURES SHOULD BE DESIGNED TO DETER SPECULATION

Parameters for bidder qualifications and eligibility standards should be stringent, and not limited to cash deposits with the Commission. Instead of the administrative burden imposed on the Commission by taking, and subsequently refunding deposits, it would be prudent for the Commission to accept documentation verifying the amount liquid capital available to the bidder. This would be much more acceptable to those entities or individuals that wish to participate in multiple markets in the MTA's and BTA's. Those

individuals or entities that cannot verify liquid capital would then be required to make an extremely large deposit for each market in which they wish to participate. If the deposits are large, the risk of non-performance is minimal. In contrast, if deposits were the only option available to the bidders, eligibility could become an impediment to participation by otherwise worthy applicants.

In an effort to simplify this method of allocating spectrum, we propose the first one hundred markets should be granted via oral bidding, largest to smallest, auctioning all licenses for market prior to moving on to the next, smaller market.

Unique expects to provide additional comments on these issues later in the Rule Making process.

WHEREFORE, Unique strongly urges the Commission to adopt these and the positions which Unique will advance later in the Rule Making process. Such a result would be consistent with the terms of the Budget Act as well as the public interest.

Respectfully submitted,

UNIQUE COMMUNICATIONS CONCEPTS

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