

CALIFORNIA  
MICROWAVE

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

November 10, 1993

**BY MESSENGER**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

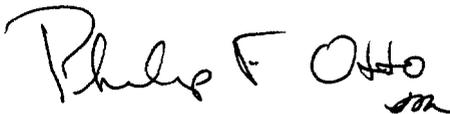
Re: PP Docket No. 93-253 Implementation  
of Competitive Bidding

Dear Mr. Caton:

California Microwave, Inc. hereby submits an original and nine copies of its Comments in the above-referenced proceeding. Any questions concerning the Comments should be addressed to me at the company's address.

Thank you for associating these comments with the docket for this proceeding.

Yours very sincerely,



Philip F. Otto  
Chairman and Chief  
Executive Officer

Enclosures

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

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In the Matter of

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

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PP Docket No. 93-253

COMMENTS

CALIFORNIA MICROWAVE, INC.  
990 Almanor Avenue  
Sunnyvale, California, 94086

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PP Docket No. 93-253

COMMENTS OF  
CALIFORNIA MICROWAVE, INC.

California Microwave, Inc. hereby comments on the Commission's Notice of Proposed Rulemaking (the "Notice") (FCC 93-455, released Oct. 12, 1993). The Notice has been issued pursuant to the congressional mandate in Title VI of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), Pub. L. No. 103-66, 107 Stat. 379 (Aug. 10, 1993).<sup>1/</sup> In the Notice, the agency reaches a number of tentative conclusions as to the implementation of a competitive bidding program and as to its applicability to various radio services in awarding of radio licenses.

California Microwave is a U.S. manufacturer of a broad line of microwave radio equipment used extensively in constructing cellular and other mobile radio networks here and abroad. California Microwave applauds the Commission's efforts to move forward expeditiously to implement spectrum auctions and licensing for PCS and other emerging radio technologies. However, the Commission's proposal to apply competitive bidding procedures to intermediate links (Notice, at para. 29) is of major concern to California Microwave and its customers. For the reasons discussed below, we believe

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<sup>1/</sup> § 6003(a) amends Section 309 of the Communications Act, 47 U.S.C. § 309, by adding new § 309(j), "Use of Competitive Bidding." See also H.R. Rep. 103-213, 103 Cong. 1st Sess., 103 Cong. Rec. H5792 (Aug. 4, 1993) ("Conference Report").

such a proposal relies on artificial distinctions in system use; creates practical problems in system deployment; and may create opportunities for unjust enrichment for spectrum speculators. For all of these reasons, we urge further consideration of this aspect of the Notice.

**I. SUBJECTING INTERMEDIATE LINKS TO COMPETITIVE BIDDING WOULD CREATE ARTIFICIAL DISTINCTIONS IN SYSTEM USE**

The Budget Act allows the Commission to use competitive bidding as a licensing mechanism only in certain, narrowly prescribed circumstances. Section 309(j)(2)(A) expressly limits competitive bidding to those licenses for which "the principal use of [the] spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee--

(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or

(ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate.<sup>2/</sup>

Giving this provision a very broad construction, the Commission proposes to subject microwave radio licenses to competitive bidding if they are used in an intermediate link for " . . . the provision of a continuous, end-to-end service to a subscriber . . ." (Notice, at 29.) The Commission posits that such an interpretation will be administratively efficient because it will eliminate the need to consider the actual use

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<sup>2/</sup> As the Commission notes, a "major criterion for competitive bidding is that the licensee have paying subscribers." (Notice, at para. 23.) Under this provision, the agency proposes to exempt virtually all mass media services from competitive bidding.

to which the licenses are being put. But it requests comment on the practical ramifications of this proposal.

California Microwave believes that this interpretation is seriously flawed. It also creates artificial and impractical distinctions in system use:

- a. Signals are not transmitted over intermediate links "directly" to or from end-user subscribers. Different multiplexing formats, the addition or deletion of control signals, and use of the intermediate link for other communications traffic will substantially alter the nature of the signals being transmitted, making it impossible to determine in any given circumstance whether the license is one that must be subject to competitive bidding.
- b. Microwave is but one transmission medium that could be used for intermediate links. Nothing in the legislative history of spectrum auctions suggests that Congress wished to distinguish and impede the use of microwave links in relationship to the use of copper or fiber optic cable links internal to communications networks.
- c. If intermediate microwave links that are used in a wireless communications service are deemed to be a direct and integral part of a service to subscribers, and thus subject to auctions, microwave links that are *integral to land-line subscriber-based services*, such as basic exchange telephone service, may also have to be subject to auction. Nothing in the legislative history would suggest such an intent or, alternatively, impose such distinction.

- d. In certain instances, such as the provision of inter-LATA cellular links to wireline RBOCs currently mandated by MEI concerns, microwave facilities may be provided by third parties as an adjunct to other unrelated transmission services. Any attempt to categorize only certain intermediate microwave links (those licensed to the service provider directly) as subject to competitive bidding would create artificial and impractical distinctions.

There is no reason to believe that Congress intended that auctions be applied to such intermediate links. These links are in all senses "private" internal facilities that are used in the business of the service provider, analogous to other "private services" licenses that are exempt from auction. A consistent interpretation of section 309(j)(2)(A) would apply competitive bidding rules only to the licensing of the spectrum that is directly providing the end-user or mobile link to and from subscribers. Intermediate links, which could be interchangeably wired or wireless, should not be included.

## **II. SUBJECTING INTERMEDIATE LINKS TO COMPETITIVE BIDDING WOULD CREATE PRACTICAL PROBLEMS IN SYSTEM DEPLOYMENT**

One of the advantages that microwave links hold over fixed cable links is that a microwave system can be deployed in a faster and more flexible manner. The Commission has been responsible for streamlining procedures to facilitate efforts by microwave manufacturers and users to clear frequencies and to accelerate the issuance of licenses.

Due to extremely effective frequency analysis and coordination, most microwave license filings involve pre-cleared frequencies and are made on a non-

competitive basis. As a practical matter, at least in the past, mutual exclusivity among microwave applications has seldom existed. In the event that justifiable and mutually exclusive applications are filed for a given microwave path and frequency, California Microwave believes that situation-specific solutions exist for resolving any conflict. Such solutions are far more efficient than competitive bidding in assuring rapid availability of licenses and efficient deployment of services.

In fact, Congress demanded that competitive bidding should not become the primary basis for licensing when other means were available to avoid the need for such approaches. Section 309(j)(6) expressly states that "[N]othing in the use of competitive bidding shall . . . be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions [or] negotiations . . . in order to avoid mutual exclusivity in application and licensing proceedings." By subjecting intermediate links to competitive bidding, the Commission is taking the exact opposite tack to achieving an efficient licensing scheme for such microwave licenses. In establishing the possibility of competitive bids for fixed service microwave licenses, California Microwave is concerned that the Commission may be forced to post notice of all applications subject to potential bid. This will necessarily introduce substantial delays in the licensing process and in system deployment. Worse yet, auctioning these frequencies could create speculative incentives for others to file mutually exclusive applications just to create an auction opportunity. This would surely delay facilities implementation. These are practical concerns that cannot be ignored.

### **III. SUBJECTING INTERMEDIATE LINKS TO COMPETITIVE BIDDING WILL NOT SERVE BUDGET ACT OBJECTIVES**

The Budget Act establishes several objectives for the use of competitive bidding, among which is the recovery of a portion of the value of the spectrum. Of course, the Commission cannot ignore other objectives, including the rapid deployment of new technologies and services, that would be seriously hindered if intermediate links are subject to competitive bidding. But even in attempting to generate net revenue for budgetary purposes, the Commission should reconsider whether competitive bidding for intermediate links will significantly affect Federal revenues. California Microwave believes the result would range from negligible to negative:

- a. Unless the initiation of competitive bidding generates a flood of new mutually exclusive applications for fixed microwave licenses, the number of situations in which competitive bidding would be employed would be small. Indeed, the administrative costs of establishing microwave bidding procedures may exceed the proceeds.
- b. To the extent that system operators, PCS or otherwise, believe they may have to pay for spectrum used for intermediate links, these assumptions will be factored into their overall system projections. Either the operators will plan to use intermediate cable links or, given the technical advantages of microwave, they will discount their bids for "primary" end-user spectrum accordingly. Net new Federal revenues should be negligible at best.
- c. Competitive bidding could become a serious, anti-competitive tool, used by existing licensees to impede the growth of new service providers by either delaying, denying or substantially increasing the

cost of necessary microwave intermediate links. The threshold qualifications for applying for such links will have to be tightly controlled. Otherwise, there is a real possibility that direct and indirect (*i.e.*, other radio service) competitive licensees could create auction circumstances (*i.e.*, file mutually exclusive applications) and then bid up the costs of these links just to create higher capital requirements on others.

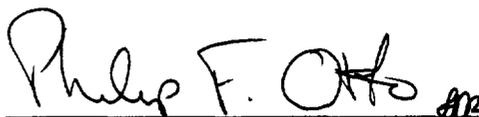
- d. In the worst case, competitive bidding for intermediate links may encourage speculators to file mutually exclusive applications preemptively or in response to the announced plans of legitimate users. Such moves would lead to spurious license applications and processing burdens on the Commission. Legitimate users may then be required to pay more in the aftermarket. The speculators may be the only new beneficiaries.

Given that these links are internal to, and not the basis for the subscriber use of, the radio services being offered to the public, there does not appear to be any legislative or policy rationale for imposing such risks on licensees of these groups of frequencies. The success to date of frequency coordination, a system that has worked well, argues against the use of auctions simply for additional revenue generation; such rules would not serve the objectives of the Budget Act.

For all of these reasons, California Microwave, Inc. respectfully suggests that the Commission should reconsider its earlier tentative analysis, and decide instead that competitive bidding procedures will not be employed for awarding licenses for fixed microwave facilities that constitute intermediate links.

Respectfully submitted,

**CALIFORNIA MICROWAVE, INC.**

By:   
Philip F. Otto  
Chairman and Chief  
Executive Officer

Dated: November 10, 1993