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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 COMSAT CORPORATION

COMSAT Corporation ("COMSAT"), through its two jurisdictional business units, COMSAT World Systems ("CWS") and COMSAT Mobile Communications ("CMC"), hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ CWS and CMC are the U.S. Signatories, respectively, to the International Telecommunications Satellite Organization ("INTELSAT") and the International Maritime Satellite Organization ("Inmarsat").

The NPRM proposes to implement certain provisions of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act")², which authorizes the Federal Communications Commission ("FCC" or "Commission") to employ competitive bidding procedures to choose among mutually exclusive applications for an initial radio spectrum license. In particular, the NPRM proposes to subject fixed satellite services ("FSS") and mobile satellite services

¹Notice of Proposed Rulemaking, PP Docket No. 93-253, FCC 93-455 (released October 12, 1993) ("NPRM").

²Omnibus Budget Reconciliation Act, P.L. No. 103-66, 107 Stat. 312, (1993) ("Budget Act").

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("MSS") to competitive bidding. The NPRM makes no distinction, however, between domestic and international satellite services. This oversight has significant legal and public policy implications.

As explained below, COMSAT submits that the use of auctions to award licenses for international satellite communications services is not required by the Budget Act, nor would it serve the public interest. Indeed, COMSAT is deeply concerned that the use of competitive bidding to award licenses for international FSS and MSS systems may trigger an international backlash contrary to U.S. interests in the provision of affordable, interconnected worldwide satellite communications. Accordingly, the Commission should not apply competitive bidding procedures to award international satellite communications licenses. To the extent mutually exclusive situations even arise in international satellite licensing, COMSAT believes it would be far better to consider alternative solutions, such as spectrum sharing arrangements, to avoid having to choose among mutually exclusive applicants for an international satellite license.

**I. Neither the Budget Act Nor the Public Interest
Require That Auctions be Used to Award International
Satellite Licenses**

In the NPRM, the Commission identifies certain classes of services which should be subject to competitive bidding. Among the common carrier radio services identified as candidates for

auction are the fixed-satellite and mobile satellite services. NPRM at 53. Although it is not clear from the NPRM, COMSAT is concerned that the Commission may extend competitive bidding to international FSS and MSS systems. Because the use of competitive bidding to award international satellite licenses is likely to affect system costs and to have severe repercussions on the cooperation among nations necessary to provide international satellite services, COMSAT urges the Commission to make clear that its proposals for FSS and MSS do not apply to the international satellite arena.

In determining whether to apply competitive bidding procedures to a particular service, Congress has indicated that the Commission should not sacrifice important communications policy objectives in the interest of maximizing revenues from auctions.³ In that context, it is important for the Commission not to overlook the requirements and policies underlying the Communications Satellite Act of 1962, and the International Maritime Satellite Telecommunications Act of 1978, as they relate to this issue.

COMSAT, in its jurisdictional role as U.S. Signatory to INTELSAT and Inmarsat, could not be subject to competitive bidding procedures under the Budget Act. COMSAT serves pursuant to statute as the sole U.S. participant in these two international organizations, and thus is neither a "licensee" nor

³See Budget Act § 309(j)(7); H.R. Rep. No. 111, 103rd Cong., 1st Sess. 585 (1993) ("House Report").

an entity subject to "mutually exclusive" application procedures within the meaning of the NPRM and the Budget Act.⁴ Indeed, INTELSAT and Inmarsat space stations are not licensed in the United States at all; instead, COMSAT as U.S. Signatory applies for authority to participate in INTELSAT and Inmarsat procurements, but is not issued Title III licenses in this connection.

The criterion of mutual exclusivity is also inapplicable to INTELSAT/Inmarsat space stations. As the Commission has recognized, if COMSAT did not pay its apportioned share of INTELSAT's and Inmarsat's costs, it would be subject to sanctions by the two organizations under the terms of the INTELSAT and Inmarsat Operating Agreements. In short, the mode of operation contemplated by the statutes and international agreements governing COMSAT's participation in INTELSAT and Inmarsat is wholly inconsistent with competitive bidding procedures. In an analogous situation, Congress recently reaffirmed COMSAT's unique role in granting it an exemption from the payment of annual spectrum fees with respect to INTELSAT and Inmarsat space stations.⁵

Furthermore, any attempt to apply auctions to the U.S. portion of an international satellite communications system would necessarily result in an uneven playing field for the U.S.

⁴Communications Satellite Act of 1962, 47 U.S.C. §§ 701, et seq.; International Maritime Satellite Telecommunications Act of 1978, 47 U.S.C. §§ 751, et seq.

⁵See H.R. Rep. No. 207, 102nd Cong. 1st Sess. 26 (1991).

participant and could trigger a global backlash detrimental to all international satellite systems. For example, if the Commission were to auction the "Big LEO" MSS applications received for the 1610-1626.5/2483.5-2500 MHz frequency bands, the U.S. MSS winner would have to invest substantially more capital up front to establish its system than its foreign counterparts which do not have to bid for their spectrum licenses.

Alternatively, once the United States opens the door on international satellite spectrum auctions, other countries might be encouraged to do the same with regard to use of the same frequency bands in their countries, thereby driving the cost of operating an international satellite system to a point which might compromise economic feasibility. Indeed, there is the danger that countries might invoke auctions as trade barriers to restrict foreign participation in domestic systems. Auctions employed under a different scheme from that proposed in the NPRM, thus, might unfairly discriminate against U.S. companies.

An even greater concern is that the auctioning of national frequency assignments by the United States could impact the international allocation process or the orbital location process administered by the ITU. There have been longstanding debates in the ITU over the issue of international allotments for the spectrum/orbital resource. Implementation of the auction concept nationally, thus, could lead to efforts to adopt auctions at the international level -- a proposal which the United States would surely oppose.

COMSAT urges the Commission to carefully consider the significant impact auctions will have on international satellite systems and on international spectrum allocations and orbital resources as it proceeds with the instant rulemaking.⁶ COMSAT firmly believes that these international concerns merit the Commission's refraining from using auctions to award international satellite licenses.⁷

II. The Commission Should Attempt to Avoid Mutual Exclusivity When Licensing International Satellite Systems

In directing the Commission to implement competitive bidding, the Congress concluded that current licensing procedures, particularly lotteries, were not effective tools for spectrum management and did not serve the public interest.⁸ For these very reasons, the Commission also has been reluctant to use lotteries to award satellite licenses, given the small number of competing applicants, the large amount of capital investment and spectrum required to establish a satellite communications system, and the typically expansive coverage areas of such systems.

In fact, the Commission has gone to great lengths to avoid

⁶See, e.g., Comments filed In the Matter of Columbia Communications Corp., Petition for Declaratory Ruling With Respect to Coordination and Interconnection With the Proposed Tongasat Satellite System, FCC File No. ISP-94-014.

⁷International satellite systems typically provide a public safety function, such as the INTELSAT system's Universal Service and the Inmarsat system's Global Maritime Distress and Safety Service.⁷ These public safety functions may warrant a separate public interest ground for exemption from competitive bidding.

⁸House Report at 575.

mutual exclusivity and to encourage negotiation and spectrum sharing arrangements to expedite the provision of new satellite services. For example, in awarding a license in the upper L-band for a domestic MSS system, the Commission instructed competing applicants to combine their proposals and create a single satellite system.⁹ In the "Little LEO" proceeding, the Commission encouraged the applicants to proceed with a Negotiated Rulemaking that appears to have been successful in accommodating all of the applicants within the allocated spectrum.¹⁰ Other spectrum sharing arrangements are being proposed by the applicants for the Big LEO systems.¹¹

The Budget Act supports these efforts and includes language which instructs the Commission to continue "to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means to avoid mutual exclusivity in application and licensing proceedings."¹² The House Report accompanying the Budget Act goes even further -- it suggests that the ongoing "Big LEO" proceeding is a case in which the

⁹Second Report and Order, Gen. Docket No. 84-1234, 2 FCC Rcd 485 (1987), affirmed Final Decision on Remand, 7 FCC Rcd 266 (1992).

¹⁰Licensing and Operating Procedures for the Non-Voice, Non-Geostationary Mobile Satellite Service Established, Public Notice Mimeo No. 40284 (CC Docket No. 92-76), released October 21, 1993.

¹¹See, e.g., Jointly Filed Comments of Motorola Satellite Communications, Inc. and Loral Qualcomm Satellite Services, Inc., CC Docket No. 92-166, filed October 7, 1993.

¹²Budget Act § 309(j) (6) (E); H.R. Rep. No. 213, 103rd Cong. 1st Sess. 1174 (1993).

Commission should do all it can to avoid a mutually exclusive licensing situation that might trigger the use of competitive bidding in contravention of the public interest.¹³ Given that all the Big LEO proposals are for either global or regional systems, this language strongly suggests that auctions are not appropriate for international satellite systems.

COMSAT encourages the Commission to continue to seek solutions for licensing international satellite systems based on efficient use of spectrum and sharing arrangements and to reject the use of the auction process.¹⁴ In the context of licensing international satellite systems, auctions are a particularly costly alternative that does little to reward financial investment and technological innovation.

Conclusion

As discussed above, auctioning licenses for international satellite services is not required by the Budget Act, and is likely to create an uneven playing field for U.S. satellite service providers and to engender unnecessary controversy in the field of international satellite

¹³ House Report at 585.

¹⁴COMSAT notes that terrestrial wireless systems, particularly PCS, are on a fast track for decision by the Commission in the instant proceeding. NPRM at 39. COMSAT urges the Commission to develop a thorough record on the impact of competitive bidding on international satellite licenses and to consider a bifurcated decisionmaking process separate from that used for PCS.

communications. Accordingly, COMSAT urges the Commission to refrain from applying competitive bidding to international satellite communications licenses and to encourage alternative licensing solutions which avoid mutual exclusivity problems.

Respectfully Submitted,

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