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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits these comments on the Commission's Notice of Proposed Rulemaking in this proceeding, released October 12, 1993 (NPRM). In the NPRM, the Commission seeks the optimum way to implement the new statute requiring the auction of rights to certain frequencies it has previously assigned through other means. USTA did not support auctions in the past,¹ but given the statutory mandate, these comments are intended to assist the Commission in applying the new law most effectively.

Notwithstanding the length of the NPRM and the many questions, USTA's comments here are short, and address only a few of the issues raised by the NPRM.

As a preliminary matter, the Commission should make clear the nature of the right being provided through auction to successful bidders. It should make clear that the spectrum itself is not being sold. Instead, it should make clear that successful bidders will become licensees of spectrum rights, whose continued license rights

¹ See Comments of USTA in Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, filed November 9, 1992 at 27-28.

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remain subject to the overriding conditions of use identified in law and Commission decisions and regulations. This distinction is one that is rarely made specific, if at all.

The NPRM asks at ¶ 20 whether it should work to apply its new rules to certain identified services first. USTA agrees that broadband and narrowband personal communications services (PCS) are services where the Commission should apply its new rules first. It is less clear that the Commission should apply its new rules to other identified common carrier radio services immediately. USTA opposes such application if the Commission does not also agree that renewals and modifications of common carrier licenses should not be subject to competitive bidding, an issue on which it asks comment at ¶ 22 of the NPRM. Existing common carrier licensees should not lose the benefit of their licenses, as the overwhelming majority have a history of good service and compliance with Commission rules and regulations. Also, the public interest would not be served by disruption of established common carrier services upon which the public depends and which have been authorized after Commission review in appropriate proceedings.

The NPRM asks at ¶¶ 28-29 whether intermediate links should be subject to auction rules. Again, this would depend on whether existing licensees and their customers are protected. Existing intermediate links are essential parts of the public switched network, and the general viability of intermediate links should not be placed at risk. There may be no alternative to the delivery of common carrier services if these intermediate links are lost.

The NPRM asks at ¶ 77 how the Commission should define "rural telephone companies" for the purposes of its rules. Use of the definition that now exists in the Commission's Part 63 rules will be restrictive, and may operate to limit the ability of many areas outside population centers to benefit from new wireless technologies. This has been the result for many citizens in the cable television area. The Commission should be cognizant of the fact that actual delivery of PCS and related technology benefits may depend in large part on deployment of new services by telephone companies in these areas of the country. Just as USTA has requested that the Commission revisit the "rural area" definition for the purposes of video programming provision,² it should adopt a definition here that will operate to actually promote delivery of PCS and related benefits, rather than quarantine certain telephone companies based on geography. If the Commission chooses to use the current narrow "rural area" video programming definition, it should make clear that it is subject to revision over time. However, this will not deal with the situation at the time that initial auctioning takes place, and therefore some companies would be left out, perhaps forever.

The NPRM asks at ¶ 78 how to apply the "rural area" definition to consortia. A consortia that is controlled by a qualified rural entity, or that has as its general partner a qualified rural entity, should be fully able to benefit from the rules applicable to "rural telephone companies." Reasonable rules governing the area of

² See Comments of USTA, filed February 3, 1992, in Amendment of Sections 63.54-63.58 of the Commission's Rules, CC Docket No. 87-266.

licensed service can be developed to assure that this qualification (and the other special qualifications) are not subject to abuse, but also assure that areas outside population centers benefit from the new PCS and related technologies. Joining with others to provide a service outside a population center should not be a disqualifying act for a "rural telephone company."

The NPRM asks at ¶ 165 whether BETRS should be subject to auction procedures. BETRS was proposed by USTA and other telephone trade associations in 1986,³ and its history has been checkered because of a panoply of Commission limitations and inadequate spectrum assignment. Nevertheless, BETRS is noteworthy for two things. It was the first service that brought to fruition the delivery of a basic non-mobile telephone service directly to end users using the spectrum rather than wire. Second, notwithstanding the obstacles, BETRS works in many areas. It has been deployed and has succeeded, even in remote areas.

BETRS offers a step to efficient rural area technology. Licensees who have deployed BETRS systems should not now be put at new risk, and should not now have to pay again for successfully beating the odds to actually deliver this fundamental service. An auction for BETRS would run counter to the concept of the service, by artificially inflating BETRS loop costs. It would reduce the net advantage that makes BETRS attractive, which is to reduce the high loop costs inherent in providing service to remote and other high cost areas. If the Commission intends to

³ Petition for Rulemaking to Establish Basic Exchange Telecommunications Radio Service (BETRS), filed by USTA, et.al., April 8, 1986, and assigned RM 5442.

apply auction procedures to BETRS: (1) it should not do so for any application already granted or on file, (2) it should retarget the service as USTA recently requested,⁴ and (3) it should finally act to remove the shared service arrangement that now exists.⁵ Those in other services who share spectrum with BETRS otherwise will be at a substantial advantage in bidding for the relevant spectrum, and will effectively be able to retarget the spectrum away from BETRS, contrary to the demonstrated interest in BETRS-based universal service.

USTA requests that the Commission take these comments into account in addressing the many issues raised in the NPRM.

Respectfully submitted,

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⁴ Petition to Authorize Co-Primary Sharing of the 450 MHz Air-Ground Radiotelephone Service with BETRS, RM 8159, filed November 9, 1992, and Reply Comments filed by USTA, et.al., February 23, 1993.

⁵ Id.