

William F. Adler
Executive Director
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004
(202) 383-6435

PACIFIC TELEESIS
Group - Washington

RECEIVED
NOV 11 0 1993

DOCKET FILE COPY ORIGINAL
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 10, 1993

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

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

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

No. of Copies rec'd
List ABCDE

0/3

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

RECEIVED

NOV 11 0 1993

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

COMMENTS OF PACIFIC BELL AND NEVADA BELL

PACIFIC BELL
NEVADA BELL

JAMES P. TUTHILL
THERESA L. CABRAL
BETSY STOVER GRANGER

140 New Montgomery St., Rm. 1529
San Francisco, California 94105
(415) 542-7664

JAMES L. WURTZ

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

Their Attorneys

Date: November 10, 1993

TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	iii
I. THE RULES SHOULD FOSTER THE AWARD OF LICENSES TO THOSE THAT VALUE THE LICENSES THE MOST	2
II. THE NPRM'S PROPOSAL DOES NOT FOSTER THE AWARD OF LICENSES TO THOSE THAT VALUE THE LICENSES THE MOST, WILL NOT PRODUCE THE MOST REVENUE, AND IS INAPPROPRIATELY BIASED IN FAVOR OF NATIONAL LICENSES .	5
III. A SIMULTANEOUS AUCTION OF ALL LICENSES, VIA REPEATED SEALED BIDS, IS BEST FOR PCS	11
IV. PACIFIC BELL AND NEVADA BELL SHOULD BE ALLOWED TO BID FOR PCS LICENSES SO LONG AS THE SEPARATION OF OUR CELLULAR AFFILIATES IS COMPLETED BY THE TIME FULL PAYMENT IS DUE	14
V. SPECTRUM SUBJECT TO AUCTIONS	17
A. Telephone Maintenance Radio Service ("TMRS") Should Be Excluded	17
B. Point-Point Microwave Links Should Be Excluded ...	18
C. Rural Radio Services Including Basic Exchange Telephone Radio Systems ("BETRS") Should Be Excluded	19
D. Specialized Mobile Radio Systems ("SMRS") Should Be Included	19
E. The Spectrum Should Be Subject To Auctions If It Is Used For Service To Subscribers For Compensation	20
VI. DEFINITIONS OF DESIGNATED ENTITIES	21

TABLE OF CONTENTS
(Cont'd)

	<u>PAGE</u>
VII. ADMINISTRATIVE ISSUES	21
A. The Application Process Should Be Easy To Administer And Simple For Bidders	21
1. Forms	22
2. Letter-Perfect Requirement	23
3. Certification	25
4. Auction Process	25
5. Petitions to Deny	26
6. Procedures When the Winner is Disqualified ..	27
B. Deposit And Payment Requirements	28
C. Collusion	29
VIII. CONCLUSION	30

SUMMARY

The Commission's primary objectives - the quick deployment of new services and technologies and the creation of new government revenues - are promoted when the auction winners are the parties that value the licenses the most. Two leading auction experts, Professors Paul R. Milgrom and Robert B. Wilson, explain that the NPRM's proposal - while well intentioned - does not maximize those goals. It will be biased in favor of national licenses which is contrary to the Commission's decision in the PCS order which rejected national licenses; it will not award licenses to the bidders who value them the most: a national license bidder is likely to win even if regional license bidders have a higher combined value for the spectrum; and, it will not produce the greatest revenues for the government.

Professors Milgrom and Wilson, on behalf of Pacific Bell and Nevada Bell, propose a simultaneous sealed bid auction for PCS licenses. The auction has these features: 1) one sealed "bid" per party can be submitted per day containing individual bids for any or all licenses offered; 2) bids must exceed the highest posted bid by some minimum amount; 3) bidders must be active or deemed active each day to continue bidding in the auction; 4) the top two bidders for all spectrum blocks and their bids are disclosed each day; 5) bids cannot be withdrawn; and 6) the bidding concludes when there is no further qualifying bid for any spectrum block.

These features allow all bidders to participate equally by having access to the same information. The proposal allows bidders to develop alternative strategies as the bidding develops. Bidders have the greatest opportunities for full realization of economies of scale and scope in assembling license combinations since our auction proposal permits bidders to assemble any combination of licenses and territories. Professors Milgrom and Wilson say this will produce the greatest efficiency and the most revenue for the government.

We also ask the Commission to address the unique position of Pacific Bell and Nevada Bell. Currently, Pacific Telesis Group, the parent of Pacific Bell and Nevada Bell, is planning to implement a "spin-off" of its cellular and other wireless telecommunications businesses. Upon completion of the spin-off, Pacific Bell and Nevada Bell would no longer be affiliated with cellular providers, creating an opportunity for each of them to obtain 30 MHz PCS licenses and up to 40 MHz of total spectrum in many markets throughout the United States. Because of stock market considerations, however, the spin-off might not be completed by early March when PCS applications may be due. We suggest that we should be allowed to participate if the spin-off is complete at the time full payment for PCS licenses is due. That promotes Commission goals by permitting two of the most capable communications providers to compete in wireless services.

DOCKET FILE COPY ORIGINAL RECEIVED
NOV 11 0 1993
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 }

COMMENTS OF PACIFIC BELL AND NEVADA BELL

The Commission's primary statutory goal - the rapid and widespread deployment of new communications technologies and services¹ - can best be reached through auction rules which award radio licenses to the parties that value the licenses the most. The NPRM's proposed rules seek to achieve that result. Pacific Bell and Nevada Bell respectfully submit, however, that the rules do not achieve it. Professors Paul Milgrom and Robert Wilson, experts in auction theory, describe a better and more practical auction structure. Their recommendation is a simultaneous auction for all PCS spectrum blocks with repeated sealed bids. Compared to other possible auction structures, the Milgrom-Wilson structure is the most likely to award licenses to the parties who value them the most which will produce the societal benefits the Commission desires and the greatest revenues for the government.

¹ 47 USC §151; Section 309 (j)(2)(B).

I. THE RULES SHOULD FOSTER THE AWARD OF LICENSES TO THOSE THAT VALUE THE LICENSES THE MOST.

The Commission's first principle should be to award licenses to those who value them the most. The attached testimony of Professors Milgrom and Wilson ("Affd.") says this is the proper auction criterion, Affd. para. 12. When the winning bidder is the party who values the license the most, service will be rolled out more rapidly, unjust enrichment and license trafficking will be prevented, and the objectives of the auction authority legislation will be fostered.

The party who values the license the most - the "Highest Value Bidder" - is the most likely among the pool of bidders to provide service as soon as possible. The Highest Value Bidder expects a return on its investment - the bid - from providing services. The faster the service is offered, the faster the return begins. It must be recognized, however, that the Highest Value Bidder is not always the highest bidder. The structure of the NPRM's proposed auction, as we explain in Sections II and III, can distort the outcome so that the Highest Value Bidder loses.

A policy which tends to award the license to the Highest Value Bidder also prevents unjust enrichment and trafficking. Parties who seek a quick profit by reselling a license will not pay the top price for the license. Paying the top price does not leave them any "value" or "margin" to gain on resale. They will only bid and pay a lower price than the license's value. On the other hand, a license holder who builds

out the system is not seeking to receive its return on investment from reselling the license. The Commission recognizes this: "In an unlimited bidding process, the winner is likely to pay the market price for its license."²

The principle also promotes the objectives of the new legislation authorizing the Commission to conduct auctions.³ Those goals are: 1) to deploy new technologies and services quickly; 2) to promote competition and avoid excessive license concentration; 3) to recover for the public a portion of the value of the spectrum; and 4) to use the spectrum efficiently and intensively. These goals are maximized when the Highest Value Bidder wins the auction.

We have explained the incentive the Highest Value Bidder has for a fast rollout. The second goal - competition - is promoted through a combination of the Highest Value Bidder principle and reasonable license eligibility requirements. In its PCS Order, for example, the Commission has adopted rules which provide for a number of PCS licenses and limit the eligibility of existing cellular licensees for new PCS licenses.⁴ These rules, coupled with the Highest Value Bidder principle, means that the auction winners will be new entrants that vigorously compete with existing providers and with each other.

² NPRM, para. 83.

³ Section 309(j)(2)(B), NPRM para. 12.

⁴ Second Report and Order, Gen Docket 90-314, para. 97 et seq.

The third goal - a high price paid to the public coffers - is also promoted when the Highest Value Bidder wins. It is the one who is willing to pay the highest price. But, as we explain in Sections II and III, the Highest Value Bidder can lose unless the auction is properly designed.

The fourth goal is furthered like the first: because of the incentive to get revenues quickly, the winner will maximize the use of the spectrum. Only in this way can the winner get the highest return.

The Highest Value Bidder principle promotes universality, speed of deployment, diversity of service, and competition - the Commission's four PCS goals.⁵ These benefits are most likely to develop through the bidders that put the spectrum to work to obtain the best return. They will not only roll it out quickly, but develop new wireless services, make them as broadly available as possible, and provide competition for existing providers.

Thus, the Highest Value Bidder principle promotes the Commission's goals under the Communications Act, and its recent amendments, and the goals the Commission has set out in this and the PCS proceeding. The Commission should adopt this principle in this rulemaking.

⁵ Id. at para. 5.

II. THE NPRM'S PROPOSAL DOES NOT FOSTER THE AWARD OF LICENSES TO THOSE THAT VALUE THE LICENSES THE MOST, WILL NOT PRODUCE THE MOST REVENUE, AND IS INAPPROPRIATELY BIASED IN FAVOR OF NATIONAL LICENSES.

The Commission proposes that oral bidding be the basic auction method.⁶ Additionally, where licenses are offered alternatively either as part of a group or individually, sealed bids would be made for licenses as part of the group, and oral bids would be made for individual licenses.⁷ For broadband PCS, the Commission proposes combinatorial bidding for awarding the two MTA licenses for each area (102 MTA licenses) and seeks comment on whether combinatorial bidding should be used for the BTA service areas.⁸

This structure is flawed for three reasons. It will not necessarily award the licenses to the Highest Value Bidders, it will reduce government revenues; and it is biased systematically in favor of combinatorial bidders (national combinations of MTA licenses or MTA combinations of BTA licenses). The testimony of Professors Milgrom and Wilson attests to these shortcomings.

Professors Milgrom and Wilson analyze the NPRM's proposed auction design in which an oral-bid auction of local or regional licenses is conducted in parallel with a sealed-bid auction for combinations. They demonstrate that the Highest Value Bidders for MTA licenses could easily lose to a

⁶ NPRM, para. 46.

⁷ NPRM, para. 47.

⁸ NPRM, paras. 120 and 123.

combinatorial bidder whose value for a national license is substantially less than the sum of the highest values for MTA licenses. This possibility occurs because the highest bid in an oral auction of an MTA license will typically be less than the bidder's full value for the license, and indeed, will just exceed the second-highest value for each MTA license by whatever bidding increment is required.

Only if there were some provision for winners of MTA licenses to coordinate their bids, so that they can offer bids in excess of the minimal amounts required to win and can have some means of anticipating the amount of overbidding required, could they prevail over the advantage provided to bidders for national licenses. Even if such provisions were feasible, there is ample evidence that bidders for the separate MTA licenses would find it difficult (if not illegal) to attain the complex coordination of their bids that would be required to defeat a national bidder.

Consequently, to win a national license when there is only one national bidder, the national bidder can bid less than the sum of the highest values among MTA bidders. In particular, the national bidder needs only to bid a little more than the sum of the second-highest values among the MTA bidders. For instance, if the second-highest value among MTA bidders averages 10% less than the highest value for each MTA license, then the national bidder will win with a bid that is 10% less than the sum of the highest values among the MTA bidders. Similarly, as shown in Figure 1 of the Affd., if there were only one national

bidder then it could win with a combination bid that is slightly more than half of the sum of the two highest values of the MTA bidders.

We anticipate that the difference between the sum of the highest MTA values and the second-highest MTA values is likely to be substantial. The 10% figure illustrated above is more likely too low than too high. Thus we foresee a real possibility that bidders for national licenses would be substantially advantaged compared to bidders for MTA licenses. A similar bias favors bidders for combinations of BTA licenses.

This flaw in the proposed design reflects the "free-rider" problem faced by the regional MTA bidders described by Professors Milgrom and Wilson (Affd. paras. 20-28). The Commission's NPRM (para. 62) recognizes the free-rider problem in connection with a second-price auction, but the same problem persists also in the proposed first-price design of the auction with oral bids and sealed combinatorial bids. The problem also exists in the NPRM's (para. 60) proposed second round of sealed bids by the winning national bidder and the winning MTA bidders. In each of these proposed auction designs, there is a substantial possibility that a bidder will win a national license only because the bidders for MTA licenses cannot coordinate their bids to solve the free-rider problem. If they fail to offer winning bids in the oral auctions that exceed the national bidder's sealed-bid, then they will lose even though in aggregate they value the licenses more than the national bidder does. The net result is that a national license can be awarded

to a bidder whose value and bid are less than the sum of the highest values of the bidders for the MTA licenses.

If this circumstance occurs, then the auction outcome will not meet the Commission's objective of awarding licenses to the Highest Value Bidders, and it will fail to obtain the full revenue for the government. Indeed, the "chilling" effect on bidders for BTA and MTA licenses could impair their full participation in the auction or force them into bidding consortia whose only rationale is to overcome the bias against bidders for local and regional licenses.

The bias in favor of national bidders is inappropriate. First, the Commission just rejected national licenses in its PCS order.⁹ In the PCS NPRM the Commission asked for comment on four license options, one of which was nationwide; that option was rejected. Instead, an MTA and BTA scheme was adopted: "We conclude that a combination of MTA and BTA service areas would promote the rapid deployment and ubiquitous coverage of PCS and a variety of services and providers."¹⁰ The Commission should adopt a bidding structure which supports this decision. The oral/combinatorial structure, which favors nationwide licenses, does not.

Second, national licenses are inconsistent with the enabling legislation to promote "the development and rapid deployment of new technologies, products, and services ****"

⁹ Second Report And Order, Gen Docket No. 90-314, September 23, 1993.

¹⁰ Id. at para. 73.

(Section 309(j)(3)(A).) We explained in Section I how awarding a license to the Highest Value Bidder creates the greatest incentive for rapid deployment. If the Highest Value Bidder doesn't win, then these objectives of the statute are not maximized.

The auction design recommended by Professors Milgrom and Wilson is guided by the basic principle that all bidders have equal opportunities and equal information for bidding on each license, and that the bidding continues until the Highest Value Bidder is identified for every license. As described above, a major conclusion from their analysis is that combinatorial bidding should be excluded. Their analysis also examines the merits of a design in which licenses are auctioned singly in a prescribed sequential order. They find (Affd., Section V, paras. 43-47) that a sequential auction has serious deficiencies compared to a single comprehensive auction of all licenses simultaneously.

First, bidders for licenses offered early in the sequence face substantial uncertainty about whether they will be able later in the sequence to assemble a set of licenses that will realize economies of scale and scope. This strategic uncertainty introduces unnecessary risks that disadvantage early bidders, and it introduces a bias in favor of bidders for licenses later in the sequence who are able to base their bids on better information. This could prevent the Highest Value Bidders from obtaining licenses, and it could diminish the government's revenue.

Second, negative behavior is endemic in sequential auctions. Such auctions are afflicted with negative behavior by bidders who drive up the prices for early licenses in an attempt to exhaust the budgets of the winning bidders for these licenses, and by "jump bidding" to intimidate bidders who would otherwise attempt to assemble efficient collections of licenses to realize economies of scale and scope. These phenomena are well known in the literature on sequential auctions, the so-called declining-price anomaly, and the role of budget constraints.¹¹

We don't see that Congress' intentions are served by introducing these features into the auction design. Moreover, these features could hinder the attainment of an efficient allocation of the licenses and impair the government's ability to derive the full potential revenue from the auction. In view of these conclusions, we endorse an auction design based on repeated opportunities for sealed bids on all licenses simultaneously. An outline of the procedural rules for this auction design is described in the following, Section III.

¹¹ Orley Ashenfelter, "How Auctions Work for Wine and Art," *Journal of Economic Perspectives*, 1989, 3:23-36. Orley Ashenfelter and David Genesove, "Testing for Price Anomalies in Real-Estate Auctions," *American Economic Review*, 1992, 82(2):501-505. C. Pitchik and A. Schotter, "Perfect Equilibria in Budget-Constrained Sequential Auctions: An Experimental Study," *RAND Journal of Economics*, 1988, 19:363-388. Yeon-Koo Che and Ian Gale, "Revenue Non-Equivalence of Auctions with Budget-Constrained Buyers," University of Wisconsin and Federal Reserve Bank of Cleveland, mimeo, 1993.

III. A SIMULTANEOUS AUCTION OF ALL LICENSES, VIA REPEATED SEALED BIDS, IS BEST FOR PCS.

Professors Milgrom and Wilson recommend that all licenses be auctioned simultaneously via repeated opportunities for submission of sealed bids. This design ensures equal bidding opportunities for all bidders, provides all bidders with equal information as the bidding progresses, and allows the bidding to continue until the Highest Value Bidder is identified for every license. The payment rules are the simplest possible (for each license, the winning bidder pays its bid) and entirely obvious and sensible to the bidders, the Commission (and the GAO) and the public. The "stopping" rule allows the bidding to continue as long as new bids are received that substantially improve on the previous high bid for some license: this feature ensures that the auction does not terminate without identifying the Highest Value Bidder for each license.

The Milgrom-Wilson recommended design also has the important advantage of being implementable without development of new software; indeed, in a crisis it can be conducted by hand without reliance on any software.

The Milgrom-Wilson recommended auction described in detail in their testimony (Affd. paras. 43 to 65), functions as follows:

- one sealed "bid" per party can be submitted per day containing individual bids for any or all licenses offered;
- bids would be accepted only if they exceeded the highest posted bid by some preestablished minimum increment;

- to continue to participate in the auction, each bidder must be active each day; this occurs if its bid on any license from the previous day is highest or if it submits a new bid exceeding the previous high bid for the same license;
- the identities and bids of the highest and second highest bidders would be reported each day;
- bids, once made, could not be withdrawn;
- the bidding concludes when the FCC reports that no license has received a new qualifying higher bid;
- the FCC asks for the deposits from the winners;
- if the FCC reports all deposits have been received, the auction is finished; and
- if a bidder fails to make a deposit, the bidder is disqualified for all licenses and forfeits all deposits and the next-highest bidder(s) is (are) declared the winner(s).

The Milgrom-Wilson recommendation has distinct advantages:

- it awards the license to the Highest Value Bidder (Affd. para. 59);
- it eliminates the bias in favor of national licenses (Affd. para. 59);
- it avoids the disadvantages of sequenced bidding (Affd. para. 60);
- it allows bidders to pursue a richer array of strategies (Affd. para. 61); and

- it does not require developing and testing new specialized auction software (Affd. para. 62).

We emphasize that the auction rules should ensure that bidders cannot withdraw bids. As the Commission has stated in the NPRM, an auction in which all licenses are auctioned simultaneously provides bidders with ample opportunities to ensure that the prices of the licenses they win are within their budget constraints. Professors Milgrom and Wilson explain how allowing bid withdrawal would introduce substantial opportunities for strategic manipulation of the auction. The principal hazards are: (1) a bidder could use nonserious bids to drive up the prices paid by other bidders for some licenses thereby deterring them from assembling efficient collections of licenses that realize economies of scale and scope; and (2) a bidder B could seemingly win a license L, thereby deterring other bidders from assembling combinations that would include this license L and leading them to redirect their bids to other available licenses, and then bidder B could withdraw this winning bid, leading to a chaotic cascade as other bidders withdrew their bids too in renewed attempts to bid for license L. The efficiency and integrity of the auction is best served by excluding such opportunities for strategic manipulation and by excluding possibilities for degradation of the bidding into chaos.

For these reasons, we endorse provisions that ensure that all bids are serious and that bids cannot be withdrawn. The most important of these provisions is that a bidder is

totally disqualified if it fails to provide the requisite deposit payment when the auction is tentatively completed and the call for deposit payments is issued by the Commission.

Professors Wilson and Milgrom also favor secondary market transactions (Section VII) because they can correct some distortions produced in the primary market. They note, however, that the secondary market is not perfect either and that some of the deficiencies in the primary market can exist in the secondary market. That is a further reason why the design of the primary market - the auctions - should be as best as possible.

Information is also important to a successful auction. The better informed bidders are, the more competition there will be. If some bidders are better informed than others, the less informed bidders will tend to bid less aggressively for fear of paying too much. That outcome does not promote the Commission's goals. It will tend not to award the license to the Highest Value Bidder, it would disadvantage smaller bidders, and it would reduce the government's likely receipts.

IV. PACIFIC BELL AND NEVADA BELL SHOULD BE ALLOWED TO BID FOR PCS LICENSES SO LONG AS THE SEPARATION OF OUR CELLULAR AFFILIATES IS COMPLETED BY THE TIME FULL PAYMENT IS DUE.

The Commission makes a tentative conclusion about the information which an applicant must include on the proposed short form application. One item is certification that the

applicant meets any service-specific qualification rules.¹² For PCS, the qualification rules are the eligibility requirements.

In its PCS order, the Commission has decided LECs are eligible for PCS licenses subject to the attributable cellular-interest rules.¹³ Those rules limit a cellular operator and its affiliates to one 10 MHz license for the area in which the cellular operator provides service. Currently, Pacific Bell and Nevada Bell have cellular affiliates that are providing cellular service in over fifty cellular markets throughout the United States. Thus, in many such markets we would only be eligible for the PCS frequency block available to a cellular operator or its affiliate (10 MHz) if that status continued.

Pacific Bell and Nevada Bell expect that their affiliation with cellular service providers will cease in the near future. In December 1992, Pacific Telesis Group announced its intention to distribute to its shareowners all of the common stock of PacTel Corporation ("PacTel"), which holds all of Pacific Telesis Group's cellular and other wireless interests. After such distribution or "spin-off," Pacific Bell and Nevada Bell would not be affiliated with any cellular providers. Since December 1992, Pacific Telesis Group has diligently pursued the various regulatory and other approvals necessary to implement the planned spin-off. The final remaining approval was obtained on November 2, 1993, when the California Public Utilities

¹² NPRM, para. 98.

¹³ Second Report and Order, Gen Docket No. 90-314, para. 126.

Commission adopted a decision permitting Pacific Telesis Group to proceed with the planned spin-off.

The first step in the planned spin-off is the completion of the initial public offering ("IPO") by PacTel in order to provide it with additional capital prior to its complete separation from Pacific Telesis Group. Currently, PacTel is in the process of marketing the IPO which, subject to market conditions and other factors, is expected to be completed in early December 1993. Thereafter, Pacific Telesis Group intends to proceed with the spin-off. However, Pacific Telesis Group's investment advisors have recommended that up to six months should elapse after the IPO and prior to the spin-off in order to minimize the disruption of the public market. Thus, depending on market conditions the planned spin-off might not occur until mid-June 1994.

The timing for PCS auctions in the NPRM indicates an application filing date of early to mid-March. If that is the case, Pacific Bell and Nevada Bell could be foreclosed from bidding on the 30 MHz blocks or bidding on and aggregating 10 MHz blocks into 20 MHz or 30 MHz blocks. That would be unjust and calamitous for us. The PCS auctions are a one-time opportunity with a narrow window for eligibility. Once they are over, there won't be another chance for Pacific Bell and Nevada Bell to bid in a government auction for this spectrum.

Accordingly, we ask the Commission to consider the unique circumstances of our separation in setting its rules for eligibility for these auctions. If the separation will have

occurred by the time full payment is due for winning bids, we should be allowed to fully participate in the auction.

This action would not conflict with any of the Commission's policies and goals but would promote them. The Commission has decided that LECs are eligible for the 30 MHz spectrum blocks and aggregating spectrum up to 40 MHz.¹⁴ The Commission said "allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks. We believe these economies will promote more rapid development of PCS and will yield a broader range of PCS services at lower costs to consumers."¹⁵ Pacific Bell will be one of the largest LECs which will be eligible for the 30 MHz block and aggregating spectrum up to 40 MHz and therefore is one of the LECs most capable of achieving these benefits. If we are not allowed to participate because of a narrow window of ineligibility, the Commission's goals will not be maximized. Additionally, our exclusion could reduce the revenues the government receives from the auctions.

V. SPECTRUM SUBJECT TO AUCTIONS.

A. Telephone Maintenance Radio Service ("TMRS") Should Be Excluded.

The NPRM asks for comment on whether this and other radio services meet the requirements for services subject to

¹⁴ Second Report and Order, Gen Docket No. 90-314, para. 126.

¹⁵ Ibid.

competitive bidding.¹⁶ Private services are excluded. The Commission defines "private" services to mean services that do not involve the receipt of compensation from subscribers.¹⁷ That interpretation puts private services outside the Commission's auction authority. Pacific Bell and Nevada Bell agree with this interpretation.

The Commission's interpretation exempts spectrum used principally for internal uses from competitive bidding. Thus, spectrum used by Local Exchange Carriers for TMRS would be exempted. LECs use TMRS to enhance repair and restoration activities. Using TMRS, our repair personnel can communicate whenever and wherever landline facilities are unavailable, in a disaster or for other reasons. The spectrum is not used to provide service directly to subscribers for compensation. Therefore, spectrum used for TMRS falls outside the statutory auction authority of Section 309(j)(2).

B. Point-To-Point Microwave Links Should Be Excluded.

Point-to-point microwave links should be excluded because they can be designed to avoid mutually exclusive applications. Thus, they do not fall within the bounds of spectrum subject to auctions under Section 309(j)(1). In the unlikely event there are mutually exclusive applications,

¹⁶ NPRM, para. 165.

¹⁷ NPRM, para. 25.

auctions should not be held.¹⁸ Spectrum for these types of links is not used for direct end-user subscription-based services like spectrum for mobile services.

C. Rural Radio Services Including Basic Exchange Telephone Radio Systems ("BETRS") Should Be Excluded.

Rural Radio Services, including BETRS should not be subject to auctions. Mutually exclusive applications for these services are rare because the services are in rural areas. Even if mutually exclusive applications were filed, there should be enough other spectrum for all applicants since the service is in rural areas and spectrum should be available. Additionally, the Commission should exclude this spectrum for policy reasons. Rural service efficiently promotes service to sparsely populated areas of the country, like parts of Nevada, and advances universal service, an important social goal of the Commission.

D. Specialized Mobile Radio Systems ("SMRS") Should Be Included.

The Commission proposes to subject certain spectrum used by SMRS to competitive bidding.¹⁹ We agree. As the Commission observes, SMRS typically provide mobile services to subscribers for compensation.²⁰

¹⁸ In the event the Commission does auction spectrum used for microwave links, we agree with the Commission's recommendation and logic for exempting entities forcibly relocated by the Commission's orders in ET Docket No. 92-9.

¹⁹ NPRM, para. 138.

²⁰ NPRM, para. 136.