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FEDERAL COMMUNICATIONS COMMISSION  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

IN THE MATTER OF )  
 )  
IMPLEMENTATION OF SECTION )  
309(J) OF THE COMMUNICATIONS )  
ACT COMPETITIVE BIDDING )

PP DOCKET NO. 93-253

TO: THE FEDERAL COMMUNICATIONS COMMISSION

RESPECTFULLY SUBMITTED,  
SOUTHWESTERN BELL CORPORATION

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**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
<b>SUMMARY</b> . . . . .	i
<b>I. INTRODUCTION</b> . . . . .	1
<b>II. PRINCIPLES FOR DETERMINING WHETHER A LICENSE SHOULD BE AUCTIONED</b> . . . . .	3
<b>A. The Commission Must Require Mutual Exclusivity Among Applications For A License To Be Subject To Competitive Bidding</b> . . . . .	3
<b>B. Renewal Licenses And Private Service Should Not Be Auctioned</b> . . . . .	4
<b>C. The Commission Should Analyze The "Principal Use" Of Classes Of Licensees In Determining Whether To Apply Auctioning To That Class</b> . . . . .	5
<b>III. SPECIFIC SERVICES WHICH QUALIFY FOR AUCTIONING</b> . . . . .	6
<b>A. Point-to-Point Microwave Services Offered Directly To End Users Should Be Distinguished From Other Uses</b> . . . . .	6
<b>B. "Intermediate Links" Should Not Be Auctioned</b> . . . . .	6
<b>1. Intermediate Links Do Not Qualify For Statutory Authorization Of Bidding</b> . . . . .	7
<b>2. Auctions Of Intermediate Links Would Be Impractical And Counter-Productive To Streamlining Efforts Underway</b> . . . . .	8
<b>3. Backbone Networks Should Not Be Subjected To The Risks Of Spectrum Auction</b> . . . . .	11
<b>C. Cellular Fill-In Applications Should Be Subject To Auction</b> . . . . .	12
<b>D. ESMR Licenses Should Be Auctioned; Governmental SMR Should Not</b> . . . . .	13

E.	Automatic Vehicle Monitoring License Should Not Be Auctioned . . . . .	14
F.	Personal Communications Services Should Be Awarded Through Auctioning . . . . .	14
IV.	AUCTION DESIGN . . . . .	15
A.	Oral Bidding Should Be The FCC's Auction Method Of Choice . . . . .	15
B.	Sealed Bid Auctions Will Not Achieve The Budget Act's Goals . . . . .	21
C.	Combinatorial Bidding Does Not Meet Congressional Objectives . . . . .	22
	1. Nationwide Combinatorial Bidding For PCS Contravenes Section 309 Of The Communications Act . . . . .	23
	2. The Value Of Combined Service Areas Will Be Adequately Expressed Without Combinatorial Bidding . . . . .	24
	3. If The Commission Employs Combinatorial Bidding, It Should Open The Sealed Nationwide Bids Before Conducting Oral Auctions . . . . .	24
	4. Nationwide Combinatorial Bidding Is Anti-Competitive . . . . .	26
	5. The Commission Should Place Restrictions On AT&T/McCaw . . . . .	28
	6. Oral Bidding Will Allow The <u>Economic</u> Aggregation Of Licenses . . . . .	29
D.	Performance Requirements Must Be Strictly Enforced To Avoid Unjust Enrichment And Warehousing . . . . .	31
E.	Prohibition Of Collusion Should Not Cause The Commission To Complicate The Bidding Process . . . . .	32
F.	Application, Bidding, And Licensing Requirements Proposed By The Commission Generally Are Acceptable . . . . .	33

V.	AUCTION DESIGN FOR PCS . . . . .	35
A.	Sequence Of Bidding . . . . .	35
B.	Auctions For Bands D Through G . . . . .	35
C.	Payment Methods . . . . .	36
D.	The Commission Should Establish A Maximum Up-Front Payment, Which Is An Adequate Deposit Amount . . . . .	38
E.	The Commission's Treatment Of Designated Entities Could Be Improved . . . . .	41
VI.	CONCLUSION . . . . .	42

## SUMMARY

The Federal Communications Commission ("FCC") proposes to utilize competitive bidding for the allocation of radiofrequency spectrum for commercial use. The Commission should take advantage of that authority and design a competitive bidding system which is simple, understandable and facilitates Congress' objectives of developing and rapidly deploying new technologies and services, furthering the economic opportunity of targeted groups, ensuring diverse participation in these services and recovering for the public a portion of the value of spectrum employed for commercial use. 47 U.S.C. § 309(j)(3).

The Commission's Notice of Proposed Rulemaking represents a thorough and thoughtful undertaking of that responsibility, though it falls short of these objectives in several respects. In particular, Southwestern Bell Corporation ("SBC") urges the Commission to reconsider its tentative decision to allow initial licensing of personal communication service on an aggregated nationwide basis through an unnecessarily complex and cumbersome bidding process.

SBC also opposes the FCC's tentative conclusion to apply competitive bidding to microwave licenses which are routinely used as intermediate links by local exchange

carriers to facilitate local exchange service and by cellular carriers to maintain and grow their core business.

SBC suggests that the Commission streamline and simplify its proposed auction procedures. SBC maintains that the FCC should abandon its combinatorial bidding option using sealed bidding. Rather, with regard specifically to Personal Communication Services, the Commission should allow reasonable, regional aggregation of Major Trading Areas and of Basic Trading Areas through the use of sequential, geographic oral bidding rounds. In any event, SBC urges the Commission to enforce strictly all performance requirements to avoid warehousing and unjust enrichment, and supports the imposition of such requirements on the currently pending "fill in" licenses for cellular service.

SBC also supports the imposition of a substantial deposit fee, forfeitable if the applicant is successful in bidding but unqualified. It advocates the use of Treasury bills to meet the obligation of upfront payments, and a limit of \$50 million as a maximum upfront payment. Finally, the Commission should adopt only the most minimal of transfer restrictions for licenses after initial auction, so that this scarce resource may be used most effectively and expeditiously.

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

To: The Federal Communications Commission

INITIAL COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC"), on behalf of itself and its subsidiaries, submits these initial comments on the Commission's proposed rules to implement the competitive bidding provisions of Title VI of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), 47 U.S.C. § 309(j).

I. INTRODUCTION

The Budget Act contained two provisions which will significantly alter the landscape of wireless services in the United States. These provisions authorize the FCC to use competitive bidding to award licenses for radiofrequency spectrum and seek to equalize the regulatory treatment of various wireless services. Coupled with the Commission's continuing efforts to create new commercial wireless services, these changes will open an unprecedented set of opportunities for participation by virtually every sector of the public. As the Commission undertakes to implement the Congressional mandate, it must exert every effort to ensure that the policy of the Congress favoring

innovation, diversity, and an efficient and widespread system of telecommunication services across the country, are achieved.

This proceeding is devoted to only one of those objectives: implementing a system of competitive bidding to award licenses for use of the radio spectrum. The Commission has been moving toward such a system for some time. For cellular service, the Commission initially utilized the traditional comparative hearing process to determine which of multiple applications for a single geographic area should be granted. When this process became too cumbersome, the Commission embarked on a series of lotteries. The lotteries, however, had two significant disadvantages. First, they did not simplify the administrative process but significantly complicated it by flooding the Commission with applications. Second, the lotteries did nothing to ensure that the public recouped the value of the spectrum. Instead, the lotteries rewarded many unqualified applicants who were successful merely by chance. While the Commission was in the process of determining whether it had authority under the Communications Act to adopt yet another system, such as competitive bidding, Congress acted to specifically award the authority to the Commission.

Congress has made clear the objectives which are to be met by the Commission's system of competitive bidding. Section 309(j)(2)(B) of the Communications Act enunciates three goals: First, the system should promote economic opportunity and competition; second, it should avoid an excessive concentration

of licenses and provide opportunities to targeted groups; and third, the public should recover a portion of the value of the public spectrum made available for commercial use. The more traditional goals of efficient and intensive utilization of spectrum and the development and rapid deployment of new technologies, products and services, are reiterated in the Budget Act.

These objectives should govern the Commission's assessment of the necessity, worth and practicality of any provision of its competitive bidding rules. SBC applauds the Commission's determination to meet the time-line mandated by Congress. In several significant respects, however, SBC must respectfully disagree with the Commission's proposed rules.

## II. PRINCIPLES FOR DETERMINING WHETHER A LICENSE SHOULD BE AUCTIONED.

### A. The Commission Must Require Mutual Exclusivity Among Applications For A License To Be Subject To Competitive Bidding.

Obviously, bidding for a license which does not have multiple applications would be meaningless and unnecessarily delay service. The meaning of the terminology "mutual exclusivity," however, requires some comment. Mutual exclusivity means that two applications seek to use the same spectrum. For example, dispatch and other licenses granted by the Private Radio Bureau are not exclusive because the channels are shared by numerous licensees. NPRM at paras. 131-146. Mutual exclusivity may exist even where the Commission has previously established a preferential right to a license. The fact that a provider may

have been awarded a pioneer's preference<sup>1</sup> does not mean that this license will not be "mutually exclusive."<sup>2</sup>

**B. Renewal Licenses And Private Services Should Not Be Auctioned.**

SBC agrees with the Commission's tentative conclusion that renewal licenses or permits should be excluded from the competitive bidding process. As the Commission notes, it appears that Congress intended this result. *NPRM* at para. 22. See H. R. Rep. No. 103-111 at 253. Moreover, subjecting renewal licenses and permits to the competitive bidding process is antithetical to the Budget Act's stated purposes of development and rapid deployment of technologies, products and services for the benefit of the public, especially deployment in rural areas, without administrative delays. Because a renewal license is predicated on extensive investment in the development of the license, it is unlikely that "efficient and intensive use of the electromagnetic spectrum" will be furthered by use of competitive bidding. 47 U.S.C. § 309(j)(3)(D). The Commission previously has recognized that the public interest will be served by encouraging incumbent licensees to continue to invest in the deployment of

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<sup>1</sup>Such an award is, at least for wideband PCS, subject to some doubt in any event. See *In the Matter of Review of the Pioneer Preference Rules*, ET Docket No. 93-266, Notice of Proposed Rule Making, adopted and released October 21, 1993.

<sup>2</sup>On the contrary, the right to occupy the spectrum awarded to the holder of the pioneer preference will be absolute; that is, no other user will be permitted access to the spectrum. Thus, the contention of some commenters that mutual exclusivity does not exist where a pioneer preference has been awarded is simply contradictory on its face and should be rejected.

services. This is why the Commission has concluded that an incumbent cellular licensee is entitled to a strong renewal expectancy. See Report and Order, CC Docket No. 90-358; Amendment of Part 22 of the Communication's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, released January 9, 1992.

SBC also agrees in principle with the Commission's conclusion that "private services" also should be excluded from the competitive bidding process. Further, SBC agrees with the Commission's proposed definition of "private services" in this context to mean "services that do not involve the receipt of compensation from subscribers." NPRM, paragraph 25. As the Commission notes, "private" for purposes of auctioning may not be the same as "private" for purposes of assessing whether regulation as a "commercial mobile service" should apply. *Id.*<sup>3</sup>

C. The Commission Should Analyze The "Principal Use" Of Classes Of Licensees In Determining Whether To Apply Auctioning To That Class.

SBC also concurs with the Commission's tentative conclusion to evaluate the "principal use" of classes of licenses, rather than individual applications, based on the activities of "average" users or a majority of users in the band, and to apply this evaluation to determine whether to permit auctioning. Congress obviously contemplated that mixed use of spectrum would occur, requiring some administrative rule of

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<sup>3</sup>Thus SBC proposes that automatic vehicle monitoring be treated as a commercial mobile service which is not subject to auctioning. See § III.F. *infra*.

thumb, since it requires the "principal use" of the spectrum to meet the statutory predicates for auctioning. 47 U.S.C. § 309(j)(3). Since the standard to be created here will determine the expense incurred by the licensees, the most precise one available, which nonetheless is relatively easy to administer, should be applied. The Commission's plan to measure the amount of spectrum applied to private use by each class of license satisfies these two objectives. NPRM at para. 32, n.14. In this instance, administrative ease in applying the rules has a benefit for the general public as well. Because providers will be able to ascertain in advance whether their proposed uses would be subject to competitive bidding, applicants may more accurately estimate their costs in choosing to provide the service.

### III. SPECIFIC SERVICES WHICH QUALIFY FOR AUCTIONING.

#### A. Point-to-Point Microwave Services Offered Directly To End Users Should Be Distinguished From Other Uses.

Point-to-point microwave services, offered by a common carrier directly to end users as a common carrier service, ought to be subject to competitive bidding if in fact the service will exclusively use the spectrum awarded. Such offerings enable subscribers to transmit and receive signals directly. Therefore, they meet all the statutory prerequisites for auctioning.

47 U.S.C. § 309(j)(2)(A).

#### B. "Intermediate Links" Should Not Be Auctioned.

Microwave used as part of an end-to-end service offering, however, such as when a cellular carrier transmits subscriber traffic between a cell site and its mobile telephone

switching office ("MISO") or when a local exchange telephone company uses microwave to transmit local exchange service, should not be awarded by auction.<sup>4</sup> As the Commission notes, these "intermediate links" would include the microwave paths that cellular carriers use to transport traffic between cell sites. It also would include the local exchange carriers' backbone network, the mainstay of its business. These links do not qualify under the statute for auctioning and application of auctioning to them would not create any public benefit.

1. Intermediate Links Do Not Qualify For Statutory Authorization Of Bidding.

Under the Communications Act, spectrum used in intermediate links cannot be auctioned. Section 309(j)(2)(A) of the Communications Act requires that the principal use of the spectrum enable subscribers to receive communication signals that are transmitted utilizing frequencies on which the licensee is licensed to operate. Alternatively the spectrum may enable

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<sup>4</sup>Section 309(j)(2)(A) of the Budget Act requires that spectrum subject to auction enable subscribers "to receive communication signals" or "to transmit directly communications signals." See *NPRM* at para. 29. The Commission's proposal to finesse this requirement by auctioning virtually all common carrier uses of microwave no doubt would appear to be administratively simple because ". . . it would eliminate the necessity to determine the nature of use being made of a particular license." *Id.* The apparent economy of effort, however, would not be realized by the Commission's proposal. Rather, it would result in an overwhelming number of auctions and a delay in licensing service. Adopting a standard like the one proposed simply is not in the Commission's best interest, nor does it meet the statutory predicate for auctioning, as described below in § III.B.1. It would not be particularly difficult, as an administrative matter, simply to require applicants for "intermediate links" to specify that they seek such a license.

subscribers to directly transmit communication signals utilizing such frequencies. This definition excludes those frequencies that a carrier uses as intermediate transport links.

A cellular subscriber transmits and receives communications ("accesses" the cellular system) utilizing 800 MHz frequencies between its mobile unit and a cell site. The cellular carrier may then choose to pass the subscriber's communication to its switching office by translating the signal to a microwave frequency or by sending it across landline facilities. The cellular subscriber himself cannot access the microwave frequencies, because his equipment is not tuned to send or receive on those frequencies. Accordingly, intermediate links cannot and should not be subject to competitive bidding.

2. Auctions Of Intermediate Links Would Be Impractical And Counter-Productive To Streamlining Efforts Underway.

In apparent recognition of the practical difficulties that such competitive bidding would create for providers of the end-to-end service, the Commission has requested comment on the ramifications of this proposal on internal operations or expansion of an existing business, and on the number of situations where mutual exclusivity could arise. NPRM at para. 29. Numerous practical difficulties arise when one subjects intermediate links to competitive bidding. Auctioning would seriously impede a carrier's ability to efficiently maintain its network in a least-cost manner. It would deprive carriers of the ability to estimate build-out costs for continuing to provide end-to-end service since they would be

unable to estimate the total cost of any particular microwave path or license. Auctioning would impair the processing of applications for microwave paths. Finally, competitive bidding would jeopardize carriers' ability to provide required levels of service.

To institute competitive bidding for microwave paths, the Commission must ignore the regulatory process it has established in Part 21. Part 21 requires a carrier to coordinate with neighboring carriers prior to application for a microwave license. This process insures that the proposed path will not interfere with other uses, guaranteeing exclusivity of use. If auctioning were applied to these links, multiple bidders would be required to "coordinate" usage of the same path. Carriers neighboring the proposed path, therefore, would be forced to participate in numerous coordination procedures, needlessly increasing the time and expense.

The Commission has put a great deal of effort into streamlining its current microwave application requirements. SBC encourages those efforts, but they would be wasted if auctioning is applied to license these microwave paths. Currently, the Commission takes approximately 300 days to approve a microwave license. Under present policies, the Commission permits the applicant to go into service during that 300 day period under a Blanket Special Temporary Authority ("BSTA"). By overlaying an auction process onto the already lengthy approval process, the benefit to the cellular carrier of using microwave links becomes

minimal. The uncertainty of the bidding process would drive cellular carriers to more predictable methods of network expansion, such as landline facilities. This inevitably would decrease the responsiveness of the carrier while increasing its costs exponentially, since landline facilities take more time to construct and can be more costly. Indeed, the greatest benefit of microwave to the cellular carriers, the speed at which it can be placed in service to meet demand, would be lost.

Such disruption in current procedures will benefit no one. No existing pool of potential bidders is clamoring for the ability to buy a microwave path that may reach no more than fifteen miles. In fact, the proposal is likely to create a class of speculators who obtain and warehouse facilities, not for their own use, but to hold it for ransom against those carriers with a genuine need for the facilities.<sup>5</sup>

Cellular carriers are required by the Commission to provide "substantial service" in an area if the carrier plans to have its license renewed. Historically, the carrier has depended upon microwave facilities to aid in fulfilling its requirements as a licensee. Applying competitive bidding to such facilities

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<sup>5</sup>As noted above, true "mutually exclusive" applications for any individual microwave path are extremely unlikely, given the prior coordination required. The most likely scenario for mutually exclusive applications would be if, during some public notice period after a carrier has isolated its desired path, some competing applicant filed a "me-too" application. It is difficult to imagine this occurring other than as part of a plan of warehousing or even "greennail." Rather than creating such possibilities, the Commission should simply determine that these intermediate links are not appropriate candidates for competitive bidding.

weakens the viability of microwave for that use and, as noted, is of no benefit to the public.

3. Backbone Networks Should Not Be Subjected To The Risks Of Spectrum Auction.

Another, and important, reason exists for the Commission to withdraw its tentative conclusion to subject intermediate links to competitive bidding. As the Commission notes, substantial use of spectrum for intermediate links is made by local exchange companies for transmitting local exchange telephone service. NPRM at para. 28. With the potentially great additional expense in provisioning the backbone network if these facilities were subjected to auctioning, the Commission, perhaps inadvertently, has changed significantly the cost curve for provider choices among types of technology. While some may argue that the public interest requires acceleration of the use of new technologies such as fiber optic facilities for such transmission, these decisions should not be made on the basis of artificial, and in some cases, prohibitive costs created by competitive bidding, especially in the continued deployment of mature services.

Before subjecting a local exchange carrier's ("LEC's") use of point-to-point microwave to auctioning, the Commission should recognize that such carriers are required by state regulatory commissions to act as the "provider of last resort" for their common carrier services. At the same time, the services provided by the LEC which are subject to this requirement are usually priced significantly below the cost

incurred by the carrier. These two regulations have been deemed necessary by state regulators to ensure universal access to telephone service.

As the most cost-effective communications medium in many situations, point-to-point microwave has enabled both large and small LECs to fulfill their obligations to serve at the lowest cost, facilitating this idea of universal service. This is especially true in rural areas, where the obligation to serve is the most costly for the LEC. Most LEC point-to-point microwave routes are used to serve rural areas. Since the service provided by LECs pursuant to such licenses currently carries with it this special obligation, the Commission should exercise its statutory discretion to determine that applying auction procedures to LECs' use of point-to-point microwave will not further the public interest. Further, it is inconsistent with the public's interest and with the purposes of the Budget Act to levy additional charges on rural telephone service, which auctioning LEC intermediate links would have the effect of doing. See 47 U.S.C. § 309(j)(3)(A).

C. Cellular Fill-In Applications Should Be Subject To Auction.

The Commission has requested comment on its tentative conclusion that the mutually exclusive applications for unserved cellular areas which were filed prior to July 26, 1993, be subject to auction. NPRM at para. 160. SBC agrees that auctions for these pending applications would meet statutory objectives. Unlike renewal licenses for systems constructed and in operation,

"fill-in" licenses authorize new service for areas that currently are not being served.

SBC urges, however, that these fill-in cellular licenses be made subject to specific short term build-out requirements, to ensure that the bidding parties actually provide service to those areas rather than warehousing the spectrum to keep a competitor from serving the area. Such standards would be consistent with Congress' directive in Section 309(j)(4)(B) that the Commission include performance requirements to ensure prompt delivery of service to rural areas and to prevent stockpiling of spectrum. If a fill-in licensee fails to meet these build-out requirements it ought to forfeit the license, which would revert to the Commission for subsequent re-licensing either through auction (if there are mutually exclusive applications) or to the sole interested and qualified applicant.

D. ESMR Licenses Should Be Auctioned; Governmental SMR Licenses Should Not.

SBC supports the Commission's tentative conclusion that spectrum auctioning should apply to Enhanced Specialized Mobile Radio ("ESMR") service. Because Specialized Mobile Radio ("SMR") channels are intended to be used primarily for the offering of services to subscribers for compensation, and because ESMR licensees anticipate exclusive use of the channels to be authorized, new licenses for the 280 SMR channel pairs at 800 MHz and the 200 SMR channel pairs at 900 MHz should be subject to competitive bidding. Public service and government agencies should have first priority to use available channels. If there

are no such applications for use of a channel in an area and mutually exclusive applications for commercial use of the spectrum are made, then auctions should be held. ESMR is clearly intended, by the Commission and by the proposers of the service, to be a competitive alternative to cellular service and ultimately to PCS. See NPRM in PR Docket No. 93-144. That being the case, it should be subject to the same regulatory rules and associated expense.

**E. Automatic Vehicle Monitoring License Should Not Be Auctioned.**

A different result applies, however, to Automatic Vehicle Monitoring ("AVM"). Because AVM shares spectrum with government entities, the applicable frequencies will not be used exclusively for "the provision of service to subscribers for compensation." Even if the Commission decides in pending Docket No. 93-61 to allow exclusive channelization within a market area, the AVM use of spectrum will be secondary to both governmental and industrial, scientific and medical ("ISM") users. Thus automatic vehicle monitoring will not qualify under the statutory guideline for spectrum auctioning. SBC is not opposed, however, to the Commission's deferral of this matter until it resolves the remaining issues surrounding AVM. NPRM at para. 145, n.153.

**F. Personal Communications Services Should Be Awarded Through Auctioning.**

SBC concurs with the Commission's tentative conclusion that the requirements of Section 309(j)(2)(A) and (B) are met by PCS spectrum. NPRM at paras. 116-119. In fact, SBC has argued to

the Commission that PCS should be considered commercial mobile services, which of necessity are services offered for a profit.<sup>6</sup> SBC strongly disagrees with some of the Commission's proposed auction mechanisms for PCS, however, particularly its proposal to allow combinatorial bidding for awarding the 51 NTA licenses on each of two 30 MHz spectrum blocks to a single bidder. See discussion of combinatorial bidding, *infra* at Section IV.(C). SBC also urges the Commission to adopt a special rule for the PCS auctions. The Commission should require all PCS applicants to continue to meet the eligibility standards for such licenses after the auctions are complete. Further, the Commission should limit eligibility for PCS auctions to companies as they might be configured if all pending applications for authority were granted. Otherwise, auction participants could manipulate the auction process by acquiring license rights which later must be resold.

#### IV. AUCTION DESIGN<sup>7</sup>

##### A. Oral Bidding Should Be The FCC's Auction Method Of Choice.

SBC urges the Commission to alter its proposal for combining oral bidding with sealed bidding on aggregated licenses in favor of oral bidding alone. SBC submits that oral bidding

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<sup>6</sup>See Comments of Southwestern Bell Corporation filed November 8, 1993, at pp. 17-21 In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93-252.

<sup>7</sup>SBC's comments in this section are addressed principally to PCS auctions, given the timeline Congress has adopted. Many of the same points would apply, however, to all auctions.

provides all of the advantages suggested by the Commission for combinatorial bidding and avoids all of its disadvantages.

The Commission appears to agree that oral bidding is the best method for meeting the statutory requirements of simplicity and quick implementation while assuring a return to the public of a portion of the value of the spectrum awarded. The Commission tentatively concluded that oral bidding should be its basic method for awarding licenses whenever another method is not specified. NPRM at para. 46. SBC agrees. As the Commission notes, there are at least four advantages of oral bidding:

(1) it is likely to assign a license to the party that values it the most; (2) it makes easier the aggregation of individual licenses by parties who value that aggregation the most; (3) it has lower private costs than a sealed bid auction because it does not require estimation of the value that other bidders place on the license; and (4) it is likely to be perceived as fair because the process is open and any eligible and qualified bidder who is willing to pay enough can be assured of winning. NPRM at para. 37.

The academic analysis of auctions over the last 30 years is unanimous that on average all types of auction procedures will result in approximately the same price for the same asset.<sup>1</sup> Thus, the question is simply which bidding process is the most efficient and fair way of allocating spectrum which

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<sup>1</sup>For example, see William Vickrey, "Counterspectulation, Auctions and Competitive Sealed Tenders," 16 *J. Fin.* 8 (1961).

also meets Congressional objectives. Oral bidding is the simplest and most straightforward method. It is the easiest to understand and relies least upon one's intuition of what another will bid. Because of the exchange of information throughout oral bidding, this process minimizes the disadvantage posed to inexperienced bidders by bidding processes (such as sealed bidding) which require extensive prior assessment of the value which other bidders will place on the spectrum. Thus, oral bidding minimizes the handicap which new market entrants might otherwise experience. The more the bidding process depends upon advance knowledge of how others will value the asset auctioned (which is most important in sealed bid auctions), the more difficult that process will be for new market entrants and those with limited personnel and financial resources. Additionally, oral bidding is likely to be easier to control and simpler to administer than any other process, including the combinatorial bidding process which the Commission has proposed for PCS licenses.

SBC suggests that the Commission weigh heavily two significant advantages which it noted from oral bidding for PCS spectrum use: (1) the method has lower private costs because it does not require prior estimation of the value that other bidders place on the license; and (2) the process of oral bidding is the fairest and simplest method. NPRM at para. 37.<sup>9</sup> These two

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<sup>9</sup>See, e.g., J.H. Kagel and D. Levin, "The Winner's Curse and Public Information Value Auctions," 76 *American Economic Review* 894, 895 (1986).

factors demonstrate that oral bidding would best achieve the statutory purpose of promoting economic opportunity and competition, especially by disadvantaged groups.

While the industry has some experience with wireless services, such as cellular and SMR services, the market demand for PCS, both wideband and narrowband, is much less clear. Even the Commission appears to be uncertain whether PCS will become an adjunct to cellular service, a replacement, or something entirely different. Accordingly, any process which puts a premium upon estimating the value which others will place upon spectrum is particularly disadvantageous to groups which lack ready access to capital markets. Acquiring information about the value of any asset necessarily requires the outlay of funds prior to an investment decision. For an untested market like PCS, outside financing to engage in such an effort may simply be unavailable. Thus, adoption of any method other than oral bidding, including overlay of combinatorial bidding, is antithetical to Congress' objective of diversified participation in wireless services and should be abandoned. 47 U.S.C. § 309(j)(3)(B).

The advantage of the increased information provided by oral auctioning cannot be underestimated. It is commonly accepted among economists that increases in information raise the level of competition within an auction. See generally, Schwerzer and Von Ungern-Sternberg, "Sealed Bid Auctions and the Search for Better Information," 50 *Economica* 79 (1983); McAfee & McMillan, "Auctions and Bidding," 25 *J. Econ. Lit.* 699, 722 (1987).

Because new information tends to raise the value estimate of those who bid later, the price paid in an auction will likely increase with the release of such information. *Id.* Oral auctions thus not only enhance the opportunity for the designated entities to participate in this process, but also will ensure that the resulting price more closely approximates the value of the spectrum and best satisfies the Congressional objective of compensating the public for private use of spectrum.<sup>10</sup>

The Commission suggests that oral bidding may be more subject to manipulation than other processes. SBC disagrees. A recent paper written for the Board of Governors of the Federal Reserve System indicated a preference for oral bidding over sealed bidding for the precise purpose of avoiding collusion.<sup>11</sup> In the paper, Mr. Reinhart suggests that the premium placed by the sealed bidding process upon knowing what valuation others place on the asset causes investors to turn to experts rather than place bids directly. This concentration of customer orders

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<sup>10</sup>The information flow in an open auction also lessens the "winner's curse" phenomenon found in other auction formats. The high bidder, in the absence of information about others' valuations, will have estimated the value higher than all others and thus may be unrealistic. But the information flow in an open auction reveals others' valuations and allows the winner to adjust his valuation accordingly. Thus, the effect of the winner's curse is mitigated, unless other bidders have overestimated the value as well. See generally Milgrom, "Auctions and Bidding: A Primer," 3 *J. Econ Perspectives* 3 (1989).

<sup>11</sup>Vincent Reinhart, "Theory and Evidence on Reform of the Treasury's Auction Procedures," *Finance and Economics Discussion Series No. 190*, Federal Reserve Board Division of Monetary Affairs, March 1992. It should be noted that Treasury auctions are not structured the same as a classic sealed bid process.