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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

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SUMMARY

Motorola Satellite Communications, Inc. ("Motorola Satcom") submits that it is inappropriate to apply any competitive bidding process to the licensing of the MSS/RDSS (or "Big LEO") applications now pending before the Commission. Instead, the Commission should institute a separate proceeding promptly to establish both licensing and service rules for the RDSS/MSS bands which contemplate the award of licenses to all qualified applicants proposing to construct and launch Big LEO satellite systems.*/

In support of these comments, Motorola Satcom states the following:

- (1) The Commission has erroneously assumed that the pending Big LEO applications are mutually exclusive. They are not. All qualified non-geostationary MSS/RDSS applicants can be authorized to construct their proposed systems without the necessity for a hearing. Absent a finding of mutual exclusivity, there is no legal basis for auctioning the RDSS/MSS bands.
- (2) The Budget Act requires the Commission to consider alternatives to auctions in order to avoid mutual exclusivity in application and licensing proceedings, such as the Big LEO proceedings.

*/ Motorola Satcom is submitting these comments separately from Motorola Inc. due to its particular interest in this proceeding as a Big LEO applicant.

- (3) Many of the objectives outlined in new Section 309(j)(3) will not be promoted if competitive bidding were used to license Big LEO systems, such as the development and rapid deployment of new technologies, products and services without administrative or judicial delays, the promotion of economic opportunity and competition, and the efficient and intensive use of the spectrum.
- (4) Competitive bidding would in all likelihood lead to other countries following the lead of the United States and auctioning their MSS spectrum. Global U.S. MSS systems would therefore have to pay many other countries, not just the United States, for the right to use this spectrum. This is a burden that some global MSS systems may not be able to bear. Furthermore, to the extent Inmarsat and other foreign MSS systems are spared this expense, U.S. operators would be placed at a substantial competitive disadvantage in the global mobile satellite communications marketplace, and further jeopardize the technological leadership of the United States in important satellite and mobile communications.
- (5) If competitive bidding were used to license Big LEO systems, it would be virtually impossible to determine the value of a U.S. license at the time an auction was conducted due to the global nature of the services and

the extensive international coordination which must take place on a bilateral basis. Big LEO systems, unlike terrestrial Personal Communications Service ("PCS") systems, will require licenses in most foreign countries and will be subject to many coordination agreements before service can be provided internationally.

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COMMENTS

Motorola Satellite Communications, Inc. ("Motorola Satcom") hereby submits these comments in response to the Commission's competitive bidding proposals to implement Section 309(j) of the Communications Act of 1934, as amended ("Communications Act"),^{1/} which are contained in the Notice of Proposed Rule Making, FCC 93-455 (released October 12, 1993) ("Notice") in this proceeding. These comments are limited to those portions of the Notice which relate to the licensing of pending applications for Mobile Satellite Service ("MSS") and Radiodetermination Satellite Service ("RDSS") in the 1610-1626.5 MHz and 2483.5-2500 MHz bands ("RDSS/MSS bands").^{2/} As set

^{1/} New Section 309(j) was added to the Communications Act by the Omnibus Budget Reconciliation Act of 1993. See P.L. 103-66, 107 Stat. 388 (1993) ("Budget Act").

^{2/} Motorola Inc., the parent corporation of Motorola Satcom, is separately filing today comments in this proceeding which relate to other proposals set forth in the Notice.

forth below, the Commission should not institute a competitive bidding process for licensing these services.

I. INTRODUCTION

As the Commission is well aware, Motorola Satcom is one of six applicants proposing to offer mobile satellite communications services in the RDSS/MSS bands.^{3/} The IRIDIUM™ system will be able to provide, for the first time, handheld portable mobile voice and data communications services to persons located virtually anywhere in world. As demonstrated in Motorola Satcom's application and by other MSS/RDSS (or "Big LEO") applicants, there is a substantial demand for such services in the United States and around the globe.

In its Notice, the Commission requests comment as to whether to use competitive bidding in licensing the current group of MSS/RDSS applications.^{4/} The Commission notes that a "significant number" of MSS applications have been accepted for

^{3/} In December 1990, Motorola Satcom filed its application with the Commission to construct, launch and operate the IRIDIUM™ system. See Application of Motorola Satellite Communications, Inc. for IRIDIUM -- A Low Earth Orbit Mobile Satellite System, File Nos. 9-DSS-P-91(87) & CSS-91-010 (Dec. 3, 1990). Since that time, there have been several refinements in the satellite system design. In August 1992, Motorola Satcom submitted an amendment to its application which described these refinements and updated certain information in the application. See Minor Amendment to IRIDIUM™ System Application (August 10, 1992). In addition to Motorola Satcom, applications were timely filed by Loral Qualcomm Satellite Services, Inc. ("LQSS"), TRW, Inc. ("TRW"), Constellation Communications, Inc. ("Constellation"), Ellipsat Corporation ("Ellipsat"), and AMSC Subsidiary Corporation ("AMSC"). See CC Docket No. 92-166.

^{4/} See Notice at ¶ 154.

filing in the RDSS/MSS bands, and questions whether these pending "mutually exclusive" applications should be resolved by auctions or lotteries.^{5/} For the reasons stated below, Motorola Satcom submits that it is inappropriate to apply any competitive bidding mechanism for licensing the MSS/RDSS applications now pending before the Commission. Instead, the Commission should institute a separate proceeding promptly to establish both licensing and service rules for the RDSS/MSS bands which contemplate the award of licenses to all qualified applicants proposing to construct and launch Big LEO satellite systems.

Competitive bidding is inappropriate for Big LEO systems for the following reasons:

- (1) The Commission has erroneously assumed that the pending applications are mutually exclusive. They are not. All qualified non-geostationary MSS/RDSS applicants can be authorized to construct their proposed systems without the necessity for a hearing. Absent a finding of mutual exclusivity, there is no legal basis for auctioning the RDSS/MSS bands.
- (2) The Budget Act requires the Commission to consider alternatives to auctions in order to avoid mutual exclusivity in application and licensing proceedings, such as the Big LEO proceedings.

^{5/} Id.

- (3) Many of the objectives outlined in new Section 309(j)(3) will not be promoted if competitive bidding were used to license Big LEO systems, such as the development and rapid deployment of new technologies, products and services without administrative or judicial delays, the promotion of economic opportunity and competition, and the efficient and intensive use of the spectrum.
- (4) Competitive bidding would in all likelihood lead to other countries following the lead of the United States and auctioning their MSS spectrum. Global U.S. MSS systems would therefore have to pay many other countries, not just the United States, for the right to use this spectrum. This is a burden that some global MSS systems may not be able to bear. Furthermore, to the extent Inmarsat and other foreign MSS systems are spared this expense, U.S. operators would be placed at a substantial competitive disadvantage in the global mobile satellite communications marketplace, and further jeopardize the technological leadership of the United States in important satellite and mobile communications.
- (5) If competitive bidding were used to license Big LEO systems, it would be virtually impossible to determine the value of a U.S. license at the time

an auction was conducted due to the global nature of the services and the extensive international coordination which must take place on a bilateral basis. Big LEO systems, unlike terrestrial Personal Communications Service ("PCS") systems, will require licenses in most foreign countries and will be subject to many coordination agreements before service can be provided internationally.

II. THE COMMISSION DOES NOT HAVE THE LEGAL AUTHORITY TO IMPOSE AUCTIONS ON THE PENDING BIG LEO APPLICATIONS

A. The Current Group of Applications Are Not Mutually Exclusive

The Commission has erroneously assumed that the pending Big LEO applications are mutually exclusive. In fact, as outlined in the Joint Comments recently submitted by Motorola Satcom and LQSS in CC Docket No. 92-166, all five of the non-geostationary MSS/RDSS applications could be granted if the Commission were to apply their spectrum sharing plan.^{6/} Since all of the qualified applicants would have an equal right to receive construction permits and licenses in accordance with this

^{6/} See Joint Comments, CC Docket No. 92-166 (Oct. 7, 1993). Even under the alternative spectrum sharing plan set forth by TRW, Ellipsat and Constellation, all five of the non-geostationary MSS/RDSS applications would be granted a construction permit. See Joint Proposal, CC Docket No. 92-166 (Oct. 8, 1993).

spectrum sharing plan, a hearing is not required under Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945), and therefore a finding of mutual exclusivity can be avoided. See Telocator Network of America v. FCC, 691 F.2d 525 (D.C. Cir. 1982) (Need for comparative hearings obviated where Commission indicated that it would award a license to every eligible licensee).

The Commission can dismiss the one remaining proposed geostationary MSS system application on a number of policy and legal grounds without a hearing.^{2/} It is well established that the Commission can promulgate by rule basic policies and qualification standards which eliminate otherwise qualified applicants without violating their Ashbacker hearing rights. See, e.g., United States v. Storer Broadcasting Co., 351 U.S. 192, 202-05 (1956); Hispanic Information & Telecommunications Network, Inc. v. FCC, 865 F.2d 1289, 1294 (D.C. Cir. 1989); Guinan v. FCC, 297 F.2d 782, 785 (D.C. Cir. 1961).

B. The Budget Act Requires the Commission to Consider Alternatives to Auctions in Order to Avoid Mutual Exclusivity

The Notice also fails to recognize that the Budget Act requires that the Commission consider alternatives to auctions when it is in the public interest to do so. Thus, newly enacted Section 309(j)(6)(E) states that:

^{2/} See, e.g., Consolidated Petitions to Dismiss and/or Deny and Comments of Motorola Satcom, File Nos. 15-DSS-MP-91, et al. (Dec. 18, 1991).

Nothing in this subsection, or in the use of competitive bidding, shall

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.^{8/}

There can be no doubt that Congress intended to apply this rule of construction to the Big LEO proceedings. As reflected in the original House Report language from which this subsection was drawn:

In connection with application and licensing proceedings, the Commission should, in the public interest, continue to use engineering solutions, negotiation, threshold qualifications, service rules, and other means in order to avoid mutual exclusivity. The licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and **the Committee encourages the Commission to avoid mutually exclusive situations, as it is in the public interest to do so. The ongoing MSS (or "Big LEO") proceeding is a case in point.** The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate.^{9/}

^{8/} Similar language is contained in the Statement of the Managers, indicating the Conferees' strong interest in this provision. See Conference Report of the Committee on the Budget, House of Representatives, to accompany H.R. 2264, Report No. 103-213, at p. 485 (Aug. 4, 1993).

^{9/} See H.R. No. 103-111, at p. 258 (May 25, 1993) (Emphasis added).

Thus, the Commission must consider whether any of the spectrum sharing proposals currently before it in CC Docket No. 92-166 are in the public interest before reaching any conclusions as to the advisability of holding auctions. Indeed, the Commission is "encouraged" to avoid mutually exclusive situations by using its normal regulatory tools, and thereby avoid auctions. Nor can the Commission, when making such allocation and assignment decisions, be influenced by the "expectation of Federal revenues from the use of . . . competitive bidding" See Section 309(j)(7) of the Budget Act.

When the Commission does consider the sharing proposals currently before it in CC Docket No. 92-166, it should determine that the Motorola Satcom/LQSS proposal satisfies the public interest for the reasons presented above. Not only does this proposal resolve any questions of mutual exclusivity, it also furthers the public interest by ensuring that only those companies ready, willing and able to proceed with their business plans get an authorization, by ensuring that the spectrum resource is used to its fullest, by eliminating the possibility of trafficking in licenses, and by allowing the marketplace to determine which technology and how many systems will survive.

C. Many of the Objectives in the Budget Act
Would Not Be Met by Auctioning Big LEO Spectrum

Even if the Commission were to conclude that, despite the regulatory tools at its disposal for avoiding mutually exclusive situations, not all of the qualified Big LEO applicants

could receive an authorization, it still should not auction the RDSS/MSS bands. In accordance with new Section 309(j)(2)(B), "a system of competitive bidding [must still] promote the objectives described in paragraph (3)." The Budget Act, in turn, sets forth five objectives, including "the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays," the promotion of "economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American public by avoiding excessive concentration of licenses," the "avoidance of unjust enrichment through the methods employed to award uses of [the spectrum] resource," and the "efficient and intensive use of the electromagnetic spectrum." See Section 309(j)(3) of the Budget Act. Many of these objectives would not be served if the Commission were to auction off the Big LEO spectrum.

For example, competitive bidding would not promote the development and rapid deployment of new technologies, products and services without administrative or judicial delays. In fact, if the Commission were to adopt one of the spectrum sharing plans proposed by the applicants, global mobile communications services would be provided to the public much sooner than if the available spectrum were auctioned. Over the past three years the Commission has developed a full record from which it can base a conclusion that the public interest would be served by authorizing all qualified Big LEO applicants to proceed with the

construction of their proposed systems. No such record currently exists for determining whether and how to auction the RDSS/MSS bands. If the Commission were to conclude that auctions for Big LEO systems would be in the public interest, it would have to institute another proceeding to determine how best to implement such a licensing scheme. Surely, this process would result in substantial administrative and judicial delays, especially in light of the serious legal questions associated with applying competitive bidding when other regulatory tools are available for avoiding mutual exclusivity.

Similarly, the adoption of a spectrum sharing plan that allows the marketplace to be the ultimate decider of the number of systems that are economically viable will better promote economic opportunity and competition for mobile satellite communications services. Using this approach, all qualified Big LEO applicants would have an equal opportunity to compete in the marketplace for investors, financing and customers. In contrast, if the Commission were to employ auctions it would have to make a preliminary determination, based upon only limited information about the marketplace and system requirements, as to the amount of spectrum that any one system operator could use for its first generation system. Any miscalculation by the Commission now could result in no competition or possibly no service at all. Moreover, licenses would be disseminated among a wider variety of applicants -- such as all of the qualified Big LEO applicants --

under a spectrum sharing plan than through competitive bidding.^{10/}

Furthermore, the public would not be assured of obtaining significant revenues from competitive bidding for the MSS/RDSS spectrum. It would be difficult, if not impossible, for an MSS licensee to determine the value of the spectrum that it is purchasing at the time an auction occurs. While the Commission might be able to auction spectrum over the United States, it cannot guarantee that this spectrum will be available on a global basis. Unlike the licensing of terrestrial PCS, which is essentially a domestic matter and subject only to the jurisdiction of the Commission, global MSS systems must be coordinated around the world on a bilateral basis and must also obtain licenses from foreign countries in order to provide service abroad.

Lastly, under the proposed Motorola Satcom/LQSS spectrum sharing plan currently under consideration in CC Docket No. 92-166, the most efficient use of the spectrum would be guaranteed by assigning frequencies only to those MSS/RDSS applicants that actually begin operation, and by adjusting spectrum assignments over time based upon the relative need of

^{10/} In this regard, it is extremely unlikely that any small businesses or members of minority groups and women will construct Big LEO satellite systems given the large amounts of capital required for even the smallest of the proposed systems and the fact that the Commission has already closed the filing window for accepting applications in the MSS/RDSS bands.

the licensees.^{11/} Under a competitive bidding licensing scheme, however, spectrum could be hoarded for some time by applicants that do not have the current financial capacity to build an entire system, or by those that simply may want to keep others out of the market. Furthermore, under a competitive bidding regime, there would be no assurance that those who purchase the spectrum would put it to its most efficient use.

III. AUCTIONING SPECTRUM FOR BIG LEO SYSTEMS
WOULD NOT SERVE THE PUBLIC INTEREST

Auctioning spectrum for Big LEO systems also would not be in the public interest because it would have a significant negative impact upon those systems licensed in the United States, and thereby adversely affect U.S. competitiveness and technological leadership. Big LEO systems are inherently international in scope and will be competing against other foreign MSS systems. For the reasons presented below, spectrum auctions for U.S. licenses of mobile satellite communications services would establish an unfortunate precedent which could result in U.S. systems having to pay for access to spectrum around the world, would impose costs on U.S. licensees not borne by their international competitors, and would create the opportunity for payment schemes in other countries to be used to

^{11/} Assigning spectrum only as systems become operational also would avoid the possibility of Commission licensees being unjustly enriched as a result of their participation in the application process.

discriminate against U.S. systems. Such repercussions would place U.S. companies at a serious competitive disadvantage.

A. Big LEO Systems Are International in Scope and Will Be Subject to Foreign Competition

Big LEO systems are singularly able to serve the global MSS/RDSS market because of their worldwide coverage capabilities, their use of frequencies recently allocated on a global basis by the 1992 World Administrative Radio Conference, the economies of scope and scale that LEO systems offer, and their interconnectivity to the public switched telephone network. The frequency assignments used by Big LEO systems also must be coordinated on a worldwide basis with other countries that already have terrestrial systems operating in the RDSS/MSS bands and those that might desire to sponsor their own LEO satellite systems. In addition, the Big LEO systems authorized by the Commission must obtain local authorizations from many countries in order to implement their global services. As systems licensed in the U.S., they will be competing against systems licensed by other countries on these and other frequencies, including systems possibly offered by governmental and intergovernmental treaty organizations.

B. Auctions Would Have An Adverse Impact Upon the Competitiveness of U.S. Systems

Auctions in the United States would establish an unfortunate precedent for other Administrations to follow. If

the United States were to require its Big LEO licensees to pay for spectrum, other countries would be inclined to charge them as well for accessing foreign jurisdictions. This could be disastrous for some global U.S. Big LEO systems. New MSS systems, with the large costs they must incur up front to construct and launch, might not be able to afford for access to every country they desire to operate in. In addition, competitive bidding could result in payment schemes in other countries which discriminate against U.S. systems (e.g., applying auctions to privately-owned systems but not state-owned systems or Inmarsat). International coordination would also be immensely more complicated.^{12/}

Such a combination of events clearly would place U.S. systems at a serious competitive disadvantage vis-a-vis foreign systems as well as jeopardize the technological leadership of the United States in important satellite and mobile communications. Indeed, Chairman Quello identified many of these very points when, in his June 23, 1993 letter to several Congressmen, he urged that Congress should:

. . . be mindful of the potential ramifications [of spectrum auctions] on the international telecommunications service providers who utilize spectrum in other countries as well as in the United States. For example, requiring use of competitive

^{12/} Foreign systems could gain access to the United States market without making any spectrum payments as a result of the international coordination process. If U.S. companies believed that they could gain access to this market without having to pay for spectrum, they might be inclined to go abroad for their system authorizations.

bidding for low earth orbiting satellite system licenses in this country might subject those licensees to exorbitant payment requirements for access to spectrum in other countries. I am particularly concerned that some foreign governments opposed to the use of our international accounting and auditing standards could use our competitive bidding requirement as a justification for retaliatory measures.

IV. CONCLUSION

For all of these reasons, Motorola Satcom urges the Commission to reject auctions as an acceptable means of licensing the current group of Big LEO applicants. At minimum, due to the unique issues raised by mobile satellite communications services provided by Big LEO systems, the Commission should defer a decision on whether to impose auctions until it establishes licensing and service rules in a separate proceeding.

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November 10, 1993

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