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November 19, 1993

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WRITER'S DIRECT DIAL NUMBER

TELEX 248349 WYRN UR

Mr. William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W. -- Room 222
Washington, D.C. 20554

Re: Notice of Ex Parte Contact
GN Docket No. 93-253

Dear Mr. Caton:

Wiley, Rein & Fielding hereby files a copy of a notification of an ex parte contact in GN Docket No. 93-253. Copies of the attached summary of comments in GN Docket No. 93-253 were distributed to a number of members of the Federal Communications Commission.

If any questions should arise concerning this notification, please contact the undersigned at (202) 828-3182.

Respectfully submitted,



Eric W. DeSilva

Encl.

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OFFICE OF THE SECRETARY

**SUMMARY OF COMMENTS
IN PP DOCKET NO. 93-253
COMPETTIVE BIDDING**

**WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000**

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**ADVANCED MOBILECOMM TECHNOLOGIES, INC.
DIGITAL SPREAD SPECTRUM TECHNOLOGIES, INC.**

000001

Interest: Advanced MobileComm is a provider of SMR service. Digital Spread Spectrum Technologies is a manufacturer of Part 15 spread spectrum equipment.

Treatment of Designated Entities:

- Supports innovator's bidding preferences based upon technological innovation and superior service proposals.
(4)

Other:

- Also resubmitted Petition for Further Rulemaking in Gen. Docket No. 90-314, originally filed August 25, 1993, concerning Specialized PCS Service.

Interest: A partner in a group that has applied for nearly forty cellular fill-in licenses.

Specific Services:

- Competitive bidding should not be used to allocate cellular unserved area licenses. (1)
- Relied in good faith upon the FCC's policies and guidelines and it is difficult to imagine how the FCC can justify a decision to change the rules of allocation from lottery to auction after substantial investments have been made by thousands of other applicants. (1)
- If a decision favoring the lottery process for pending fill-in licenses cannot be made with the information available, suggests that additional time be allowed for public comment. (1)

Interest: Not identified.

Treatment of Designated Entities:

- Supports proposal to provide two blocks of spectrum to designated entities in each service area.
- Supports bidding enhancements, tax certificates, reduced deposit requirements and extended auction payment installments.

ALCATEL NETWORK SYSTEMS, INC.

Interest: Manufacturer of microwave radio equipment

Applicability of Competitive Bidding:

- Does not support subjecting any mutually exclusive fixed microwave initial license applicants to auctions as the current microwave licensing process already meets the statutory goals established by Congress in authorizing auctions and the limited number of mutually exclusive microwave radio applications does not justify imposition of the additional processing required under auctions. (2-3)

ALLCITY PAGING, INC.

000005

Interest: Allcity provides Part 22 one-way paging services from about 120 different sites.

Applicability of Competitive Bidding:

- Allcity is concerned with the proposed application of auction procedures to the situation where a paging licensee applies to expand an existing system on a given frequency and is subject to a mutually exclusive application. The public interest requires continuation of the policy embodied in the present Section 22.33(c) in order to afford mutually exclusive applicants the right to request hearing in lieu of auctions. If a "first come, first served" approach is implemented for Part 22 applications, mutually exclusive paging applications should not automatically be subject to auction. (3)

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ALLIANCE FOR FAIRNESS AND VIABLE OPPORTUNITY

Interest: AFVO is a group of small companies owned by persons normally classified as "minority." (3)

Payment Method:

- The FCC should develop payment guidelines to maximize the opportunity for designated entities effectively to compete. (11)
- Since the FCC presumes that he who values the frequency most will pay the highest price, it should consider more seriously the possibility of royalties. (11)
- AFVO supports the recommendations of the Small Business Advisory Committee regarding a streamlined process, and the acceptability of relying on "highly confident" letters obtained by applicants from Small Business Investment Companies. (12)
- A small upfront payment increases the likelihood that the FCC will achieve its statutory goal of maximizing diversity of grant of PCS licenses. Moreover, the safeguards now proposed are more than sufficient to protect the process from less than serious applicants. (13)

Treatment of Designated Entities:

- The FCC should establish firm guidelines for companies seeking to qualify for any designated entity status. (10)
- Such guidelines should consider: (a) the ownership of the company; (b) the relationship of the company to a present or prior parent; and (c) the control of the company. (10)
- Any entity seeking designated entity status should have 51% ownership vested in members of the designated category. (11)
- The FCC should look beyond the SBA standard regarding small businesses in view of the fact that some larger companies have begun the process of spinning off operating branches, presumably, in anticipation of the PCS licensing. (12)

Safeguards:

- AFVO disagrees with the FCC's conclusion that unjust enrichment is likely to occur only in auctions where participation is limited in order to ensure designated entities' opportunity to participate. (7)
- Since the issue of trafficking in licenses applies to all licensees, restrictions on transfer should apply equally to all licensees, without regard to company size, auction in

which the applicant participated, or spectrum/block covered by the license. (8)

Application Processing Requirements:

- Short-form applications should be used for purposes of PCS licensing. (12)

Other:

- The FCC should abandon the presumption that a smaller universe of bidders necessarily means that the value of the spectrum diminishes. (9)
- The FCC should resist the temptation to place some external value on markets for purposes of establishing a minimum bid. (10)

**ALLIANCE OF RURAL AREA TELEPHONE
AND CELLULAR SERVICE PROVIDERS**

Interest: Asserts viewpoint of small, independently owned and operated common carrier service providers who intend to offer new radio technology services within their own geographical market areas.

Sequence of Bidding:

- The FCC should auction all frequency blocks within a given market area before proceeding to auction licenses in the next market area. The blocks within an area should be auctioned on the same day in order to avoid a headstart advantage to the first successful bidder. Markets should be auctioned from largest to smallest based on population. (12-13)

Combinatorial Bidding:

- Sealed combinatorial bidding should be allowed only for MTAs; where allowed, all of the oral bidders should be permitted to participate in an additional round of counteroffer bidding. If a combinatorial MTA bid exceeds the sum of the individual winning MTA bids, then the oral auction should be reopened for all of the affected MTAs, and all of the oral bidders from the first round should remain eligible to continue bidding for their respective MTAs. (11, 13)

Payment Methods:

- There should be no minimum bids. (12)
- Successful designated entities should be permitted at least to choose between 10-year installment payments with interest or royalties on revenues produced from the acquired spectrum. (4-5)
- The financial qualifications of a bidder should be demonstrated by presentation of a payment upfront in the amount of 2 cents per MHz per pop. Payment should be examined but not collected and should be in the form of a cashier's check. There should not be a requirement that checks be drawn on banks or savings and loans with assets exceeding \$1 billion. The upfront payment of auction winners only should be deposited by the FCC. The FCC should announce the specific upfront payment amount for a given market at least 30 days in advance of the auction. (8-10)
- In PCS, nothing else should be required to demonstrate the winning bidder's financial ability to construct and operate PCS facilities. (10)

- The winning bidder's 20% deposit should be tendered to the FCC by cashier's check within 30 days after the auction date. Failure to do so would automatically cancel the winning bid, in which case the second high bidder should be given the opportunity to acquire the license at the second bidder's last bid amount. If second highest bidder declines, auction should be reopened among previously qualified applicants. New bidders should be allowed only where the license is awarded and later forfeited or revoked. (13-14)
- Upfront payment and deposit should be forfeited by any applicant who fails to achieve the award of the license for which it applied, except in rare instances. (14)

Treatment of Designated Entities:

- Supports FCC proposal to set aside two blocks of spectrum nationwide in the broadband PCS service and reserve them for designated entities. (2)
- Preferences should be extended to designated entities when they bid on non-set-aside blocks spectrum. (3)
- Any consortium that is controlled (50.1%) by designated entities should be eligible for preferential measures. (3)
- Designated entities should include:
 - Rural telcos that serve either (1) communities with populations of less than 10,000, (2) no more than 10,000 access lines in any community, or (3) no more than an average of 15 subscribers per mile of plant. The preference should be extended to the companies' affiliates, but not in defined market areas where the company has no presence of service. (3-4)
 - Small businesses that meet the SBA definition if they also have an operating presence in the market area applied for. (3)
 - Women and minorities so long as such individuals have their principal residence in the market area applied for as of the date of the public notice announcing the application filing window for the market area and do not have a net worth exceeding \$6 million and an average net income after taxes

for the preceding 2 years in excess of \$2 million.
(4)

- Tax certificates should be available for deferral of taxation on any transaction involving the transfer or assignment of stock or FCC license to or from a designated entity. (5)

Safeguards:

- Potential bidders should not be prohibited from collaborating, sharing information or otherwise discussing bids or bidding strategies prior to completion of an auction. (7)
- A mandatory hold for one year on licenses set aside for designated entities is acceptable. Premature transfer should cause the license to be canceled automatically and then re-auctioned by the FCC, without delay, to another entity. Conditional licenses requiring payment to the federal government of any gains upon the event of a premature transfer is not an effective deterrent. (5-6)

Application Processing Requirements:

- Applicants should be required to submit only a short form application, during a one-day filing window, in order to apply to participate in a PCS auction. For PCS applications in particular, submission of a long form application, including the specific technical proposal, should be delayed until after the auction. (6-7)
- Minor amendments should be allowed prior to the auction. Minor changes in ownership should be permitted, as well as any (including major) ownership changes necessitated by the winning of another auction by an affiliated entity. (7)
- After payment of the deposit and submission of the long form application, the winning application should be placed on public notice for 30 days. Hearings before an ALJ are not necessary to consider challenges to the applicant's qualifications. Written proceedings with FCC staff are sufficient. (15)

Other:

- The FCC should request from Congress a legislative delay of the date for mandatory PCS licensing. (16)

ALLIANCE TELECOM, INC.

Interest: Unspecified designated entity.

Bidding Methods:

- Supports oral sequential bidding. (3)

Sequence of Bidding:

- Largest to smallest markets, starting with 2 MTA licenses. (3)

Combinatorial Bidding:

- Supports sealed bidding for combinatorial groups. (3)

Treatment of Designated Entities:

- Supports a CELSAT proposal for additional deferred payment benefits (including deposits, bid payments, and earnest money) for "special preference" groups where a member of the executive management team (e.g., CEO, CFO) is a designated entity, 30% of the management team are designated entities, ownership otherwise satisfies designated entity qualifications guidelines, and designated entities have a simply majority of the ownership. (2, 7-8)
- Supports use of tax certificates; strict qualifications criteria, including the use of the SBAC guidelines; and a requirement that voting ownership, financial control, and operational control of designated entities is held by designated entities. (2, 5-8)
- Proposes requiring designated entities to retain 20% ownership or more of a preference recipient until one third of the market is built out. (6)
- Proposes special "innovator" incentives. (6-7)
- Supports incentives to ensure that 20 MHz PCS set-asides are viable competitors to 30 MHz blocks. (3)

Other:

- The FCC should employ an auction structure that offsets large companies' advantages in providing integrated service. (9-11)

AMERICAN AUTOMOBILE ASSOCIATION, INC.

Interest: Not-for-profit organization dedicated to promoting safety and comfort to American drivers; accesses spectrum to provide private-use dispatch service to fleet of towing contractors and response units. (2)

Applicability of Competitive Bidding:

- Urges clarification that any licensee who does not receive compensation from subscribers for enabling subscribers to receive or transmit signals should be exempt from competitive bidding requirements. (3)
- Opposes Commission's suggestion that licensees classified in "mixed-use" services should be subjected to competitive bidding depending upon the "principal use" of the entire radio service; authority to impose competitive bidding is contingent on "principal use" by the licensee, not by the service into which the licensee is classified. (4)
- Supports proposed exclusion of General Category and interservice sharing channels from competitive bidding requirements. (8)
- Strictly internal use entities should not have to bid against SMRs for spectrum on "contaminated" channels. (8)
- Disagrees with proposal that only public safety entities should be exempt from competitive bidding. (8)

Specific Services:

- Principal spectrum use of Automobile Emergency Radio Services and Land Transportation Radio Services is internal dispatch, thereby disqualifying licensees for these services from competitive bidding. (7)
- Refarming docket (PR Dkt No. 92-235) may result in reclassification of AAA and other internal users to larger pools; requests clarification that member automobile clubs requesting Business Radio Service licenses for internal use, or requesting "General Category Pool" channels, will not be subjected to competitive bidding. (7)

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Interest: Trade association for 220/800/900 MHz SMRS systems.

Applicability of Competitive Bidding:

- Generally supports proposed FCC resolution of definitional issues, but still considering the tentative conclusion that "principal use" should apply to classes of licenses rather than individual licensee usage. (5)
- Does not support the proposed application of competitive bidding to private services, since these services utilize frequency coordination, do not typically involve mutual exclusivity, and use shared frequency allocations. (6-8)

Specific Services:

- Competitive bidding would be ill-suited for traditional 800 MHz SMRS licensing since these channels are also used for intercategory sharing by noncommercial licenses; the preferable approach would be retaining the "one day" filing windows and waiting lists. (8-9)
- If filing windows are eliminated for traditional 800 MHz SMRS, competitive bidding should be used for new systems where the FCC determines that randomly assigned file number cannot legally be used to rank same day applicants. (9)
- Unlike PCS, wide area 800 MHz SMRS licensed under the FCC's proposed 800 MHz NPRM are not appropriate for competitive bidding since AMTA's 800 MHz wide area "blueprint," upon which the NPRM is based, would not require the use of either lotteries or auctions; 800 MHz wide area authorizations are reconfigurations of existing systems and not new authorizations, and thus fail to meet one of the statutory tests for competitive bidding; and the application of auctions to 800 MHz wide area systems would be exceedingly complicated. (9-11)
- If wide-area 800 MHz SMRS are auctioned, the FCC must consider mutual exclusivity on a frequency by frequency basis and geographic area basis, as well as protections to avoid "greenmail." (13)
- 900 MHz wide area systems are also inappropriate for auctions since they do not involve virgin spectrum; auctions would not protect licensees that have extended service by the initial Designated Filing Areas ("DFAs") in response to customer needs; and auctions would not serve Congressional policies if such licensing resulting in islands of DFA service surrounded by unrelated systems. (13-15)

- 2 -

- Instead of auctioning 900 MHz wide area systems, the FCC should utilize AMTA's preferential licensing scheme proposed in that docket; if auctions are used, however, the FCC should recognize investments made by existing licensees and extend protection to secondary sites outside the DFAs, auction the same 10 channel blocks used in the original authorizations, and allow the use of combinatorial bidding to aggregate licenses. (14-15)
- Agrees with the FCC that competitive bidding should not be used for 220 MHz licenses since it is premature to determine whether the principal use will be commercial or noncommercial.