

standards: have been in business for at least two years as a company; have actually conducted business activities during at least these two years. Adequate qualifying standards are necessary so that larger companies do not create small/minority/women owned businesses as fronts. (6)

- For a bidding consortium to qualify for bidding, it must be 100% composed of eligible entities. Voting control must rest with eligible entities, and no one non-eligible entity should have more than a 10% economic interest in the consortium. (6)

Safeguards:

- Transfers of C and D band licenses among small/minority/women/rural telco owned businesses should be allowed at any time; transfer of C and D band licenses to other entities should be allowed after 4 years or 50% coverage of license area. In the case of premature transfer to other entities, the transferor should be entitled to receive only its provable out-of-pocket costs and non-transferable obligations to the date of transfer. All amounts in excess would be due to the government. (7)
- While certain bid rigging conduct would be barred by existing criminal and antitrust laws, specific prohibition of collusive bidding for PCS and similar licenses would be appropriate. These rules should provide as wide as possible restriction on all non-designated large firms preventing them from collaborating, sharing information, or discussing with one another any information regarding the substance of bids or bidding strategies prior to the completion of the auction. No bidding consortia that include non-designated large firms should be allowed. (7)
- Consortia of small businesses and businesses owned by minorities, women and rural telcos should be allowed. To qualify as a small/minority/women/rural telco owned consortium, all members of the consortium must be members of these designated groups and no single large company may have more than a 20% economic interest in the consortium. (7)

COUNCIL OF 100

Interest: National organization of African American Republicans.

Bidding Methods:

- Supports oral bidding. (2)
- Regardless of methodology, the bid package should include clear instructions requiring applicants to submit model business programs that set forth the bidder's policy toward minority and women ownership and participation and the action the bidder intends to take to promote ownership and participation of designated entities in the research, development and implementation of spectrum-based services. Eligibility to bid should be restricted to applicants that have submitted a model business program. (3)

Payment Methods:

- Support use of the "innovator's bidding preference" proposed by the Small Business Advisory Committee. (3)

Treatment of Designated Entities:

- Supports bidding preferences, tax certificates. (4)
- Supports the findings and recommendations of the Minority Business Enterprise Legal Defense and Education Fund, Inc. (4)
- Supports bidding preferences to non-designated entities that have entered into strategic alliances. (4)

COX ENTERPRISES, INC.

Interest: Diversified company with interests in cable, radio, and television broadcasting, newspaper publishing, automobile auctions and other businesses; actively involved in PCS development. (p.2)

Applicability of Competitive Bidding:

- Commission should make clear that PCS pioneer preference applications are not mutually exclusive applications and therefore are on a separate processing track; any modifications of pioneer preference program should not apply retroactively. (p.4)

Sequence of Bidding:

- Suggests using sequential bidding for PCS auctions as this permits participants to consider licenses won in adjacent and related markets. (p.5)
- Suggests auctioning available MTA blocks and announcing results prior to auctioning BTA licenses available within MTA (p.5)

Combinatorial Bidding:

- Takes no position on desirability of combinatorial bidding; opposes proposal to allow participants to select combinatorial market groupings. (p.6)

Application Processing Requirements:

- Supports proposal for pre-auction public notices and letter-perfect application screening. (p.6)
- Recommends that no site specific engineering information be filed prior to auctions as this will unnecessarily burden auction participants. (p.7)
- Application process for bidding for the two 30 MHz blocks of spectrum in each service area should not require multiple applications. (p.8)

Specific Services:

- Spectrum auctions should not apply to Community Antenna Relay Services and Point-to Point Microwave services, as there is no congressional authority. (p.8)

THOMAS CREMA

Interest: Partner in a group that has applied for nearly forty cellular unserved area licenses

Specific Services:

- Auctions should not be applied to the already filed applications for cellular unserved areas. To do so would cause financial damage and dislocation to thousands of applicants, many of whom are small businessmen and women. Basic fairness requires the FCC to allocate these licenses by lottery. If such a decision cannot be made based on the available information, then the FCC should allow additional time for public comment on this issue. (1)

DATA LINK COMMUNICATIONS

Interest: Not identified.

Payment Methods:

- Supports allowing bidder to designate part or all of cash deposit to be used as a deposit for bidding or to make up the 20% required payment upon winning; deposits could be rolled forward to other auctions.

Treatment of Designated Entities:

- Once a small business wins an auction it should be able to withdraw from other auctions where sealed bids have been submitted; should be able to use deposits for other bids as credit toward 20% down payment.
- Small businesses and minority firms should be allowed to pay for licenses on installment basis over three to five years.

Specific Services:

- FCC should proceed as soon as possible with lottery for MAS licenses; applicants have invested time and money into the applications process; FCC has moral/legal duty to proceed with process.

DEVSHA CORPORATION

Interest: A start-up Delaware corporation, formed to provide newly emerging communications services; owner is a United States citizen of Indian (Asian subcontinent) ethnic background.

Payment Methods:

- The FCC cannot lawfully require substantial upfront payments from designated entities as a prerequisite for competitive bidding eligibility. Also questions the FCC's statutory authority to require any upfront payments. The justification for such a requirement appears to be based in part on revenue maximization, which is a prohibited purpose under the statute. To the extent the FCC is concerned that the auction will terminate with the winning bidder unable to pay, the auction can be kept open until the granted license is final and unappealable. (4)

Treatment of Designated Entities:

- Supports the FCC's proposal to base its system of preferences upon the existence of a small business or rural telco and not upon the gender or minority status of the applicant. The use of further category-specific preferences might lead to reversal of the entire preference system. The FCC can reasonably presume that most women-owned and minority-owned businesses are small businesses. (2-3)
- The definition of Asian Americans should include those from the Indian subcontinent of Asia. (3)
- Supports the FCC's proposal to define small businesses using the criteria of the SBA. (3)
- The FCC should adopt a wide variety of competitive bidding preferences for designated entities, including: the payment of auction deposits and winning bids by installments, amortized over the life of the granted license; application of a bid multiplier (suggests 125%) for auction bids made by designated entities; and use of tax certificates when a license is sold to a designated entity, when a designated entity sells its license in order to pay any deferred auction price, and when a designated entity sells a minority interest to a non-controlling investor. (5)
- Rejects FCC conclusion that it can satisfy its statutory obligations to give a preference to designated entities by making two PCS frequency blocks into a designated entity "spectrum ghetto." Whatever preferences are awarded to designated entities should apply to all auctionable licenses. (5)

Safeguards:

- Opposes the FCC's proposal to pile its competitive bidding/payment requirements on top of existing financial qualification requirements. This cumulative showing of financial qualifications would disadvantage designated entities, which historically have been constrained by difficulties in capital formation and financing. The demonstration of financial qualifications in competitive bidding should be sufficient; in the case of non-mutually exclusive situations (thus not subject to auction), the applicant should be permitted an opportunity to file any required demonstration of financial qualifications. (6)

Application Processing Requirements:

- FCC should adopt the SBAC Report's recommendation that SBICs and SSBICs be treated as bona fide financial institutions for financing purposes in any and all services. (7 n.10)

DIAL PAGE, INC.

Interest: Provides public mobile service, private carrier paging service, and SMR service throughout southeastern United States.

Combinatorial Bidding:

- Opposes combinatorial bidding; combinatorial bidding will result in bulk of PCS spectrum being awarded to large operators; if Commission adopts combinatorial bidding, combinatorial bids should be submitted prior to bidding for individual markets, and should be used as floor for individual market auctions; bidders should be required to make up-front deposit of 50% of bid; combinatorial bidders should be required to meet the build-out requirements in all MTAs they acquire. (2-3)

Treatment of Designated Entities:

- Award of preferences must be limited to those who truly might suffer from a lack of access to capital; minority and female applicants must meet the qualifications of small businesses in order receive auction preferences; Commission should require detailed disclosures in order to evaluate whether a company qualifies as a small business. (4)
- Rural telephone companies should be defined as local exchange carriers which in the aggregate serve no more than 150,000 access lines. (5)

Specific Services:

- In fashioning method for licensing PCS, Commission should be guided by three goals: 1) speed in issuing authorizations; 2) flexibility to operators to fashion services to meet customer demand; and 3) fairness to entities bidding for licenses. (2)

ABBY DILLEY

Interest: Partner in group that has applied for almost forty cellular fill-in licenses; has invested significant amounts of time and capital into preparation of applications.

Applicability of Competitive Bidding:

- Pending applications for the cellular unserved area licenses should be allocated as soon as possible by means of a lottery process; if such a decision cannot be made with available information, additional time should be allowed for public comment.

DIVERSIFIED CELLULAR COMMUNICATIONS

Interest: Not indicated

Payment Methods:

- A qualified small business should be entitled to dedicate a portion of the anticipated downstream revenues to its bid structure in an "installment payment" plan. This will enhance the ability of small businesses to compete. (1)

Treatment of Designated Entities:

- Small businesses should receive preferences as directed by Congress. (1)

DOMESTIC AUTOMATION COMPANY

Interest: Manufacturer of private microwave, multiple address system (MAS) radio equipment.

Applicability of Competitive Bidding:

- Supports the FCC's tentative conclusion to exempt private services from spectrum auctions. (4)
- Supports the FCC's tentative conclusion that spectrum is "principally used" for private purposes when the majority of licensees use the spectrum for internal purposes. For this reason, the FCC should exempt MAS channels from auctions because their principal use is for private, internal operations. (5)

Safeguards:

- When lotteries are used for future MAS application filing windows, the FCC must adopt strict anti-trafficking rules to stem speculation. (6-8)

JOHN DUDINSKY

Interest: A partner in a partnership that was awarded two RSA cellular service areas in a previously held lottery, and an active participant in the operation of these systems. A participant in the current cellular fill-in lottery.

Specific Services:

- Competitive bidding should not be applied to the cellular unserved areas lottery. (1)
- To assure fairness and public access to cellular telephone service opportunities, it is critical that the FCC expeditiously proceed under the originally announced cellular lottery guidelines. (1)

DUNCAN, WEINBERG, MILLER & PEMBROKE, P.C.

Interest: Law firm representing municipalities, municipal electric utilities, quasi-governmental authorities, rural electric cooperatives, franchising authorities, and local governmental authorities that have interest in services that will be subject to competitive bidding. (p.1)

Bidding Methods:

- Oral bidding should be considered in light of the different positions of governmental and non-governmental bidders. (p.3)

Payment Methods:

- There should be no minimum bid requirement. (p.4)
- Local governmental authorities should be treated differently from commercial enterprises; installment payments should be allowed. (p.4)

Sequence of Bidding:

- It would be inconsistent with Congressional mandate to start auctioning with largest markets and work downward; instead, should start with smallest markets. (p.5)

Application Processing Requirements:

- Supports proposal to display, rather than tender, "upfront payments". (p.3)

Other:

- Competitive bidding process should not discourage or inhibit participation by local governmental authorities; process should facilitate development of service in smaller markets and in rural areas. Thus, for each element of bidding process, Commission should consider impact on local governmental applications. (p.2)

ECONOMICS AND TECHNOLOGY, INC.

Interest: Not indicated (consultant)

Treatment of Designated Entities:

- The Commission should amend its list of qualifying minorities to include the handicapped and the disabled. The participation of handicapped persons in such companies would ensure new wireless applications meet the unique needs of such individuals (1-4).

E.F. JOHNSON COMPANY

Interest: Equipment manufacturer and 800 MHz SMR licensee.

Applicability of Competitive Bidding:

- Auctions should not be used on channels shared by non-profit private users and commercial services or where the essential character of the service is not dictated by one category of license. (4)

Payment Methods:

- Small businesses should be provided a variety of flexible payment options. (5)

Treatment of Designated Entities:

- The definition of small business and rural telephone companies should rely on standards established by the Small Business Association. (6)

Specific Services:

- Local 220 MHz channels should not be subject to competitive bidding because they are available for both commercial and non-commercial purposes. (6,7)
- Mutually exclusive 800 MHz and 900 MHz SMR channels should be subject to auctions. (7)
- Only applications for initial SMR licenses should be subject to auctions. Allowing existing 800 MHz and 900 MHz SMRs to expand their geographic service area should be considered a modification of license not subject to competitive bidding. (8)
- The FCC has correctly characterized the 800 MHz general category channels as inappropriate for auctions. Its analysis should apply equally to private land mobile channels in the 470-512 MHz band and any "refarmed" private land mobile spectrum below 800 MHz. (9)

FIBERSOUTH, INC.

Interest: Newly organized, entrepreneurial competitive access provider based in Raleigh, North Carolina; intends to bid for PCS licenses

Payment Methods:

- Supports use of installment payment plans for small businesses, and suggests that the FCC specify that the first installment payment not be due until the beginning of the third year of the license term. Small business PCS licensees initially will need to devote most of their capital resources towards network construction and deployment. Commencement of the installment payments in the third year of the license term will enable the small business PCS licensee to begin to generate revenues and place the PCS licensee in the best posture to compete and pay its bid price in full. (5)
- Pre-auction deposits proposed by the FCC as a pre-condition to bidding in auctions generally should not apply to small businesses, women and minority-owned businesses, and rural telephone companies. Otherwise, this requirement could severely restrict the ability of designated entities to participate in auctions. (6)
- The FCC should provide a grace period for small businesses that default on any payments to the government. The rules should provide that small business PCS licensees will be given notice of default within a specific time period and should provide small businesses with a minimum grace period of six months to cure any defaults. During the grace period, restructuring of the payment terms should be permitted. (7)

Treatment of Designated Entities:

- Definition of small businesses is key to their participation in PCS. Valuation of the net worth of an applicant should relate back to the date of the FCC's adoption of the final report and order in the PCS docket on September 23, 1993. Using this date rather than a later date (such as the date of the auctions) will enable small businesses to raise capital in the financial markets without jeopardizing their preferred status as a small business -- small businesses are likely to need to acquire capital for PCS bids that easily could exceed the \$6 million benchmark. (2-3)
- Adoption of this valuation date also will weed out applicants that alter their structure or manipulate their net worth to take advantage of the bidding policies proposed for small businesses. (4)

FIRST CELLULAR OF MARYLAND, INC.

Interest: Cellular Licensee, applicant for cellular unserved areas. (1)

Payment Methods:

- The deposit requirement is fair, and will expedite delivery of cellular service to unserved areas. The installment payment plan will allow qualified small businesses to compete more effectively in the auctions, allowing the small businesses to include anticipated revenues in their bid structures. (3)

Specific Services:

- Cellular unserved area auctions should be limited to those entities that applied prior to July 26, 1993. This would eliminate the need to open a new filing window, and not delay the implementation of the new services. (2)

Other:

- The requirement that an individual application must be filed for each cellular geographic service area (CGSA) should be included in this Rulemaking. (2)

DAVID F. GENCARELLI

Interest: Partner in a group that has applied for nearly forty cellular unserved area licenses

Specific Services:

- Auctions should not be applied to the already filed applications for cellular unserved areas. To do so would cause financial damage and dislocation to thousands of applicants, many of whom are small businessmen and women. Basic fairness requires the FCC to allocate these licenses by lottery. If such a decision cannot be made based on the available information, then the FCC should allow additional time for public comment on this issue. (1)

Interest: Not identified.

Bidding Methods:

- Identities of bidders should be masked in order to prevent entities from strategically purchasing blocks with the sole intent of blocking the plans of another bidder. (13)

Sequence of Bidding:

- Bidding for Blocks A and B must be linked so that participants who desire to obtain a license in either block can bid on both blocks; provides detailed explanation of proposed bidding procedure for Blocks A and B. (3-6)
- Blocks C through G should be auctioned on a BTA basis, with Blocks C and D set-aside for designated entities; blocks should be auctioned in the following order: 1) sealed bids for the entire MTA; 2) oral auction of individual BTAs; 3) comparison of highest sealed bid to the total of individual BTAs. (12)
- Commission should start with the smallest MTA in Block A and proceed to the largest MTA in Block A. (12)

Treatment of Designated Entities:

- Scope of preferences should be limited; liberalized payment terms should not apply outside the set-aside blocks; rural telephone companies should not be a designated entity outside of their franchise areas. (13)

Application Processing Requirements:

- Applicants should be required to submit only the short form to participate in auction; winning applicant should be permitted to submit long form within a reasonable period after winning an auction. (14)

Specific Services:

- Opposes auctions for Fixed Satellite Services, Point-to-Point Microwave Services and Mobile Satellite Services; it is unclear how these applications could be considered mutually exclusive. (14)

Other:

- Rule attributing all PCS ownership interests of 5% or more to the holder of such interest should be changed to 20%; winning bidders must be given a grace period to come into compliance with any ownership restrictions; 5% rule should also be revised for passive investors. (6)
- Proposes designating one of the 30 MHz Blocks, preferably Block A, as the non-dominant carrier block; dominant cellular carriers should be precluded from owning licenses in this block. (9)

GEOTEK INDUSTRIES, INC.

Interest: Licensee of 900 MHz SMR systems.

Bidding Methods:

- Supports oral bidding for more accurately reflecting the value of the license. (10)

Combinatorial Bidding:

- Does not support combinatorial bidding because it would be cumbersome and hard to implement without distorting the auction process. However, it may work in unoccupied spectrum such as PCS but not where there are existing licensees such as the 900 MHz SMR band. (11)

Specific Services:

- Before accepting new applications for 900 MHz SMR systems that would create mutually exclusive situations, the FCC should allow existing 900 MHz SMR licensees to build out their systems across their associated major trading area. (7,8)

Other:

- Preferences in the auction process should be given to applicants proposing new innovative digital technologies in the 900 MHz SMR band. (12)

GTE

Interest: Local exchange, 800 MHz air-to-ground, and cellular telephone carrier.

Applicability of Competitive Bidding:

- Supports closely tracking legislative language and thus excluding non-initial licenses from bidding. (2)
- Opposes auctioning intermediate links, since these links are analogous to licenses used for internal communications, the links are frequency coordinated and not often mutually exclusive, and auctioning these links would be contrary to legislative policy goals. (3-4)

Bidding Methods:

- Competitive bidding goals are best served by oral sequential bidding since this method results in assignments based on sound economic principles, allows informed judgments on continuing in bidding, and the party ultimately willing to pay the most will win. (5)

Sequence of Bidding:

- Rational decision making is enhanced by auctioning the biggest PCS spectrum blocks first, proceeding from largest to smallest service areas. (6)

Combinatorial Bidding:

- Combinatorial bidding is not in the public interest since it contravenes findings in the PCS order that nationwide authorizations unduly restrict entry, do not provide sufficient technical diversity, limit consumer choices, and slow service deployment. (6-9)

Payment Methods:

- Supports proposals regarding prompt payment of deposits, but favors a reasonable time for auction winners to tender full payment. (9-10)
- Supports proposed deposit requirements. (10-11)

Treatment of Designated Entities:

- The FCC's policies toward designated entities should be carefully crafted to prevent abuse. (12)
- "Rural telcos" should be defined as "those carriers providing telephone exchange service by wire: (1) in an

area having no incorporated place of 10,000 or more inhabitants and no territory included in a Census Bureau-defined 'urbanized area'; (2) to less than 10,000 subscribers; or (3) whose income accrues to a state or political subdivision thereof," independent of the company's relationship to a parent or holding company. (13)

- Experience in the broadcast services demonstrates that strict qualifications criteria are needed for preferences for small businesses and businesses owned by women and minorities, including a 50.1% ownership limit. (13-14)
- Supports the SBA definition of a small business--net worth not in excess of \$6 million with average net after tax revenues for the last two years not in excess of \$2 million. (14)

Safeguards:

- Safeguards against unjust enrichment are needed only for designated entity participation, and should include: compliance with threshold technical and financial requirements; certifications regarding non-speculative motivation for filing; build-out requirements; and antitrafficking rules. (16)

Application Processing Requirements:

- The FCC should require disclosure of the identity of a bidder's owners and its bidding agents on the short form and publicly disclose such information. (11-12)

Specific Services:

- The FCC should implement competitive bidding for mutually exclusive applications for private radio licenses involving service for profit to subscribers. (17)

GVNW INC./MANAGEMENT

Interest: Consultant to independent telephone companies

Treatment of Designated Entities:

- The large size of BTAs and MTAs and construction requirements will attract large scale providers with little incentive to serve rural areas. Rural telephone companies are uniquely positioned to address the needs of rural areas (1-2).
- In the cellular service, many rural telcos were shut out from providing service and some of their customers are still without cellular service (2).
- The proposed rules impede the ability of rural telcos to provide PCS in their service areas (2-3).
 - The rules should avoid a situation where the rural telco must buy a license for an entire BTA or MTA even though it may be primarily interested in, and most capable of, serving only its own serving area.
 - The PCS construction deadlines will not guarantee deployment in rural areas as these requirements can be met by only serving metropolitan areas.
- Small telephone companies that serve fewer than 50,000 access lines should be eligible for designated entity preferences both inside and outside their telephone serving areas (5).
 - Channel block C should be set aside only for small telcos to promote their participation in the provision of PCS (5).
 - Small telcos that lose in the bidding process for the set-aside blocks should be permitted to apply to partition the market to carve out their service area. The rural telco would be required to pay a discounted pro rata portion of the successful bid on the basis of 70% of the auction cost per pop (discount is necessary to take into account the added cost of providing service to rural areas) (4, 5-6).
 - Outside of their service areas, small telcos should be entitled to participate as a designated entity for the set-aside spectrum blocks. Small telcos should also be entitled to certain preferences in bidding for non-set-aside blocks, including deferred payment, a 10% bid credit, and tax credits (6).

HUGHES COMMUNICATIONS GALAXY, INC. AND DIRECTV, INC.

Interest: Licensee and service providers in the fixed satellite service and direct broadcast satellite service.

Specific Services:

- The FCC has presumptively chosen not to view satellite applications as mutually exclusive and has instead relied on flexible licensing policies in processing satellite applications. Thus, neither the FSS nor the DBS services meet the threshold requirement for exercising competitive bidding. Further, the current processing procedures for satellite applications have proven successful and should not be displaced merely because they preclude the invocation of competitive bidding. (3-6)