

TELEPOINT PERSONAL COMMUNICATIONS, INC.

Interest: Apparently, small business PCS provider

Payment Methods:

- The upfront payment of two cents per MHz will limit the participation of speculators without the resources to establish an effective PCS system to the public. (p. 2)
- Upfront payments should be refundable upon disqualification for any reason other than flagrant violation of the rules. (p. 2)
- Recommends that the 20 percent payment be reduced for designated entities to 10 percent of the difference between the upfront payment and the license price to facilitate investment financing. (p. 3)
- The same financing terms available to designated entities bidding on set-aside blocks should be available for any license acquired by a qualified designated entity. (p. 3)
- The payment term should be the term of the license, ten years, and the first payment should not be due for two years, with quarterly payments of 0.5 percent of the license price until year five when the balance will be amortized by equal payments through year ten. (p. 3)
- In order to make financing more available to designated entities, the FCC should allow financing organizations to have a security interest in the license purchased at auction. (p. 3)

Treatment of Designated Entities:

- Supports the proposal to set aside two frequency bands for bidding by designated entities. (p. 1)

Specific Services:

- A common air interface is necessary for PCS to allow for nationwide coverage and standardization for both small and large business subscribers. (p. 2) National roaming with transparent interconnection can be accomplished with the existing national networks. (p. 2)
- A 20 MHz band is sufficient spectrum for a PCS system and will not create difficulty for small businesses to deliver service to the public. (p. 2)

THE TELMARC GROUP AND TELMARC TELECOMMUNICATIONS, INC.

Interest: Not indicated.

Bidding Methods:

- Recommends open sequential bid auctions, starting with the largest asset. Requests the Commission to consider block auctions of combined asset blocks in a sealed pre-oral auction bid. The winner would be the highest of the two. (3)

Treatment of Designated Entities:

- Recommends implementation of a strict rule that will ensure that members used to secure DE status are directly involved in the DE to preventing "fronting." (3)
- Generally supports the use of existing rules for defining minorities and women, the use of the SBAC standards for defining small businesses, and the Commission's proposals for defining rural telephone companies. (11)
- Recommends use of a "bright line" test to include all companies that earned pioneer's preferences in various services and qualifying DEs in mechanism that grants such entities a 10% reduction in their overall required bid. (3-4)

Other:

- In the context of awarding some sort of preference in the competitive bidding process, strongly urges the Commission to refrain from using any standard that focusses on the amount of money spent. (13)
- In-depth discussion of general auction principles. (5-10)

TELOCATOR

Interest: Personal Communications Industry Association

Applicability of Competitive Bidding:

- Ancillary communications licenses obtained for PCS or other wireless networks should be exempt from competitive bidding processes as they are not directly involved in transmission of subscribers' information for a fee. (p. 18)

Bidding Methods:

- Supports the use of oral sequential bidding for the licensing of new spectrum, including broadband PCS, as it is the only mechanism that ensures licenses are awarded to those that value them most highly and provides clear information about who is bidding and the bid amount at all times during the auction process. (p. 3)
- Objects to sealed bidding because it inflates the value of spectrum, resulting in undercapitalized licensees that cannot survive in a competitive market. (p. 3)
- Objects to sealed bidding even in those systems designed to compensate for the "winner's curse." For example, the use of sealed bidding processes that allow the winning bidder to pay only the highest losing bid distorts market mechanisms. (pp. 3-4)

Sequence of Bidding:

- The largest geographic market divisions should be licensed first, followed by smaller license areas, to allow participants to pursue rational aggregation strategies if one or more bids for multi-market areas fail to succeed. (p. 4)

Combinatorial Bidding:

- Opposes combinatorial bidding as unfair and irrational-- it would disrupt aggregation strategies and raise the potential for litigation, and it should not be allowed as a back-door reintroduction of national service areas. (pp. 5-7)

Payment Methods:

- Minimum bids place artificial constraints on market processes. (pp. 4-5)

- Concurs with the use of tax certificates, bidding credits, and installment payments for designated entities. (p. 7)

Treatment of Designated Entities:

- Objects to set-asides because they lead to market distortions and do nothing to assist designated entities in building viable businesses, once a license has been won. (pp. 7-9)
- Recommends adoption of a required ownership threshold of 51 percent to encourage participation by designated entities without fostering abuse. (p. 9)
- Rural telephone company should be defined as a local exchange telephone company that (a) serves a geographic area that does not include either any incorporated place of 10,000 or more, or any territory incorporated or unincorporated included in an urbanized area, or (b) provides telephone exchange service by wire to less than 150,000 access lines, in combination with all parent companies and subsidiaries, as of the date of the bid. (pp. 10-11)
- Rural telco should only be treated as a designated entity when bidding for a license within that local exchange carrier's franchised service area. (p. 11)

Safeguards:

- Anticollusion rules are unwarranted -- the behavior and outcomes the FCC seeks to prevent are more properly addressed by existing antitrust regulations. (p. 5)
- If combinatorial bidding is allowed, the FCC should enforce construction requirements tailored to ensure performance commensurate with a national license. (p. 6)
- Post-auction transferability of licenses among qualified entities should be allowed to correct any flaws in the spectrum assignment process. (pp. 14-16)

Application Processing Requirements:

- Land mobile services should be allowed to utilize an FCC Form 401 without the associated engineering, accompanied by the \$230 filing fee, and identifying the name and address of the real party in interest, a contact representative, the license at issue, and any necessary self-certifications regarding eligibility for designated entity status. (p. 13)

- Concurrs that a deposit of 2 cents per pop per megahertz should be available from all bidders entering an auction for a particular market and additional funds bringing the total deposit paid up to 20 percent of the final award should be tendered no later than 5 days after the auction. (p. 13)
- All deposits should be payable in cashier's checks and nonrefundable in the event that a licensee is unqualified or unable to pay. (p. 14)

Specific Services:

- For 900 MHz narrowband PCS, simultaneous open bidding should be implemented with MTAs offered before the BTAs by order of descending population, with the 50 kHz pairs offered first, followed by the 50 kHz/12.5 kHz pairs, followed by the 50 kHz unpaired channels and the 12.5 kHz unpaired channel. (p. 20)
- A minimum upfront fee of \$25,000 should be adopted for all 900 MHz PCS licenses, except a \$2,500 fee should be used for the 12.5 kHz talk back channels. (pp. 20-21)
- While mutual exclusivity will rarely arise for existing land mobile services, the FCC should resolve such situations expeditiously by immediately issuing a notice to the filing parties establishing a time for an abbreviated oral auction. (pp. 22-23)

THUMB CELLULAR LIMITED PARTNERSHIP

Interest: Cellular licensee and unserved area applicant in Detroit market.

Specific Services:

- For reasons of effectuating legislative intent and public policy, the FCC should allow those entities that have concluded settlements to avoid mutual exclusivity in cellular unserved areas to proceed with licensing rather than wait for lotteries or auctions. (1-5)

TIME WARNER TELECOMMUNICATIONS

Interest: Conducting PCS experiments pursuant to PCS experimental licenses in New York City, Columbus, Ohio, Cincinnati, Ohio, and St. Petersburg, Florida

Applicability of Competitive Bidding:

- The licensing of intermediate links should not be subject to competitive bidding procedures. The Commission has too broadly interpreted the statutory directive in proposing to auction intermediate link licenses. Specifically cites point-to-point microwave links used in cellular systems (and CARS) as facilities that should be excluded from competitive bidding. Introducing auctions to such intermediate links risks upsetting the efficient balance now achieved under the current frequency coordination and interference resolution processes. (6-9)
- The Commission should interpret the statutory language regarding competitive bidding as applying only to radio spectrum that actually delivers a communications service directly to subscribers instead of to all internal spectral components of an "end-to-end" service. (7)

Safeguards:

- The use of competitive bidding procedures makes antitrafficking restrictions unnecessary and counter-productive, at least in the case of spectrum blocks not reserved for bidding by designated entities. Post-auction transactions can be expected to be driven by legitimate business considerations. To impose antitrafficking restrictions would place the FCC in the untenable position of having to make judgments as to what constitutes unjust enrichment or when a transfer would be considered premature. (4-5)

Specific Services:

- Supports competitive bidding as the means of selecting PCS licensees. (1-2)

TRI-STATE RADIO COMPANY

Interest: Communications company primarily engaged in the provision of one-way paging services.

Payment Methods:

- Tri-State suggests elimination of or substantial reduction of upfront payment requirements as applied to DEs because substantial payment and deposit requirements could significantly hinder the ability of small businesses to participate. (15-16)

Treatment of Designated Entities:

- Commission did not go far enough in crafting its competitive bidding procedures to provide the maximum opportunity for participation by DEs. (5)
- With respect to the definition of "small businesses," Tri-State suggests that the \$6 million net worth standard is too low to accommodate the capital intensive nature of telecommunications, and suggests instead a net worth standard of \$50 million or less. (7-8)
- Tri-State also suggests that the \$2 million average net income test be replaced with a \$5 million average annual operating cash flow test. This would provide a clearer picture of the overall size, volume and extent of an applicant's business and prevent large firms from circumventing the limit by accounting maneuvers that limit net income. (8-9)
- Also believes that 1500 employees is too many for an applicant to qualify as a small business, and suggests instead a standard of 200 or fewer employees. (9)
- Tri-State believes that the Budget Act constitutes a specific statutory direction that allows the adoption of small business standards different than those used by the SBA, and urges the Commission specifically to address the issue of this discretion. (10 n.15)
- Firmly supports the use of regulatory set-asides for DEs, particularly for broadband PCS spectrum. (10-11) Tri-State suggests, however, that the Commission go further by: (a) setting aside additional broadband PCS spectrum of at least a 30 MHz frequency block to be assigned on an MTA basis; and (b) making clear that in licensing any new radio services by competitive bidding in the future, spectrum will be set-aside for DEs whenever possible. (11-13)

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- Supports the adoption of additional steps suggested by the Commission to meet the Congressionally-mandated economic opportunities for small businesses such as installment payments and tax certificates. Suggests two caveats, however. First, Tri-State believes that eligible small business applicants should be able to take advantage of these preferential steps when bidding on all spectrum licensed pursuant to competitive bidding. Thus, in the PCS context, a small business should be able to use installment payments, bidding credits, tax certificates, and distress sales regardless of whether it is bidding on set-aside PCS Blocks or other PCS spectrum. (13-14)
- Relatedly, although Tri-State recognizes the importance of including women and minorities in the telecom industry, it believes that this goal might best be served by relying on classification as a small business to ensure participation by these groups. This economic-based approach avoids extensive, lengthy legal challenges to the competitive bidding process while ensuring women and minorities opportunities for licensing. (14-15)
- Should allow small businesses to form consortia and bid in combination with other entities without losing DE status. (17-18) To prevent abuse, Tri-State suggests requiring the DE to hold and retain de jure or de facto control of any facility licensed as a result of preferential treatment afforded based on DE status. (18)

TRW, INC.

Interest: Mobile Satellite Services (MSS) or MSS and Radiodetermination Satellite Services (MSS/RDSS) applicant.

Applicability of Competitive Bidding:

- Threshold criterion that auctions be used only for initial applications is essential as competitive bidding at the renewal stage would require existing providers to pay simply for the privilege of staying in business, likely leading to abuses of the process. (22-23)

Payment Methods:

- To facilitate the introduction of new services, the amount of the upfront payment and deposit required for a particular service should be inversely proportional to the degree of risk and novelty of the technology or its commercial application. (26) Similarly, if successful, such licensees should be given greater flexibility in making installment payments. (28-29)

Application Processing Requirements:

- The Commission should establish a 30-day window after the selection of an initial winning bidder within which other parties may file petitions to deny. In the event that the winner is disqualified, the other initial round bidders should retain their cut-off protections and a second round of bidding should follow. New applications should be accepted only if no qualified applicant emerges. (31-32)

Specific Services:

- Outstanding issues in MSS/RDSS rulemaking proceedings include possible means of eliminating mutual exclusivity and, as such, are issues the Commission must consider and resolve before deciding to use auctions for these services. (6-8)
- If the Commission did decide to use auctions for MSS/RDSS applications, the only portion of the MSS/RDSS bands that could be included is the segment of the L-Band at 1613.8-1626.5 Mhz. No auction would be required for the S-band spectrum at 2483.5-2500 Mhz because all four of the current applicants proposing to use this spectrum have indicated the intention to do so on an interference-sharing basis. Similarly, no auction would be required for the 1610-1613.8 Mhz spectrum segment of the MSS/RDSS uplink band as all four applicants

proposing to use this spectrum have likewise so agreed.
(6-7 n.5)

- The considerations that promoted Congress to enact the competitive bidding legislation, and the Commission's auctioning proposals, both of which center on PCS, are particularly ill-suited for application to MSS/RDSS. For example, in the MSS/RDSS context, it will be difficult if not impossible to ensure an equitable distribution of licenses because the services are national in scope and a single bidder may secure access to the entire bandwidth. (12-14)
- Because MSS/RDSS service is international in scope, the Commission must take international considerations into account in deciding whether to apply competitive bidding to this service. The Commission must consider, for example: (a) the reaction of the International Telecommunication Union (ITU), which expects that no nation will request access to orbital locations solely for the purpose of pecuniary gain (15-17); (b) the fact that competitive bidding could deter potential service providers and materially disadvantage licensees in the global market if competing systems are permitted entry without paying for the spectrum. (18-19)
- Regardless of action taken with respect to auctioning of the MSS/RDSS band segment at 1613.8-1626.5 MHz, under no circumstances should feederlink spectrum, which is generally non-adjacent to service uplink and downlink bands, be subject to bidding. Rather, the authority to operate an MSS/RDSS system in primary uplink and downlink frequencies should carry with it the authority to use a sufficient amount of additional spectrum required for feeder links. (23-24)

Other:

- Lotteries are also inappropriate as a means for selecting MSS/RDSS licensees because of the low number of applicants. (21-22 and Attachment)

Safeguards:

- The Commission must exercise care to avoid discouraging efficient cooperation among applicants seeking the same types of services. The Commission should clearly direct its focus in attempting to discourage collusion to conduct that is anti-competitive. (30)

UNIQUE COMMUNICATIONS CONCEPTS

Interest: Not Indicated

Sequence of Bidding:

- The first 100 markets should be granted via oral bidding, from largest to smallest, auctioning all licenses for that market before moving to the next, smaller market. (7)

Payment Methods:

- Deposits - The FCC should verify the amount of liquid capital available to the bidder. If the bidder cannot verify liquid capital, then the bidder should be required to make an extremely large deposit in the market they wish to participate. This method would decrease the administrative burden on the FCC, and it would be more acceptable for those wishing to participate in multiple markets in the MTAs and BTAs. (6)
- Payment for Licenses - Small businesses should be allowed to defer auction payments. A portion of profits over a ten year period can be applied to the cost, with a balloon payment at the end of the period. Because minority status can be claimed regardless of the size of the bidding party, a tax certificate should be used instead of the payment deferment system. If an entity fits under both (small business and a minority), then the party can choose which option they want. (3) All the Block D licensees should be granted tax certificates. (6)

Treatment of Designated Entities:

- To assist small businesses and minority owned businesses in providing PCS, Block C should be reserved for these entities. Small businesses and minority owned businesses will need outside financing. If a licensee of Block C had 30 MHz of spectrum to compete effectively within the BTA, the risk to lending institutions will be greatly decreased. The licenses themselves can serve as collateral, almost guaranteeing private funding. There should be 10 MHz of additional spectrum given to Block C from the unlicensed isochronous PCS in the 1890-1900 MHz range. (2-3)
- The D block should be exclusively reserved for rural telephone companies. An additional 10 MHz of spectrum from the unlicensed isochronous PCS in the 1900-1910 MHz range should be allocated to the D block. The

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additional spectrum will enable the rural telcos to obtain financing and deploy services rapidly. (4)

Other:

- Experimental licensees should be allowed to bid for Block D as a reward for those that completed the research and the development of the PCS technology. Granting a few commercial licenses from hundreds of applications will serve as a disincentive to future research and development. (5)

UNITED NATIVE AMERICAN TELECOMMUNICATIONS, INC.

Interest: UNAT intends to seek FCC authority to set aside a 20 MHz block of PCS spectrum to be licensed on a nationwide basis for Native American reservations, Rancherias, Native Alaskan villages, Native American communities and Native Hawaiian communities. UNAT is a licensed interstate common carrier. (1)

Bidding Methods:

- The process must be fair and equitable to all parties involved and must include equal opportunity for all parties, even the smallest bidder or special interest group. The usage of the "second winning bid" method will create problems, such as those seen in New Zealand. (9)

Payment Methods:

- The installment payment system for groups who would have difficulty obtaining financing is fine, but the FCC must safeguard against designated entities joining with large firms using this method, for these would have an advantage over "stand alone" designated entities. A special stand alone category should be established. (10-11)

Treatment of Designated Entities:

- Minority and women owned businesses, small businesses and rural telcos that want the bidding preference must state their qualifications, and must have participated in similar cellular or telco service regulated by a state agency or the FCC in the operation of a telecommunications business. (5)
- In the case of Native American businesses, the FCC should exclude economically disadvantaged individuals or firms, and issue licenses on the basis of performance and how the firm will impact the area by creating not only access to the system but employment for the area also. (6)
- If no spectrum is set aside and the larger businesses go by straight competitive bid in the larger BTAs, then small businesses, women and minority owned businesses, and rural telcos will lose out. (9)
- The 10% advantage credit for designated entities should be adopted. (10)

- The constitutionality of the preferences for Native Americans is codified in Title 25-Indians §450a. There is also the Congressional declaration of policy and Public Law 100-472 (100th Congress), stating the U.S. government is committed to supporting and assisting Indian Tribes to develop the economies of their respective communities. (12)
- The establishment of minority consortia is fine, but to determine if the consortia is a minority consortia, it must be 51% owned and operated by minorities. (16)

Other:

- The 10% innovative technology credit would be time consuming for the FCC and difficult to judge without field testing prior to the awarding of the bid. (10)

UNITED STATES SMALL BUSINESS ADMINISTRATION

Interest: Government agency promoting small business interests and opportunities.

Treatment of Designated Entities:

- Opportunities for designated entities should be viewed in the context of economically feasible, geographically realistic and potentially profitable bandwidth combinations, and therefore FCC should consider economically attractive individual and aggregate bandwidths that will meet the fairness standard of equitable participation by designated entities. (1)
- Supports proposed alternative payments options as enhancing designated entities' ability to participate. (1)
- Encourages adapting the small business set-aside concept to the auction environment. (1)
- Urges consideration of reserving spectrum for qualified participating firms in the USSBA's "Minority Small Business and Capital Ownership Development Program," or 8(a) program as it is known. (1)
- Also urges considering DOD's so-called 1207 program under P.L. 99-166, § 1207. (1)
- Recommends adopting USSBA's definition of small business: "a small business concern ..., shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation..." (1)
- USSBA recommends use of SIC code 4812 (Radio Telephone Communication Service) or 4813 (Telephone Communications, Except Radio Telephone), which both correspond to a small business size standard of 1,500 employees or less. (2)

UNITED STATES TELEPHONE ASSOCIATION

Interest: Trade association for telephone companies

Applicability of Competitive Bidding:

- Common carrier renewal and modification applications should not be subject to competitive bidding. (2)
- Applicability of competitive bidding to intermediate links should depend in part on whether existing licensees and their customers are protected. Existing intermediate links are essential parts of the public switched network. (2)

Treatment of Designated Entities:

- With respect to definition of rural telephone companies, definition contained in Part 63 of the Commission's Rules is too restrictive. The FCC should adopt a definition that will operate to promote delivery of PCS and related benefits rather than quarantine certain telephone companies. (3)
- A consortium that is controlled by a qualified rural entity or that has as its general partner a qualified rural entity should be fully able to benefit from the rules applicable to rural telephone companies. (3)

Specific Services:

- Agrees that broadband and narrowband PCS are services where FCC should first apply its competitive bidding rules. (2)
- Opposes applying competitive bidding to BETRS. If the Commission does apply auction procedure to BETRS: it should not do so for any application already granted or on file; it should retarget the service as requested by USTA in 1992 rulemaking petition; and it should act to remove the shared service arrangement that now exists. (4-5)

Other:

- The Commission should make clear that the spectrum itself is not being sold; it should be clear that successful bidders will become licensees of spectrum rights, whose continued license rights remain subject to the overriding conditions of use identified in law and FCC decisions and regulations. (1-2)

U.S. INTELCO NETWORKS, INC.

Interest: Provider of customer database services, calling card billing validation services, 800 RESPORG services, and other database services to over 1000 independent telephone companies nationwide.

Applicability of Competitive Bidding:

- Intermediate links used by common carriers as part of an end-to-end service should not be subject to competitive bidding. (pp 5-7)

Bidding Methods:

- Open oral bidding promotes fairness and will generate lower private information costs. (pp. 8-9)

Sequence of Bidding:

- The option of licensing the spectrum in descending order of population is flawed in that it favors the bigger players. (p. 9) Instead, auctions should be conducted on a band-by-band basis, with the smaller spectrum bands being auctioned first, starting with the smaller population areas within each band. (pp. 9-10)

Combinatorial Bidding:

- Opposes combinatorial bidding because it favors only the bigger players. (pp. 10-11) If combinatorial sealed bidding is permitted, sealed bidders should be forbidden from participating in the oral auction and a substantial forfeiture for failing to close a successful bid should be adopted. (p. 12)

Payment Methods:

- The public interest would not be served by a minimum bid or reservation price. (p. 12)
- Alternative payment requirements for the designated entities are appropriate -- payment of the bid price should be deferred over time, at an interest rate that does not exceed a defined national prime rate. (pp. 12-13)
- Supports utilization of tax credits for designated entities. (p. 18)
- Designated group members should be required to submit not more than one-half the amount of the deposit required of other bidders and the 20 percent payment

should not be applied to designated entities. (pp. 22-23) Instead, they should be required to submit an additional amount equal to the total initial bid deposit required of non-preference entities. (p. 23)

Treatment of Designated Entities:

- Rural telephone companies should qualify for preferential treatment based upon two factors -- both as rural telcos and small businesses. (p. 14) Thus, the FCC should adopt its definition of small telephone companies, those which serve fewer than 50,000 access lines, to qualify for the rural preference, both inside and outside of those areas where they provide telephone service. (pp. 14-15)
- Channel block C should be reserved exclusively for small telephone companies to ensure that rural areas are served and also to promote the participation of rural telephone companies in the provision of new services. (pp. 15-16)
- Small rural telephone companies that qualify as designated entities should be allowed to apply for a partition of their telephone service area within the licensed area prior to construction by the successful bidder, and the partitioning entity should be required to pay the winning bidder a pro rata portion of the winning bid based upon the percentage of the total population in the licensed area within the telephone service area. (pp. 16-17)
- Rural telcos should be allowed to bid outside their telephone service areas on a preferential basis. (pp. 17-18)
- Eligibility for preferences should be accorded to consortia with a super-majority (i.e., two-thirds of control in the hands of designated entities). (p. 18)

Safeguards:

- Transfers between designated entities should not be restricted but block C and D licenses should not be transferable to non-designated entities. (p. 19)
- Suggests that areas remaining unserved within a geographic area after ten years should be ceded for further licensing. (p. 20)
- Application of benchmark requirements to successful designated group bidders is unnecessary. (pp. 20-21)

Application Processing Requirements:

- Long form applications should be required only by the successful bidder within a reasonable time after the auction, such as five business days. (p. 21)
- Disagrees with the proposal to apply a "letter perfect" standard to the short form application and submits that applicants should be allowed to amend these applications to correct for minor errors. (p. 22)

UTILITIES TELECOMMUNICATIONS COUNCIL

Interest: National representative on communications matters for the nation's electric, gas and water utilities, and natural gas pipelines.

Applicability of Competitive Bidding:

- Urges the Commission to address whether certain applications, e.g., to add new channels to an existing license, will continue to be defined as modifications. (4)
- Distinction drawn in the Budget Act between "commercial" or "subscriber" services and "noncommercial" or "private services" highlights the need for the Commission to make discrete allocations for "commercial" and "private" services. (6)
- Because intermediate links are not used to provide service directly to subscribers, and do not enable subscribers to transmit directly, they are not subscriber services and should not be subject to competitive bidding. (7-8)
- Urges caution in attempting to make final designations of the "principal use" of a service until the Commission has an opportunity to review and revise the basic eligibility rules for "mixed" private and subscriber services. (9-12)
- Suggests that lotteries be used to select among mutually exclusive applicants in mixed use bands at least until the Commission can develop discrete frequency allocations or strict eligibility and operational limitations that can ensure that "private" applicants will still have fair access to spectrum, and that use of auctions will not serve as an artificial incentive for applicants to apply for "private" spectrum with the intention of establishing a primarily commercial service. (13)
- Opposes proposal to classify service as commercial if there is any commercial use. (14-15)

Safeguards:

- To prevent unjust enrichment, applicants for transfers or assignments should be required to submit information demonstrating all expenditures made in acquiring the license and complying with construction and operation requirements, compliance with construction benchmarks, disclosure of consideration promised or paid, certification of no other consideration as part of the transaction, and certification by an independent auditor that the consideration does not exceed the licensee's expenditures. These showings may be unnecessary if the licensee proposes to transfer the license

to another entity that would have been eligible under the same terms and conditions as the original licensee. (16)

- Also supports strict limits on sale of licenses acquired via lottery. (16-17)
- Reasonable performance requirements, such as basic construction and loading requirements, will ensure the provision of service and prevent warehousing. A requirement that the licensee serve some portion of the public is generally irrelevant and prohibitive in most services. (17)
- Anti-collusion rules should not discourage legitimate ventures. UTC suggests that the Commission adopt disclosure requirements that reveal potentially collusive activities and that prohibit applicants from discussing proposed bid amounts prior to auction. (18-19)
- To protect the integrity of the bidding process, UTC recommends that waivers relating to eligibility be processed prior to auction. Waivers relating to technical or service rules should be reviewed after auction. Alternatively, applicants should be permitted to request summary disposition of waiver requests prior to auction on the condition that if the waiver is denied, the applicant will not be permitted to participate in the auction. (20)

Application Processing Requirements:

- The Commission should invite the filing of petitions to deny prior to auction to minimize the incentive for losing applicants to join together to challenge the winner. Supplemental filings should be permitted only by waiver, upon a showing that new information has been obtained that reflects the winner's disqualification, and that must be investigated to serve the public interest. (20-21)
- UTC supports the Commission's proposal to conduct a new auction if the winner is found to be ineligible or otherwise disqualified, and recommends that the second round of bidding be opened to new applicants as well as old. This may reduce the incentive for losing bidders to "gang up" on the winner. (21)

Specific Services:

- UTC urges the Commission to find that existing mixed-use services remain subject to lotteries, at least until the Commission has had an opportunity to review and revise the

basic eligibility and operational requirements of these services. (22-24)

- Urges the Commission not to declare all PCS spectrum "commercial" and to reserve some spectrum at 2 GHz for traditional uses. (25-26)
- Opposes proposal to subject all 220 MHz local licenses to auction, with the exception of channels reserved for public safety entities. (28)
- Agrees that 220 MHz noncommercial nationwide channels should be awarded via lottery. (27-28)
- Agrees that Congress did not intend for the General Category land mobile channels or channels obtained through intercategory sharing to be subject to auctions. In the alternative to the above, UTC would not oppose, but does not endorse, the use of auctions if only commercial service applications are found to be mutually exclusive for a particular channel or group of channels. (28-29)
- Recommends continued use of lotteries for mutually exclusive finder's preferences because these are mixed use situations. (29)
- Generally supports the Commission's proposals for other private services, including private land mobile services at 470-512 MHz (30), MAS systems (31), private land mobile services below 470 MHz (31), Private Operational Fixed Microwave Service licenses (31-32).
- UTC urges the Commission not to consider shared systems, whether above or below 800 MHz, as "commercial" for purposes of the competitive bidding rules. (32)
- Generally supports the Commission's tentative conclusion that most common carrier radio services will be subject to competitive bidding, but urges the Commission to exempt shared uses, including: shared point-to-point microwave uses (34), shared control station frequencies available to public paging licensees. (35)
- In addition, for the sake of consistency, UTC urges the use of lotteries for all point-to-point microwave bands. Offering some of these frequencies via lottery and others via competitive bidding may create artificial incentives for common carrier applicants to select only the mixed use bands to avoid competitive bidding. (34)

VALLEY MANAGEMENT, INC.

Interest: Minority-owned business

Payment Methods:

- To minimize effect of lack of access to capital by small businesses, minority and women owned businesses, FCC should allow winner to make unconditional installment payments without interest over a ten year period, with a 10% payment at the time of license award. (4)

Treatment of Designated Entities:

- Rural telephone companies should be limited to bidding on spectrum in the 10 MHz band set aside for DEs. The 20 MHz band should be set aside for small businesses, women and minority businesses. (2)
- Endorses several proposals contained in FCC SBAC Report including: (a) use of tax certificates, etc. to encourage capital formation for owners and investors in minority owned and controlled licensees; (b) allowing minority and female applicants to certify financial qualifications based on "highly confident" letter and letters of intent from qualified firms; (c) awarding innovators bidding credits of 10% or more of bid; (d) allowing installment and royalty payments for qualified small female and minority businesses; (e) authorizing distress sales; (f) seeking legislation to establish a communications capital fund from revenues generated by auctions. (3-4)
- Concurs with FCC proposal to rely on existing rules and policies to define a minority business. Definition should include those of Black, Hispanic surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction. Women should not be included as a minority unless the woman is also a member of one of these groups. (4)

VANGUARD CELLULAR SYSTEMS, INC.

Interest: Cellular carrier.

Treatment of Designated Entities:

- Recognizing costs of PCS deployment, the FCC should not define "small business" narrowly--it should adopt a definition that includes all companies with a positive net income for the last three years with last year revenues not more than \$15M and no more than 1,500 employees. (2-4)

Safeguards:

- The FCC should adopt the following safeguards to assure that designated status is not abused: (1) it should take a "hard look" at applications of successful bidders for potential abuse; and (2) the FCC should incorporate protective measures, such as requiring provision of complete ownership information, reasonable financial showings, and disqualification provisions for those that tender sham applications. (4-6)
- Construction schedules can also protect against abuses by those subject to preferential bidding. (6)