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November 22, 1993

Office of the Secretary
Federal Communications Commission
1919 "M" Street
Washington, D.C. 20554

RE: PP Docket No. 93-253
Section 309(j) Rule Making

To Whom It May Concern:

As a small individual business person I invested in filings for IVDS and paid engineering fees for the necessary license applications. All of this investment was based on the fact that IVDS would be offered as a no connection charge and no time charge service to the recipient. As such, this would essentially be a free versus pay service to the public. My initial effort and investment was done in good faith under the original FCC IVDS rules which were in effect in 1991 and 1992, permitting lottery mechanism for license distribution. I assumed that they would not be arbitrarily changed. I request that before auction is considered for the IVDS licensees that the Commission request comments from prospective IVDS service providers on their proposed operational plans so that the Commission can have the facts available upon which to base a conclusion on the primary use of the IVDS spectrum.

However, should the final determination with respect to IVDS be that lotteries are not permitted and auctions are to be the method of licensing, then I would be in full accord with the comments previously submitted by Romulus Telecommunications, Inc., which follows.

Auction Design

The single most important element in auction design should be simplicity. Complicated auction rules will only feed suspicion on the part of the public that the rules have been rigged to benefit one interest group or another. The simplest procedure is therefore the best.

Oral bidding, as noted in paragraph 37 ("#37"), is likely to be perceived as fair because the process is open, and any eligible qualified bidder who is willing to pay enough can be assured of winning.

Sealed bidding for licenses as part of a group and oral bids for the component parts (#47 & #48) denies the small business bidder the opportunity to pay enough for the market that he wants to build and operate. If a major player wants to buy all of the markets comprising a market cluster, that player should have to compete on

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a market by market basis for each component of the cluster. That assures that each market will go to the party that values it the most (#34 & #41), and maximizes the return to the treasury.

Small business owners of small markets provide service to the public sooner than do major players who own both the large markets and the surrounding small ones. The large market gets built first, because it is more profitable. Small, low population density markets get built only after the large, high population density market is built out. In effect, small markets are warehoused by big players until they get around to building them.

Sealed bids where the Commission expects very few bidders (#49) is a departure from open bidding, and therefore undermines public confidence in the process. It increases the possibility of bidder collusion: the possibility of collusion increases as the number of bidders gets smaller. Finally, what are the markets which are going to have very few bidders? As market size declines, more small business bidders will bid. If anything, small markets will attract more bidders, not fewer.

Sequence of Bidding(#51-#53, #125). In the cellular industry, regions are organized around the major market. PCS is likely to be the same. Aggregation of multiple regions does not improve service to the public; it just reduces competition by making big players into really big players.

The best balance of aggregation and revenue to the treasury would appear to be offering the regions in order of population, each market within the region in order of population, and each spectrum block in descending order of size within each market. This permits those who want to aggregate within a region to do so in one auction session.

Simultaneous sealed bidding (#55) creates problems because of the problems of overall ceilings and having to permit bidders to withdraw bids. If sealed bids undermine public confidence in the process, simultaneous sealed bidding just makes it worse.

Simultaneous ascending bid electronic auctions (#56 & 62) assumes that the major players are to be the sole beneficiary of the auction process. It assumes that there will be no open auction. It discriminates against small business. The creation of such a system would take more time than the Commission has for this proceeding. Keep it simple.

Combinational bidding (#57-#62, #120, #123) creates a very complex alternative to open bidding which will not affect aggregation but is likely to reduce revenue to the treasury.

If a major player wants to purchase all of the markets in a region, it can do so one market at a time in open bidding. A sealed bid for all of the markets in a region forces such a bidder to buy markets which it might otherwise not purchase, but for which it is

forced to bid to meet expected sealed bids from other major players.

As a practical matter, these smaller markets would be unavailable to small business bidders for whom these markets would be just the right size for their resources. The history of cellular build out indicates that the big operator will build the smaller markets last while it fully develops it's large markets, depriving the small market consumer of service until the day before license expiration.

Combinational bidding would reduce proceeds to the treasury, because it makes it impossible for the treasury to receive the highest price from those bidders that value each individual market the most.

A "Final and best" offer (#60) is worse still from the point of view of the small business bidder. He may lose the market for which he has offered the highest bid, not because a major player particularly wants that market, but because the major player is willing to raise his bid for the major market in the region for which it submitted the initial sealed bid. This runs directly counter to the principal of disseminating licenses among a wide variety of applicants, including small business (#11).

Limitations by bidders on winnings and expenditures (#63-65) is a complication arising from permitting simultaneous sealed bid auctions. Open bidding keeps it simple.

Minimum Bid Requirements (#66-#67) places the Commission in the position of determining value in a proceeding specifically designed for value to be determined by the auction process. Failure of bidders to meet a predetermined value simply delays service to the public until such time as the Commission has reduced the minimum bid to the point where it reflects true market value.

Installment payments (#69 & #79) for qualifying entities is the easiest form of alternative payment method to administer. For a seven year license, an appropriate formula would be a down payment of 1/7 the winning bid and six additional equal payments with interest at prime plus one percent on the unpaid balance.

A combination of initial payment plus royalties (#70) would be an ideal formula because payment of, say, a 5% of gross revenue royalty would precisely match payments to market revenues. There is a strong public policy appeal for the treasury to receive an ongoing revenue stream from the operation of spectrum that is a national asset.

Most operators hold each market license in a separate subsidiary, and auditing is simply a matter of looking at the appropriate tax return to determine gross customer revenue. The complexity lies not in the administration but in the bidding.

A royalty approach is appropriate only if all bidders for a

particular license were "royalty" bidders. Then the bidding competition would be the amount of the initial payment. If the final rules provide for specific spectrum set asides for qualified applicants, then royalties would provide maximum opportunity for qualified entities by reducing the cost of entry and the best deal possible for the treasury.

Default (#71) should not place the Commission in the position of becoming a bill collector. It should be sufficient for the amount unpaid, with interest accruing, to be a lien on the license, to be paid when the license is either renewed or transferred.

The Eligibility Criteria (#77) should be for the purposes of establishing a maximum, e.g. not more than a net worth of $6.0 million and earnings of not more than $2.0 million, so that large operators will be excluded from the qualifying class.

Minimum financial requirements should be determined on a service by service basis. And, even then, account must be taken of the fact that a compact market of 100,000 population may be capable of being served by one cell, and require a relatively small investment, compared to a market with millions covering a large geographic area.

Tax certificates (#80) should not be used for those selling their license. The time qualifying entities need help is at the beginning of their activities, not at the end. What the small business applicant needs is installment payments and royalty type of assistance at the beginning.

However, tax certificates would be invaluable in encouraging license exchanges among licensees who wish to rationalize their portfolios in response to a changing marketplace. The Commission should establish procedures for the issuance of tax certificates in the case of exchange of like kind licenses.

Unjust enrichment from auctions (#83-#88) has been an issue in the cellular lotteries because of the Commission's rules which permitted the sale of a construction permit or license without taking any steps to build or operate the market. Rather than involve the Commission in the quagmire of determining market value, the better approach is to prohibit transfers for a three year period after the award of a license. In these circumstances, forbidden transfers would cause the license to cancel automatically (#88).

Where there are multiple licenses in a market, particularly in the case of PCS, the fear of service not being provided to the public (#84) is unfounded, because the service will be provided be the competitors. The handful of cases in which this would be an issue does not warrant the Commission stepping into the valuation quagmire.

Unjust enrichment from lotteries (#89) involves the Commission in

valuation questions much more complicated than in the case of auctions. At least in auctions, there will be a record of prices paid for other spectrum in the same market. None of this data will be available in the case of lotteries. The Commission will be able to implement the intent of Congress just as effectively with a three year transfer restriction without stepping into the valuation quagmire.

The Commission has already enacted **Performance requirements** (#90) for most services. They appear to work reasonably well. The existing framework should be maintained.

Collusion (#93) is most likely among the largest firms. There is already a suspicion among the general public that these large firms will divide up the country by informal agreement and bid for major markets accordingly. At the same time, collusion is easy to allege and hard to prove. Overall, it is another quagmire that the Commission should avoid. Most effective would be to obtain a commitment from the Justice Department that it will establish a task force to monitor the auction results and prosecute violators under existing law.

Application processing requirements (#95-#101, #128) need not change from present procedures. A short form to determine legal qualifications to be reviewed prior to the auction already exists for services such as cellular and IVDS. A long form, the application currently in use, should be submitted prior to the auction, but reviewed only after the applicant is a successful bidder. This will assure that only serious bidders apply, and reduce the pre-auction processing time required by the Commission. Short form applications should be subject to the letter perfect standard, and long form applications subject to the standards already in place for each service.

In determining **deposits and other requirements for entering bids** (#102-#109, #126) the Commission's goal should be simplicity. Any process which requires a separate deposit amount for each segment of spectrum for each market creates a paperwork logjam and multiple opportunities for error.

The most straight forward approach is to require all bidders to deliver a cashiers check for a minimum of $100,000 to the auction for entry to the area reserved for bidders to open his auction account. At the close of each bidding session for each license, if the amount in the winners account is not sufficient to cover 20% of the winning bid, then the winner makes an additional deposit. If the winning bidder fails to cover the amount required, the license is immediately re-auctioned.

The winner has thirty days after the close of the auction to pay the remaining 80%. Failure to do so acts as a forfeit of the deposit. The second highest bidder is given the opportunity to purchase the market at the winning bid price. If the second highest bidder fails to purchase at the winning bid price, the

license is scheduled for re-auction in thirty days.

This procedure has the virtue of simplicity. The rules are easily understood. The maximum delay in those cases where the 80% is not paid is sixty days.

In the event that a winning bidder is found to be ineligible, unqualified or unable to pay the remaining 80% (#113), the market should be re-auctioned as indicated above. The market should be open for bidding by all applicants who were eligible for the first auction, whether or not they actually participated. The Commission's objective is to have as many qualified bidders as possible at each auction session.

Specific Services

PCS and designated entities (#121). If the Commission is going to set aside two spectrum blocks for designated entities, then the use of royalty payments as the exclusive method of payment would be appropriate for the reasons previously set forth. If the Commission does not approve royalty payments, then installment payments would be appropriate.

When bidding for non set aside spectrum, designated entities should be able to make payment using the installment payments. This is particularly important in encouraging small business to provide service in smaller markets where the major operators would otherwise be warehousing spectrum while they build the major markets.

Consortia should be accorded designated entity status only when a majority of the ownership and control is in the hands of designated entities.

PCS Narrowband (#122) licenses should be open to all applicants, and designated entities should be entitled to use installment payments.

The determination that IVDS should be subject to auction rules needs to be reconsidered (#143). Since IVDS was authorized, the industry has begun to move in a different direction from that originally contemplated. The business plans of a number of IVDS service providers contemplate "free" access to the IVDS system for any customer who owns an appropriate box. There would be no charge to the customer for connection to the system or for system time used.

The costs would be paid by the vendors of goods and services offered to customers via IVDS. In this respect, IVDS looks much more like broadcast television, which is paid for by the vendors of goods and services, than like, for example, cellular telephone service, where the customer pays for connection time.

Because no IVDS systems are yet in service, the degree to which

this trend in the IVDS industry becomes the primary operational reality is as yet unknown. If, in fact, IVDS is offered as a no connection charge and no time charge service, then the Commission is mandated under the rules established by Congress to award IVDS spectrum by lottery and not by auction. This commentator requests reply comments from prospective IVDS service providers on their proposed operational plans, so that the Commission can have the facts available upon which to base a conclusion on the primary use of the IVDS spectrum.

IVDS preferences (#144), where there are only two licenses per market, are more difficult than PCS where there are multiple licenses per market. The applications filed for the first nine markets, at $1,400 per application, indicate that there is strong interest from small business applicants. With a relatively low entry cost (compared to PCS), IVDS is a natural for small business.

In view of the foregoing, in the event that IVDS is awarded by auction, the Commission should set aside one of the two available licenses in each market for qualified entity applicants, and such applicants should, at a minimum, be permitted the installment method of payment.

If the Commission really wants to encourage qualified entity participation in IVDS, it should adopt the down payment plus 5% royalty method of payment previously discussed. All bidding for one license in each market would be for the amount of the down payment. This approach gives maximum opportunity for qualified entities to participate in IVDS.

I would appreciate your reconsideration of reverting to the original proposal that IVDS applications be awarded by lottery as originally indicated in the FCC Rules and Regulations.

Thank you.

Sincerely,

Marguerite Geckler

Marguerite Geckler

MG/dkb