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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of )  
Sections 309(j) of )  
the Communications Act )  
 )  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF THE  
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

The Industrial Telecommunications Association, Inc. ("ITA") hereby respectfully submits these Reply Comments responsive to various comments filed in the above-referenced proceeding.

I. BACKGROUND

1. On November 10, 1993, the Industrial Telecommunications Association filed Comments responsive to the Commission's Notice of Proposed Rule Making in this proceeding. In these Comments, ITA was generally supportive of the approach which the Commission's proposed to take in implementing the spectrum auctions mandated by Congress. ITA agreed with the Commission's preliminary conclusion that competitive bidding will not be relevant for most of the private radio services, either due to the absence of mutually exclusive applications or the fact that the majority of private radio services do not serve "paying subscribers".

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## II. REPLY COMMENTS

2. ITA strongly opposes the argument, advanced in comments filed by Comcast Corporation, that any "licensees making any commercial or 'excess' capacity available to third parties be charged the value of the spectrum."<sup>1</sup> Comcast expresses concern that license holders who paid an auction price will be at a "severe competitive disadvantage as they compete with 'partial' commercial service providers who, under the proposed rules, have received their spectrum cost-free."<sup>2</sup>

3. ITA believes that Comcast's concern is misplaced and inconsistent with the Congressional intent. The express wording of the auctions legislation provides that competitive bidding will apply to operations in which "the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers ...."<sup>3</sup>

4. Though the term "principal use" may lend itself to a variety of interpretations, it strains credibility for Comcast to argue that "principal use" is tantamount to "any" use. Had

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<sup>1</sup> Comments of Comcast Corporation, page 12.

<sup>2</sup> Id.

<sup>3</sup> Section 309(j)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j)(2) (1993).

Congress intended this result, it certainly would have used the word "any" in place of "principal". For reasons that are clearly evident, Congress chose not to apply auctions to "any" commercial use. It is disingenuous for Comcast to suggest that the amendments to Section 309 of the Communications Act could and should be construed as applying auctions to "any" commercial use.

5. The approach urged by Comcast is contrary to the public interest. In those proceedings where the Commission granted private radio licensees the flexibility to lease excess capacity on a commercial basis, it did so primarily to promote more efficient and more intensive use of the radio spectrum. Clearly, the primary motivation was not to provide private radio licensees with another opportunity for making more money. Rather, the intent was to provide an incentive for licensees to share their systems, thereby making more efficient use of radio facilities and conserving the spectrum resource.<sup>4</sup>

6. If the Commission were to adopt Comcast's approach, the effect would be clearly counterproductive. The vast majority of licensees in the private radio services who elect to lease excess capacity to other entities do not depend on the leasing of excess capacity as an indispensable source of revenue. Comcast's approach

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<sup>4</sup> The "private carrier" proceeding for the Private Operational-Fixed Microwave Radio Service, PR Docket No. 83-426, vividly illustrates the Commission's concern for improving spectrum efficiency and conserving frequencies. Report and Order, adopted January 31, 1985, 50 Fed. Reg. 13,338 (April 4, 1985).

would require these licensees, when they find it necessary to secure additional spectrum, to choose between forgoing the leasing of excess system capacity or submitting to auctions. Most would choose to forgo the leasing of excess capacity. Quite simply, the additional money derived from leasing of excess capacity would not be worth the cost, both direct and indirect, of having to participate in spectrum auctions.

7. The likely results of Comcast's suggested approach would be: (1) the vast majority of private radio licensees who might otherwise be inclined to lease excess capacity will decide not to do so; (2) the Commission's careful efforts to provide an impetus for more efficient use of the radio spectrum, as exemplified in PR Docket No. 83-426 and other proceedings, will be negated. ITA finds these results particularly undesirable and urges the Commission to reject Comcast's arguments in this regard.

8. ITA agrees with the arguments of the Association of American Railroads, the Utilities Telecommunications Council and other commenters regarding the Congressional intent to exempt industrial and other private radio systems from the competitive bidding process. As the Utilities Telecommunications Council has pointed out,

for utilities, pipelines, and other core industrial users, spectrum is not a profit-center: it is a 'tool' needed to ensure the safe, efficient, and reliable delivery of goods and services to the American public.<sup>5</sup>

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<sup>5</sup> Comments of the Utilities Telecommunications Council, page 14.

ITA firmly believes that it would be contrary to the Congressional intent to require such users to compete for access to the spectrum via the competitive bidding process.

**WHEREFORE, THE PREMISES CONSIDERED,** the Industrial Telecommunications Association, Inc., respectfully submits these Reply Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS  
ASSOCIATION, INC.**

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