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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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NOV 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

PP Docket No. 93-253

REPLY COMMENTS OF TRW INC.

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Summary

TRW notes the following significant areas of agreement among the parties filing initial comments in this proceeding:

- Most commenters focus their discussion of competitive bidding upon its imminent use for assigning spectrum to Personal Communications Services ("PCS"), many appropriately suggesting that the Commission apply auctions only to PCS at this time.

- The parties addressing the prospect that competitive bidding procedures would be applied to the new Mobile Satellite Service/Radiodetermination Satellite Service ("MSS/RDSS") unanimously agree that such procedures are inappropriate for this service. Both the commenting MSS/RDSS applicants and Rep. John Dingell emphasize that the Commission is still required to use traditional means of avoiding mutual exclusivity (which is a prerequisite to the imposition of competitive bidding), including negotiation, engineering solutions, and threshold technical and service rules. These avenues, which are being pursued in the ongoing rulemaking proceedings in ET Docket No. 92-28 and CC Docket No. 92-166, provide the Commission with multiple means of avoiding mutual exclusivity in the MSS/RDSS. The MSS/RDSS rulemakings must be completed before competitive bidding can be considered.

- The MSS/RDSS applicants also agree that MSS/RDSS is not suited to the objectives that Congress sought to serve by permitting assignment of spectrum via competitive bidding. For example, the term "small business" may have no reasonable meaning

for MSS/RDSS in relation to the enormous costs of providing this service.

- Both MSS/RDSS applicants and other satellite service applicants and providers agree that awarding international satellite spectrum to the highest bidder domestically would have international consequences that are squarely contrary to U.S. interests, and potentially disadvantage U.S. providers vis-à-vis current or proposed domestic and international competitors that are not required to pay spectrum access fees. Alternatively, other administrations might impose their own auction procedures, driving up costs so far that MSS/RDSS would no longer be viable.

- Finally, the great majority of commenters strongly believe that it would be inappropriate for the Commission to auction intermediate links (including satellite feeder links) because "subscribers" do not either receive or "transmit directly" on these frequencies. Moreover, alternative proposals for spectrum use cannot properly be considered "mutually exclusive" unless the proponents seek to offer the same service.

In light of these views, the Commission should announce in this proceeding that it will not use competitive bidding to assign MSS/RDSS or other international satellite service licenses or to authorize intermediate links.

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TRW Inc. ("TRW"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (1992), hereby submits its Reply Comments with respect to the above-captioned proceeding.^{1/} The NPRM responds to the Congressional mandate that the Commission implement expeditiously the competitive bidding provisions of Section 309(j) of the Communications Act, which was adopted in August as part of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").^{2/}

The Commission's solicitation of public comment regarding spectrum auctions has elicited initial comments from more than two hundred twenty-five individuals and entities representing many segments of the telecommunications industry with myriad views on the questions raised in the NPRM. Due to

^{1/} See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, FCC 93-455 (released October 12, 1993) ("NPRM").

^{2/} See Budget Act, 1993 U.S.C.C.A.N. (107 Stat.) 312, 388 et seq. (to be codified at 47 U.S.C. § 309(j)).

the tremendous volume of submissions in this proceeding, a comprehensive review and analysis of and response to the initial round of comments is simply not possible within the less than three week reply period. However, TRW notes several significant areas of agreement among those submitting initial comments, particularly with respect to the non-applicability and unsuitability of competitive bidding procedures both for assignment of licenses to provide Mobile Satellite Service and Radiodetermination Satellite Service ("MSS/RDSS") and for authorization of intermediate links.

I. The Commission Should Limit This Proceeding To Adopting Competitive Bidding Procedures For Personal Communications Services, And Announce That It Will Not Use Competitive Bidding To Assign MSS/RDSS Licenses.

Initially, it is noteworthy that by far the largest portion of the comments submitted in this proceeding deal primarily or exclusively with the applicability of spectrum auctions to new terrestrial Personal Communications Services ("PCS").^{3/} Indeed, many commenters approached the auction

^{3/} Commenters taking this approach come from all segments of the telecommunications industry and from government as well. See, e.g., Comments of Bell Atlantic Personal Communications, Inc. at 2; Comments of Cellular Telecommunications Industry Association at 5; Comments of Comcast Corporation at 1; Comments of Cox Enterprises at 2; Comments of MCI Telecommunications Corporation at 6; Comments of the National Telecommunications and Information Administration at 2-3; Comments of PacTel Corporation at 1 ("PacTel"); Comments of Time Warner Telecommunications ("Time Warner") at 1-2; Comments of the Utilities Telecommunications Council ("UTC") at 36.

proceeding as if it were merely an outgrowth of the PCS docket.^{4/} This circumstance is not surprising, as the exigencies of this proceeding are driven by the congressional desire to speed the implementation of PCS.

Several commenters suggest, explicitly or implicitly, that the Commission bifurcate its consideration of competitive bidding procedures and limit this proceeding to adopting only auction mechanisms for PCS license assignment, deferring any attempt to implement competitive bidding procedures of broader applicability.^{5/} TRW believes that this approach has merit. By following this course, the Commission can use PCS as a "trial run," both satisfying the Congressional mandate to proceed quickly on PCS (a service to which auctions are suited), and avoiding possible difficulties that could be created by undue haste in applying auctions to other services.^{6/} However, if it

^{4/} See Comments of MEBTEL, Inc. at 1.

^{5/} See Comments of COMSAT Corporation ("COMSAT") at 8 n.14; Comments of the National Telephone Cooperative Association at 15; Joint Comments of Rocky Mountain Telecommunications Association and Western Rural Telephone Association at 30.

^{6/} Unlike some services for which competitive bidding has been suggested as a possible course, PCS already has a structure that has been adopted by the Commission. Based on this structure, it is very likely that most of the available licenses will produce a significant number of mutually exclusive applicants. As indicated in the NPRM, this is a situation that clearly lends itself to spectrum auctions. See NPRM, FCC 93-455, slip. op. at ¶¶ 116-119. This fact is emphasized by the near universal acceptance of competitive bidding as an assignment method by PCS applicants.

chooses to proceed in this manner, the Commission should not hesitate immediately to eliminate certain services from further consideration for license assignment via competitive bidding where it is already clear that such procedures are inappropriate.

For example, despite the Commission's suggestion in the NPRM that it intends to use competitive bidding to authorize MSS/RDSS providers (see NPRM, FCC 93-455, slip op. at ¶¶ 154-155), it is already plain that this service is unsuitable for use of such procedures. Insofar as they have participated in this proceeding, the applicants and other parties expressing interest in this issue unanimously oppose use of competitive bidding to assign authorizations for MSS/RDSS.^{2/} This universal opposition is soundly premised on both fundamental requirements of the legislation itself and upon broader U.S. interests and policies, all of which are summarized below.

^{2/} See TRW Comments; Comments of AMSC Subsidiary Corporation ("AMSC"); Comments of COMSAT; Comments of Loral Qualcomm Satellite Services, Inc. ("LQSS"); Comments of Motorola Inc. ("Motorola"); and Comments of Motorola Satellite Communications, Inc. ("MSCI"). See also Comments of the Chief Counsel for Advocacy of the United States Small Business Administration ("SBA") at 6 n.12.

II. The Current Group of MSS/RDSS Applicants Is Unlikely To Be Mutually Exclusive Following A Decision By The Commission Concerning Technical And Service Rules.

In the absence of mutual exclusivity among the applicants for a single service, the Commission lacks the ability to assign licenses for that service through the use of auctions.^{8/} The Commission cannot determine that the applicants seeking authority to provide MSS/RDSS are mutually exclusive unless and until it makes certain critical and required decisions concerning technical and service rules. All parties commenting on this issue agree that the current MSS/RDSS applicants are unlikely to remain mutually exclusive following final Commission action.^{2/}

In addition to the unanimous views of the commenters addressing this issue, Rep. John D. Dingell, Chairman of the House Energy and Commerce Committee, recently underscored the intent of Congress with respect to the utility of auctions for the MSS/RDSS. In a November 15, 1993 letter to then-Chairman Quello, Rep. Dingell strongly emphasizes that the Commission is required by the statute to continue to use such tools as "engineering solutions, negotiation, threshold qualifications, [and] service regulations" in order to avoid mutual exclusivity

^{8/} See Budget Act, 1993 U.S.C.C.A.N. at (107 Stat.) 388 (to be codified at 47 U.S.C. § 309(j)(1)).

^{2/} See, e.g., TRW Comments at 4-10; LQSS Comments at 2-5; Motorola Comments at 5-7; and MSCI Comments at 5-8.

in the pending MSS/RDSS application and licensing proceedings. Letter from Rep. John D. Dingell, Chairman, House Committee on Energy and Commerce, to Hon. James H. Quello, Chairman, Federal Communications Commission, dated November 15, 1993, at 2 ("Dingell Letter"). On the subject of the competitive bidding legislation in general, Chairman Dingell states:

[I]t was never the intent of Congress for auctions to replace the Commission's responsibilities to make decisions that are in the public interest. Rather, the competitive bidding authority was always intended to address those situations where the Commission could not either narrow the field of applicants or select between applicants based upon substantive policy considerations . . . auctions are not a substitute for reasoned decisionmaking.^{10/}

Thus, it is evident that congressional mandate, as well as the public interest, require the Commission to set fundamental policies with respect to MSS/RDSS, i.e., technical and service rules, before adoption of auctions could be considered, even if competitive bidding procedures were otherwise available for application to the service.

Finally, Chairman Dingell plainly states that "Congress clearly had the [MSS/RDSS] proceeding in mind" when it added to the statute the language that admonishes the Commission not to abandon its traditional methods of avoiding mutual exclusivity, and that Congress "believed that mutual exclusivity could be

^{10/} Dingell Letter at 2.

avoided in that proceeding."^{11/} Neither the Congressman nor his colleagues were misguided in this belief, as multiple options are now before the Commission through which it can avoid mutual exclusivity among the current applicants.^{12/} All that is now required is for the Commission to finalize its proposal to allocate spectrum for the MSS/RDSS and to adopt a licensing scheme that implements one of the available options.

III. Competitive Bidding For MSS/RDSS Authorizations Would Be Inconsistent With The Congressional Objectives Set Forth In The Budget Act.

Auctioning spectrum for the MSS/RDSS would be inconsistent with congressional objectives for and limitations upon competitive bidding procedures. The Budget Act requires not only that the Commission continue using traditional methods of avoiding mutually exclusive situations,^{13/} but also that it promote, inter alia, rapid deployment of new technology, economic opportunity and competition, equitable distribution of licenses to a wide variety of service providers, and efficient and intensive use of spectrum.^{14/} None of these statutorily

^{11/} Dingell Letter at 3.

^{12/} See TRW Comments at 6-10.

^{13/} See Budget Act, 1993 U.S.C.C.A.N. at (107 Stat.) 390 (to be codified at 47 U.S.C. § 309(j)(6)(A) and (E)).

^{14/} See Budget Act, 1993 U.S.C.C.A.N. at (107 Stat.) 389 (to be codified at 47 U.S.C. § 309(j)(4)).

mandated objectives would be met if the Commission were to pursue auctions to license MSS/RDSS.^{15/}

One example of the unsuitability of competitive bidding for the MSS/RDSS is highlighted by the variety of comments made concerning spectrum set asides and alternative payment methods for small businesses, rural telephone companies ("rural telcos"), and minority and women-owned businesses. The goal of enhancing the ability of these "designated entities" to participate in providing new telecommunications services is unquestionably an important and worthy one, but it is also a goal that MSS/RDSS provides few, if any, opportunities to serve.

The desire to ensure full participation by rural telcos is fundamentally geared toward terrestrial PCS -- an inherently local service that is divided into multiple markets, each of which will have multiple licenses available. It is not a goal that can readily be served within an inherently-global, spectrum-limited service such as MSS/RDSS that cannot be subdivided on a geographic basis, and thus offers very few licensing opportunities.

With respect to minority and women-owned businesses, the current "cut-off" group of MSS/RDSS applicants does not include entities that could meet any reasonable definition of such entities. As a result, any post hoc attempt by the parties

^{15/} See, e.g., TRW Comments at 11-14; LQSS Comments at 7-9; MSCI Comments at 8-12.

to fall within such a definition would simply be manipulative and would not serve the objectives of the Budget Act.

As for "small business," commenters discussing potential ways of defining this term for purposes of competitive bidding rules have proposed a wide range of alternatives, with many suggesting that the Small Business Administration ("SBA") definition is too narrow for the capital intensive telecommunications industry.^{16/} The SBA definition provides both a financial measure and a total employment measure of "smallness," i.e., a business is considered small if it has either (1) a net worth not in excess of six million dollars with an average net income after federal income taxes for the preceding two years not exceeding two million dollars, or (2) one thousand five hundred or fewer employees.^{17/} While a significant number of parties endorsed use of this definition,^{18/} the SBA itself stated that neither the net worth/net income nor total employee aspects of its definition

^{16/} See, e.g., Comments of Independent Cellular Network, Inc. at 4; Comments of Iowa Network Services, Inc. at 16-17; Comments of Tri-State Radio Company at 9-10; and Comments of Suite 12 Group at 9-11.

^{17/} See Report of the FCC Small Business Advisory Committee to the Federal Communications Commission, GEN Docket No. 90-314, at 20 (submitted September 15, 1993).

^{18/} See, e.g., Comments of the Association of Independent Designated Entities at 4; Comments of GTE at 14; and Comments of Minority PCS Coalition at 3.

"will lead to determinations suitable for the instant proceeding."^{19/}

These divergent views highlight the fact that in some instances, where huge amounts of capital must be raised in order to begin service, it simply may be contrary to the best interests of the relevant service to attempt to accommodate "small businesses." In the MSS/RDSS, for example, the extremely high cost of implementing each of the currently proposed systems essentially renders each applicant a small business in relation to the enormity of the costs of implementing service.^{20/} Thus, any decision to implement an MSS/RDSS small business preference would require the Commission to determine whether any business that possesses the wherewithal to take on these costs reasonably

^{19/} SBA Comments at 8. With respect to the net worth/net income provision, the SBA stated that this cap would "not include businesses of sufficient size to survive, much less succeed, in the competitive wireless communications marketplace." Id. at 8-9. Instead, the SBA proposes a definition of "small business" as a company with less than \$40 million in revenues. Id. at 10. This definition, however, is explicitly geared to PCS. Id. at 10-12.

^{20/} For example, MSCI estimated last year that its ambitious Iridium system would cost approximately \$3.4 billion to place in service. See Minor Amendment, File Nos. 9-DSS-P-91(87) and CSS-91-010, at 2-4 (filed August 10, 1992). In fact, in TRW's view, this sizable estimate is itself quite conservative; the actual Iridium system costs are likely to be substantially higher. See TRW Comments, File Nos. 9-DSS-P-91(87) and CSS-91-010, at 4-5 (filed September 8, 1992). Even the most modest of the MSS/RDSS proposals, however, necessitate an immense initial capital investment.

could be deemed a "small business" under the objectives of the Budget Act.

The MSS/RDSS is also ill-suited to the potential means of enhancing the ability of designated entities to participate in competitive bidding procedures on even terms. Set-asides are unworkable because the majority of the current applicants anticipate providing services that would access the entire bandwidth proposed for allocation. Additionally, due to the substantial risks and high costs entailed in constructing, launching and operating the first MSS/RDSS systems, use of installment payments and royalties also would not be useful means of enhancing opportunities for designated entities, as these methods likely would be necessary to permit any applicant to bid premised on the actual value of spectrum to provide MSS/RDSS. See TRW Comments at 28-29. The failure to use such methods would simply ensure that licenses were awarded to the applicant with the deepest pockets, and not to the applicant that actually places the greatest value on the spectrum, or that would make optimal use of it.

IV. Long-Held Policies Concerning International Spectrum Usage, As Well As Current U.S. Interests, Would Be Undermined By The Use Of Auctions To Assign Spectrum Authorizations For International Satellite Services.

Awarding MSS/RDSS band spectrum to the highest bidder domestically would have international consequences that are squarely contrary to U.S. interests, and would likely imperil the

viability of the MSS/RDSS by creating grave financing uncertainties. Even COMSAT, which in its capacity as an INMARSAT signatory is a potential competitor of the international voice services to be offered by the MSS/RDSS applicants, raises these concerns with respect to auctioning MSS/RDSS spectrum:

[A]ny attempt to apply auctions to the U.S. portion of an international satellite communications system would necessarily result in an uneven playing field for the U.S. participant and could trigger a global backlash detrimental to all international satellite systems. For example, if the Commission were to auction the "Big LEO" applications received for the 1610-1626.5/2483.5-2500 MHz frequency bands, the U.S. MSS winner would have to invest substantially more capital up front to establish its system than its foreign counterparts which do not have to bid for their spectrum licenses.

Alternatively, once the United States opens the door on international satellite spectrum auctions, other countries might be encouraged to do the same with regard to use of the same frequency bands in their countries, thereby driving the cost of operating an international satellite system to a point which might compromise economic feasibility.^{21/}

Furthermore, other parties, including non-MSS/RDSS applicants, have pointed out that auctioning spectrum for provision of international satellite services would undermine the long-held

^{21/} See COMSAT Comments at 4-5. See also TRW Comments at 18-20; AMSC Comments at 3; Comments of Hughes Communications Galaxy, Inc. and DirecTv Inc. at 8; LQSS Comments at 5-7; Motorola Comments at 8-9; and MSCI Comments at 13-15.

U.S. position that the orbit/spectrum resource may not be treated as a mercantile commodity to be bought and sold.^{22/}

V. Under No Circumstances Would It Be Appropriate For The Commission To Utilize Competitive Bidding To Assign Intermediate Links, Including MSS Feeder Links.

Finally, it is notable that virtually all commenters, representing a variety of existing and proposed services, oppose on multiple legitimate grounds the Commission's proposal to auction spectrum for "intermediate links" (which include intersatellite and feeder links necessary for MSS/RDSS operation).^{23/} Chairman Dingell buttressed this view in the Dingell Letter, stating that it would be inappropriate to auction authorizations for this spectrum because subscribers do not either receive or "transmit directly" on these frequencies.^{24/} Dozens of commenters also point out that it would be poor public policy to require payment of assignment fees for this use of

^{22/} See TRW Comments at 15-17; COMSAT Comments at 5; LQSS Comments at 6; Comments of Primosphere Limited Partnership at 5-6.

^{23/} See, e.g., TRW Comments at 23-25; Comments of AT&T at 22; LQSS Comments at 2 n.3; PacTel Comments at 8-10; Comments of Rochester Telephone Corporation ("RochesterTel") at 5-7; Comments of Southwestern Bell Corporation ("Southwestern Bell") at 8; Comments of Telephone and Data Systems, Inc. at 5-6; Time Warner Comments at 6-9; and UTC Comments at 7-8.

^{24/} Dingell Letter at 1-2. See also Budget Act, 1993 U.S.C.A.N. at (107 Stat.) 388 (to be codified at 47 U.S.C. § 309(j)(2)(A)).

spectrum, inter alia, because it could encourage spectrum speculators to buy up attractive spectrum for resale.^{25/}

Finally, TRW itself explains in its initial Comments that proposed alternative uses of the same spectrum by those seeking to offer different services do not meet the statutory "mutual exclusivity" requirement, as mutual exclusivity is a concept that applies only to competing intraservice applications (i.e., mutual exclusivity in the assignment context can exist only where the Commission first allocates spectrum to and defines a particular service that multiple applicants seek to provide, and the amount of spectrum allocated for that service is insufficient to accommodate all of these applicants).^{26/} Where competing proposals for spectrum use involve different types of service, the Commission cannot use competitive bidding as a substitute for fundamental policy decisions concerning the use of spectrum.^{27/}

^{25/} See, e.g., GTE Comments at 3-4; PacTel Comments at 9-10; RochesterTel Comments at 6-7; Southwestern Bell Comments at 8-11; and Comments of U.S. Intelco Networks, Inc. at 6-7.

^{26/} See TRW Comments at 23-25. See also Comments of Brown and Schwaninger at 3.

^{27/} See Budget Act, 1993 U.S.C.C.A.N. at (107 Stat.) 389 (to be codified at 47 U.S.C. § 309(j)(6)(A)).

VI. Conclusion

For the foregoing reasons, as more fully supported in TRW's initial Comments, the Commission should announce in its Report & Order in this proceeding that it will not use competitive bidding to assign MSS/RDSS authorizations. Further, the Commission should proceed to allocate the 1610-1626.5 MHz and 2483.5-2500 MHz spectrum bands for the MSS/RDSS, and should adopt a Notice of Proposed Rulemaking in CC Docket No. 92-166 that, consistent with the Budget Act and its legislative history, proposes rules that would resolve the mutual exclusivity that currently exists among the MSS/RDSS applicants in the current processing group.

Respectfully submitted,

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