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

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket 93-253
of the Communications Act	)	
Competitive Bidding	)	

Reply Comments of General Communication, Inc.

Kathy L. Shobert
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November 30, 1993

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SUMMARY

The Commission must follow the objectives outlined by Congress in designing the structure for competitive bidding. The Commission should adopt the minor modifications proposed by GCI to make the process work. It should not adopt the requests suggested by many commenters to fragment the PCS spectrum into small and uneconomic increments dispersed so widely that the promises of PCS will never be achieved. It is important that the Commission stick with its rules to allow national combinational licenses for Blocks A and B. This will enable bidders to submit bids that reflect the value of the licenses together. In Blocks A and B, the Commission should employ oral auctions for individual Major Trading Areas (MTAs), with sealed combinational bids for all 51 MTAs submitted prior to each oral auction. However, the sealed bids should be opened only after the oral auction in each block has concluded.

The Commission must strictly define designated entities and allow the preferences in the set aside blocks only. Rural telephone companies must not be exempt from the rules applicable to all other bidders. Cellular carriers should not be allowed to bid for PCS licenses based on a promise to divest their cellular operations.

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Reply Comments of General Communication, Inc.

General Communication, Inc. (GCI) hereby files reply comments on the Notice of Proposed Rule Making[1] to implement Section 309(j) of the Communications Act. In these reply comments GCI focuses primarily on the importance of retaining an auction format and sequence and ownership criteria that will enable Personal Communications Services (PCS) to develop its full potential in a competitive market, including effective competition with existing cellular carriers. Additionally, GCI comments briefly on miscellaneous other issues.

I. The Commission Should Resist Requests To Fragment The PCS Spectrum Auction Into Small, Uneconomic Increments Dispersed So Widely That Full-Service PCS Is Impossible.

A. The Possibility Of A National PCS License Should Be Maintained By Allowing Combinational Bidding For All 51 Major Trading Area (MTA) Licenses In Block A And Block B.

A common theme of many comments filed in this matter is that combinational bidding for a national PCS license should not be allowed.

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[1]Notice of Proposed Rule Making, PP Docket 93-253, FCC 93-455 (released October 12, 1993).

Some parties[2] specifically and openly advocate prohibiting national combinational bidding or argued more generally that no combinational bidding should be allowed. Some parties[3] proposed unfair bidding rules or took other positions that would effectively destroy any chance of a winning national bid. In most instances, the anti-competitive objectives of the parties opposing a national license should be obvious to the Commission. GCI urges the Commission to retain combinational bidding for all 51 MTA licenses in Block A and B and thereby retain the possibility of a national PCS license.

GCI continues to believe that a nationwide PCS license available to consortia, with up to 40 MHz of spectrum, would be in the public interest. The benefits of a nationwide PCS license are numerous. Such a spectrum allocation would be the most effective in achieving a rapid, nationwide deployment of full-scale PCS. A national consortia offers the most advantages in enabling the public to receive the full benefits of PCS. First, a national consortium will enable all areas of the country to be built and served at the same time. This will encourage development of the non-urban areas enabling Anchorage, Alaska and New York City to be built at the same time. All companies that participate in a national consortium will be able to obtain access to the consortia's intelligent network platform, allowing all subscribers,

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[2]See, Comments of AT&T, Comments of McCaw, Comments of BellSouth, Comments of Comcast, Comments of GTE, Comments of Southwestern Bell, Comments of TDS, Comments of American Personal Communications, Comments of Pacific Bell/Nevada Bell, Comments of Paging Network, Inc., Comments of Rural Cellular Association and Comments of Cellular Communication, Inc., filed November 10, 1993 in this proceeding.

[3]See, Comments of CTIA, Comments of Southwestern Bell, and Comments of Pacific Bell/Nevada Bell, filed November 10, 1993 in this proceeding.

no matter their location, to realize the full benefits of PCS. Subscribers will benefit the most from a national consortia in having access to nationwide coverage. The consortia will enforce nationwide interoperability standards, freeing the Commission from the burdensome requirement to promulgate standards and enforce business arrangements among fragmented system providers. The cellular providers only recently created such systems in response to customer demands and the possibilities created by PCS. PCS should be encouraged to create these systems now. The consortia will have national purchasing power which could lower the costs of building a national system. Furthermore, financing for the entire project will be easier to obtain and enable all areas, especially the rural areas to be built quickly. This will encourage economic development all across the country. Subscribers will have the ability to be anywhere in the country and receive the benefits of full PCS deployment. Lastly, a national consortium will be able to compete effectively against the national cellular providers, including McCaw/AT&T, the Regional Bell Operating Companies (RBOCs) and GTE.

Although the Commission did not set aside any spectrum blocks solely for a nationwide license, the Commission has proposed allowing combinational bidding for all 51 MTA licenses in Block A and Block B. The Commission's proposal does not assure a nationwide license, but it does provide for the possibility that two bidders will obtain nationwide licenses. It also allows parties to express, through bids, the additional value of all MTA

licenses held in combination, rather than individually.[4] The anti-competitive motives of most of the parties opposing a nationwide license is apparent. The large cellular providers are just now achieving nationwide cellular systems, such as MobilLink and AT&T/McCaw. It should come as no surprise that these nationwide cellular system do not want to allow a new competitor, holding a nationwide PCS license, in the market.

It should also be evident that the large cellular systems are in the best position of any party to piece together a nationwide PCS system, notwithstanding the 10 MHz restriction on cellular providers. Nationwide cellular systems are dependent on cooperation of independent cellular providers, and that cooperation is now developing many years after the issuance of cellular licenses for small geographic areas. By obtaining an additional 10 MHz of spectrum the cellular entities will have 35 MHz with which to provide PCS service and, using the same cooperative arrangements that are now developing, these entities can quickly piece together the semblance of a nationwide system. Thus, by arguing against a nationwide PCS license, these entities are attempting not only to protect their existing cellular business from competition, they are also gaining the ability to achieve the only nationwide PCS coverage, thus limiting competition in a new business as well.

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[4]The additional value that a group of items may hold in combination over the value of the individual items in the group is very well illustrated, as a theoretical matter, in the Comments of R. Mark Issac, filed November 10, 1993 in this proceeding.

The cellular carriers do not have any incentive to develop PCS in a manner that will achieve the objectives of the Commission.[5] Lacking that incentive, the cellular carriers also wish to keep carriers that would have the incentive out of the market, at least on a nationwide basis. By allowing a nationwide PCS licensee in Blocks A and B the Commission will bring the full promise of PCS to reality while also bringing competition to the existing cellular providers. Thus, the Commission should retain its proposal to allow combinational bidding for MTA licenses.

B. PCS Licenses Should Not Be Limited To Small Spectrum Allocations In Small Geographic Areas.

Many commenters went beyond proposals to eliminate nationwide licenses and proposed auctioning PCS only in small increments of spectrum such as 10 MHz,[6] or in small geographic areas,[7] without combinational bidding for any larger areas.[8] Additionally, proposals from designated entities requested separate set-aside blocks for each type of designated entity,

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[5]See, Comments of GCI, filed November 10, 1993 in this proceeding, pp. 9 - 11.

[6]See, Comments of Cellular Communications, Inc., filed November 10, 1993 in this proceeding.

[7]See, Comments of Western Wireless, Inc., and Comments of Point Communications Co., filed November 10, 1993 in this proceeding.

[8]See, Comments of AT&T, Comments of McCaw, Comments of BellSouth, Comments of Comcast, Comments of GTE, Comments of Southwestern Bell, Comments of TDS, Comments of American Personal Communications, Comments of Pacific Bell/Nevada Bell, Comments of Paging, Network, Inc., Comments of Rural Cellular Association, and Comments of Cellular Communications, Inc., filed on November 10, 1993 in this proceeding.

and bidding "credits" or "multipliers" (up to 4 times[9]) outside of the set-aside blocks. These proposals were often founded on the argument that the existing spectrum allocation and auction rules favor "deep pockets" and will not, in fact, fulfill the Congressional mandate to ensure that designated entities are given an opportunity to participate in the provision of spectrum-based services, including PCS. These arguments are without foundation.

It appears that some of these commenters desire the PCS auction to result in over 5000 licensees each holding only 10 MHz of spectrum in an area no larger than a Basic Trading Area (BTA). Such a result would ensure that the full promise of PCS is never realized. Although that may be the actual intent of some entities, such as existing cellular and rural telephone companies, in order to avoid the competition that PCS may pose, that is not in the public interest.

It is simply inaccurate to suggest that the Commission's proposed spectrum allocation and set-aside will fail to ensure designated entities an opportunity to acquire spectrum. Nearly one thousand of the 2,562 licenses are set aside solely for designated entities. Designated entities are also free to bid for other licenses, but should do so on an equal footing with other bidders, without preference.

The motives of many of the parties suggesting very small spectrum allocations is again obvious. Having themselves been limited to 10 MHz of

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[9]See, Comments of Richard L. Vega Group, filed November 10, 1993 in this proceeding.

spectrum, cellular providers are also attempting to limit other parties to 10 MHz of spectrum for PCS. Although that may be in the interest of the cellular providers, it not in the public interest. Furthermore, the cellular providers will combine an additional 10 MHz with their existing cellular allocation of 25 MHz, for a total of 35 MHz. It is absolutely necessary to provide large spectrum blocks licenses to compete with these cellular providers and to fulfill the promises of PCS. Simply allowing post-auction accumulation of spectrum is not sufficient. Such post-auction accumulation is expensive in terms of both time and money and would, at a minimum, significantly delay any effective competition against the existing cellular providers.

C. The Commission Should Retain Its Basic Decision To Rely Primarily On Oral Auctions, Supplemented By Limited Sealed Combinational Bidding.

The Commission received comments in favor of totally eliminating oral bidding for sealed bidding;[10] comments in favor or relying totally on oral bidding with no sealed bids;[11] comments in favor of eliminating all combinational bidding;[12] and, comments in favor of allowing bidding for any

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[10]See, Comments of PageMart, Inc., and Comments of Richard S. Myers, filed November 10, 1993 in this proceeding.

[11]See, Comment of Cellular Communications, Inc., Comments of BellSouth, Comments of GTE, Comments of McCaw, and Comments of AT&T filed November 10, 1993 in this proceeding.

[12]See, Comments of AT&T, Comments of McCaw, Comments of BellSouth, Comments of Comcast, Comments of GTE, Comments of Southwestern Bell, Comments of TDS, Comments of American Personal Communications, Comments of Pacific Bell/Nevada Bell, Comments of Paging Network, Inc., Comments of Rural Cellular Association, and Comments of Cellular Communications, Inc. filed November 10, 1993 in this proceeding.

and all combinations of licenses.[13] In sum, the comments confirm that the Commission proposed an appropriate compromise, oral bidding supplemented by limited sealed combinational bidding.

The comments of Pacific Bell/Nevada Bell (Pacific) suggest perhaps the most complete departure from the Commission's proposed auction procedures. While cloaked in the guise of establishing fair and unbiased bidding procedures, the comments of Pacific would clearly eliminate any possibility of a party obtaining a nationwide PCS license.

Pacific suggests that the Commission implement a simultaneous auction for all individual licenses, via repeated sealed bid, with no combinational bidding. Pacific suggests this system in order to eliminate an alleged bias in the Commission's proposal in favor of national bids. The allegation of bias in the Commission's proposal fails to consider all aspects of the proposal. As further discussed below, bidders for a nationwide license are at a significant information **disadvantage** compared to bidders for individual licenses.

More importantly, the proposal of Pacific is fundamentally flawed in that it completely fails to recognize that a combination of licenses may have value above the individual licenses and, further, that the added value exists if and only if the complete combination of licenses is obtained. This added value of a combination is clearly illustrated in the comments of R. Mark

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[13]See, Comments of NTIA, Comments of NYNEX, and Comments of Nextel Communications, Inc. filed November 10, 1993 in this proceeding.

Issac.[14] Under the proposal of Pacific, all bidding is for individual licenses, thus making it impossible for a bidder to express the added value of a combination of licenses.

Further, a bidder seeking a national combination would bid on many individual licenses that have value to the bidder only as part of a national combination. Because Pacific proposes that no bids may be withdrawn, the bidder would be stuck with such licenses, with no national combination, if the bidder fails to win one or more other key licenses.

Several other specific aspects of the Pacific proposal are cleverly designed to work to the maximum disadvantage of any bidder seeking a nationwide license. Bidders seeking to thwart a nationwide license will attempt to "bid-up" the cost of many individual licenses solely to increase the cost of the nationwide license. Because the identity of the highest two bidders for each license would be revealed each day, all parties would know which parties are seeking the nationwide license and also know if, and when, these parties had been defeated. The proposal that bidders must be active each day to continue bidding is particularly conducive to such a strategy. It appears that the proposed "active" rule is an all-or-nothing proposition in the sense that an active bid for any one license on one day allows a bidder to continue bidding for any and all licenses the next day. Such a rule is particularly conducive to a strategy of selectively bidding up the cost of individual licenses, one at a time, absorbing the additional value the

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[14]See, Comments of R. Mark Issac, Discussion of Proposed Spectrum Auction Process, filed November 10, 1993 in this proceeding, pps. 7-9.

nationwide bidder places on a combination, and continuing until the surplus has all been bid without obtaining all licenses. As noted before, the nationwide bidder could not withdraw bids and would be left with individual licenses that do not have the enhanced value without the total combination of licenses. Finally, it is obvious than no "active" rule is present in most auction; bidding strategy allows bidders to begin bidding when and if they please, as the auction progresses.

For all of these reasons, the proposal of Pacific should be rejected. Similarly, other proposals that call for significant and fundamental changes in the bidding procedures proposed by the Commission should also be rejected.

Many other proposals, such as to allow no combinational bidding, are simply not in the public interest because they ignore the additional value that may attach to a combination of items. Other proposals, such as proposals for electronic bidding and to allow combinational bidding for any and all groups of licenses across both spectrum and geographic, may have merit for long-term study and consideration. However, those proposals are simply too complex to implement in the short period of time available for the Commission to plan and execute the very first auction for PCS. The reliance on simple oral auction, with a limited experiment with some combinational bidding as proposed by GCI,[15] is a reasonable and appropriate compromise

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[15]See, Comments of GCI, filed November 10, 1993 in this proceeding, pps. 3-6. Specifically, GCI proposed bidding for Blocks A and B as follows: (1) Submit national sealed bids for Block A; (2) Orally auction individual Block A MTAs; (3) Open the sealed bids for national Block A and compare the highest bid to the combined total of the individual Block A to determine whether the individual or national bids prevail in Block A; (4) Submit national sealed bids for Block B - an entity that wishes to submit a national bid on Block B would not be precluded

in this case. Given the practical ability to allow only limited combinational bidding in this instance, it is most important that it be allowed in Blocks A and B for nationwide licenses.

II. The Commission's Proposed Auction Sequence, Modified Slightly In Accordance With GCI's Initial Comments, Should Be Adopted.

In its initial comments,[16] GCI supported the Commission's proposed auction sequence, modified only to provide an option to withdraw bids or allow a grace period to come into compliance with ownership restrictions (solely for entities to resolve conditions over which they have little or no control which may occur inadvertently). After reviewing other comments regarding the auction sequence, GCI remains convinced that its proposal is appropriate.

Some parties[17] commented that sealed bids for Blocks A and B should be opened prior to any oral bidding. That would be unfair. National sealed bidders in Blocks A and B already face a significant information disadvantage. Sealed bids for Block A will be submitted before any oral bids take place;

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from doing so if it or any affiliated entity had won individual MTAs on Block A; (5) Orally auction individual Block B MTAs; (6) Open sealed bids for national Block B and compare the highest bid to the combined total of the individual bids on Block B to determine whether the individual or national bid prevails in Block B; (7) If the national bid prevails in Block B, allow the winning bidder, including any entities that meet the ownership attribution test, to withdraw winning MTAs in Block A; (8) Re-auction the MTAs that have been returned or allow a grace period of six months for the winning bidder in Block B, including any entities that meet the ownership attribution test, to achieve compliance with any ownership restrictions, including the 40 MHz restriction.

[16] Id.

[17] See, Comments of CTIA and Comments of Southwestern Bell, filed November 10, 1993 in this proceeding.

therefore, sealed bidders for Block A will have absolutely no actual knowledge from bidding with which to evaluate the market. Thus, sealed bidders for Block A run the risk of significantly underbidding or overbidding relative to the market. On the other hand, oral bidders in Block A will have actual, real-time information regarding the market as they bid. Given the fact that the sealed bidders will be forced to make their bidding decision without knowing the oral bids, oral bidders should make their bidding decisions without knowing the sealed bids. In Block B, the situation changes somewhat for both sealed and oral bidders because both will have gained information about the market from the sealed and oral bidding in Block A. However, it is still true that sealed bidders in Block B will bid without knowing the oral bids for Block B, so oral bidders should again make their bidding decision without knowing the sealed bids. Also, the bidding strategy for Block B will be somewhat different from the bidding strategy on Block A in that no more 30 MHz blocks will be available after Block B.

In both Block A and Block B, if the oral bidders already know the amount that has been bid by the highest sealed bidder, some oral bidders will bid more than the actual value of individual licenses solely to defeat the national bid. Such strategic bidding solely to defeat a nationwide license is not in the public interest, and the opening of sealed bids before oral bidding is simply another attempt to thwart a nationwide license.

MCI proposed[18] that sealed bids in both Block A and B not be opened until after the oral bidding in both Blocks is complete. That proposal should not be adopted. As is evident in these comments, GCI clearly supports allowing a national combinational bid on a fair basis. However, the proposal of MCI would unfairly impact entities attempting to acquire an individual MTA license. If MCI's proposal were adopted, the winning bidder for an MTA in Block A would not learn if the bid had been "trumped" by a national bid before oral bidding begins in Block B. Thus, the winning bidder from Block A might again bid in Block B for the same MTA, but in doing so the bidder risks accumulating more spectrum than allowed. Bidders for individual MTA licenses should not be forced into such a Hobson's choice.

For Blocks A and B, GCI continues to believe that all Block A licenses should be auctioned, in order of populace, before proceeding to Block B, although GCI recommends proceeding from the least populace to the most populace MTA. Many commenters[19] suggested that all licenses in all blocks in each geographic area (perhaps MTA) should be auctioned before moving to another geographic area. Such a proposal may be desirable where aggregation of spectrum within a geographic area is a primary consideration, and thus the proposal may be appropriate for the small spectrum blocks,

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[18]See, Comments of MCI, filed November 10, 1993 in this proceeding, pps. 10-11.

[19]See, Comments of Alliance of Rural Telephone and Cellular Service Providers, Comments of National Association of Black Owned Broadcasters, Inc., Comments of Association of Independent Designated Entities, Comments of Paging Network, Inc., Comments of Rural Cellular Association, Comments of Richard S. Myers, and Comments of Liberty Cellular, Inc. d/b/a Kansas Cellular, filed on November 10, 1993 in this proceeding.

Blocks C through G. However, if such geographic sequencing is deemed desirable, Blocks A and B should not be included. In Blocks A and B the sequencing of the sealed and oral bidding and bid opening are the primary considerations. Those large spectrum blocks, with combinational bidding allowed, should be auctioned first, before proceeding to Blocks C through G.

The Commission should auction wideband PCS first. AT&T and McCaw filed separate comments[20] supporting the auctioning of narrowband PCS first. MCCaw further proposed that cellular applications for unserved areas then be auctioned. Both parties proposed that wideband PCS be auctioned last. These proposals are inconsistent with the intent of Congress. Further, the Commission will not gain any relevant experience by auctioning narrowband PCS or cellular unserved areas first. Wideband and narrowband PCS are significantly different primarily because narrowband will not be allocated into seven different blocks that hold different values. AT&T and MCCaw seem to be attempting to delay competition for cellular service by requesting that wideband PCS be auctioned last. This proposal should be seen for what it is.

III. Miscellaneous

A. Preferences For Designated Entities Should be Allowed Only In the Set Aside Blocks.

As mentioned above, many designated entities requested preferences outside of the set-aside blocks, including bidding "credits." As also discussed

[20]See, Comments of AT&T and Comments of McCaw, filed November 10, 1993 in this proceeding.

above, the set-aside blocks absolutely assure that nearly one thousand of the 2,562 PCS licenses will be awarded to designated entities. GCI believes that this assurance fully satisfies the requirement of Congress that designated entities be "given an opportunity to participate" in the provision of spectrum-based services, including PCS.[21]

Not only does the Commission's proposal guarantee significant participation in the PCS market by designated entities, those entities would receive significant benefit within the set-aside blocks. Liberalized payment terms benefit designated entities within the set-aside blocks, and this benefit should allow many designated entities to participate in the auction.

Thus, GCI does not believe that it is necessary or appropriate to extend the preferences to designated entities outside of the set-aside blocks. Most particularly, bidding credits are not appropriate. Bidding credits would surely reduce receipts from the auction. As proposed by some parties, bidding credits would ensure that virtually all licenses are obtained by designated entities; while it may be desirable to grant preferences to designated entities to encourage their participation in PCS, it is not desirable to make that preference so great that large firms with significant resources, including telecommunications expertise, are totally excluded from PCS.

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[21]Section 309(j)(4)(D).

B. The Definition of Designated Entities Must Be Strict.

GCI agrees with the comments of many parties,[22] including designated entities themselves, that strict and specific criteria should be adopted to determine whether an entity qualifies as a designated entity. This is necessary to prevent sham attempts to qualify as a designated entity. The existence of such shams is unfair to designated entities and, if preferences are inappropriately extended beyond the set-asides, to all other parties as well. Such shams also reduce public support for and confidence in the policy favoring the preferences, again to the disadvantage of designated entities.

C. Rural Telephone Companies Must Abide By All The Rules Outlined By the Commission.

There were many comments filed regarding the treatment of rural telephone companies. GCI generally supports increasing the size limitation to include all telephone companies serving fewer than 10,000 access lines (including all those served by affiliated companies). However, many of the other comments filed by rural telephone companies should not be adopted.

Rural telephone companies should not be considered designated entities outside of their franchise area. The primary reason for providing rural telephone companies status as designated entities is to promote PCS development in rural areas, and this reasoning applies only when the rural telephone company is providing service within its existing area.

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[22]See, Comments of Iowa Network, Comments of Alliance for Fairness and Viable Opportunity, Comments of Vanguard Cellular Systems, Inc., Comments of Cook Inlet Region, Inc., and Comments of Minority PCS Coalition, filed November 10, 1993 in this proceeding.

Rural telephone companies should not be exempted from the rule limiting cellular providers to 10 MHz. The combination of the 25 MHz cellular spectrum with another 10 MHz of PCS spectrum provides rural telephone companies with more than adequate spectrum for PCS. The set aside proposed by the Commission was not adopted to protect the rural telephone companies from competition. Therefore, the cellular rules applicable to all telephone companies should apply to rural telephone companies.

GCI opposes the comments of Anchorage Telephone Utility (ATU)[23] that the definition of rural telephone company should be expanded to include all municipally-owned telephone companies. ATU serves an urban area of over 200,000 people and ATU has more than 125,000 access lines and almost $100 million of annual regulated operating revenues.[24] According to its own 1992 Annual Report, "ATU is the 22nd largest [local exchange company] in the United States, as measured by revenues and access lines."[25] ATU also provides cellular service in and around Anchorage and is acquiring additional cellular service areas.

Also, ATU states that "[t]he focus for ATU -- and most municipal carriers -- is to keep rates low, not on paying dividends to the Municipality."[26] At least in the case of ATU, that statement is not true. In 1991, the citizens of Anchorage voted to amend the Home Rule Charter to

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[23]See, Comments of ATU, filed November 10, 1993 in this proceeding.

[24]With $100 million in revenue, ATU would be considered a Tier 1 carrier.

[25]ATU 1992 Annual Report, p. 1.

[26]See, Comments of ATU, p. 4.

restructure ATU. Subsection (a) of the amendment establishes the Board of Directors, and subsection (b) specifically states "[t]he utility shall be operated and compete in accordance with prevailing industry practices and in a manner which will provide a dividend to the municipality."[27] There is no mention whatsoever of "low rates" as an objective.

In testimony before the Alaska Public Utilities Commission (APUC), ATU's General Manager has recognized that this new management structure "was created in an effort to depoliticize the process of operating the utility." He emphasized that the voters had "mandated" that the Board of Directors operate the utility in a manner which will provide a dividend to the Municipality.[28] In its Annual Report, ATU states that it has paid a 1992 dividend of $2.5 million; that the dividend will increase to $3 million in 1993; and, additionally, ATU paid a Municipal Utility Service Assessment of $4.2 million and intergovernmental charges of $5.1 million.[29] ATU is in no sense a rural company and there is no basis upon which it should be treated as a designated entity.

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[27]Section 16.03(b).

[28]See, Prefiled testimony of James G. Morrison, APUC Docket U-91-91, filed January 31, 1993, pps. 5-6.

[29]ATU 1992 Annual Report, p. 3.

D. Cellular Carriers Should Not Be Allowed To Bid For PCS Licenses Based On Promises to Divest Their Cellular Assets.

Several existing cellular providers[30] argued that they should be allowed to bid on and acquire more than 10 MHz of PCS spectrum, subject to later divesting cellular assets. This should not be allowed. Acceptance of this proposal would allow existing cellular providers to "lock-up" large amounts of PCS spectrum. In some instances promises to divest will take longer than anticipated, resulting in requests for waivers or forfeiture of licenses, causing delays in providing PCS and possible re-auctions.[31] Cellular providers who cannot comply with license restrictions prior to bidding will be able to acquire desired licenses in the post-auction market, after divesting cellular assets.

E. Upfront Payments And Deposits Should Be Significant.

GCI continues to support significant upfront payments to qualify to bid and further deposits from winning bidders. Although such payment should not be so high as to discourage legitimate bidders, they should discourage speculators. GCI also supports full payment of bids within a short time after license award.

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[30]See, Comments of Bell Atlantic Personal Communications, Comments of Pacific Bell/Nevada Bell, and Comments of Ameritech, filed November 10, 1993 in this proceeding.

[31]The request of the cellular providers for a grace period to comply with restrictions in not comparable to GCI's proposed grace period. The grace period proposed by GCI would apply solely to allow entities to resolve problems from conditions over which they have little or no control or which result, inadvertently, because of the bidding sequence. Cellular entities have made a choice to own cellular services and control the acquisition and disposition of those assets.

F. Bidders Should Be Masked.

GCI also continues to believe that bidders should be "masked". All parties should bid based on the value they place on a license; parties should not bid solely to thwart another bidder. If bidders are masked it will be more difficult for others (perhaps collectively) to bid against an entity for motives that are not in the public interest.

G. Collusion Rules Should Not Be Adopted At This Time.

GCI does not believe that the Commission should adopt rules against collusion. Some information-sharing is legitimate and desirable, and it would be difficult for the Commission to draft new rules, with no actual experience, that would allow legitimate information-sharing yet prohibit undesirable collusion. GCI also believes that collusion (with the possible exception of collusion against a legitimate bidder) will be difficult because of the large number of bidders. For all these reasons, GCI suggest that, at least for a time, the Commission rely on existing rules and laws to control undesirable collusion.

CONCLUSION

The Commission must adopt a fair compromise that allows oral bidding supplemented with limited sealed combinational bidding, as proposed by GCI in its Comments. The Commission should not adopt rules that would fragment the market and allow the dominant cellular carriers an unfair advantage. The Commission must adopt rules that are fair to all players.

Respectfully submitted,

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November 30, 1993

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed November 30, 1993.

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