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

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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
	)	

ERRATUM TO REPLY COMMENTS OF AMERICAN 52 EAST, AMERICAN 52 WEST, AMERICAN INTERACTIVE EAST, AMERICAN INTERACTIVE WEST, U.S.A. INTERACTIVE PARTNERS, VISION INTERACTIVE AND PREMIER INTERACTIVE

American 52 East, American 52 West, American Interactive East, American Interactive West, U.S.A. Interactive Partners, Vision Interactive and Premier Interactive ("American Group"), by counsel, hereby submits this Erratum to its Reply Comments in the above-referenced proceeding, which were filed yesterday, November 30, 1993.

American Group timely filed the original of its Reply Comments. However, because of an unanticipated eleventh-hour malfunction of counsel's photocopier, American Group was not able to file copies of its Reply Comments.

Attached hereto is a corrected version of the Reply Comments with the appropriate number of copies. In addition, minor changes to correct typographical errors also have been made and are reflected in the attached Reply Comments.

American Group respectfully submits that these Reply Comments be accepted. First, American Group timely filed its Reply

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Comments. Second, the attached Reply Comments are identical in substance to those filed November 30, 1993. Third, the attached Reply Comments are being filed on the first day after the filing deadline. Thus, no party will be prejudiced by the filing of this Erratum and the attached Reply Comments.

Respectfully submitted,

AMERICAN 52 EAST, AMERICAN 52 WEST, AMERICAN INTERACTIVE EAST, AMERICAN INTERACTIVE WEST, U.S.A. INTERACTIVE PARTNERS, VISION INTERACTIVE AND PREMIER INTERACTIVE

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Date: November 30, 1993

TABLE OF CONTENTS

		PAGE
Summary		ii
Introduction		1
I.	Background	2
II.	Definition of Small Business	3
III.	Determining Minority and Women Ownership	5
IV.	Application and Suitability of Special Preferences	7
	A. Spectrum Set-Asides	8
	B. Installments and Royalty Payments	8
	C. Innovator's Bidding Preference	10
V.	The Application Process	12
VI.	The Bidding Process	14
VII.	Safeguards	16
VIII.	Specific Services	20
	A. Cellular Unserved Area Applications	20
	B. IVDS Applications	23
IX.	Conclusion	25

SUMMARY

In these Reply Comments, American Group ("American Group") addresses many important issues that the Commission must consider in fashioning rules for competitive bidding. In particular, American Group urges the Commission to be true to Congressional objectives designed to facilitate the participation of small businesses in the allocation of spectrum.

Congress directed the Commission to promulgate rules permitting small businesses and minority-and women-owned businesses (the so-called "designated entities") to compete with large telecommunications companies in the auction process. To qualify as a "small businesses" entitled to special consideration, American Group advocates a definition based on annual gross revenues. The maximum level of gross revenues should vary according to the particular service and the size of the market.

American Group believes that the participation of designated entities in the competitive bidding process will be greatly enhanced through the use of the special preferences the Commission has proposed. Specifically, American Group supports the designated entity frequency set-asides for broadband PCS. A deferred payment plan should also be made available to designated entities, and to decrease the likelihood of default, American Group endorses a royalty-based payment scheme premised on subscriber revenues. Instead of the innovator's bidding preference proposed by the Commission, American Group supports a universal "designated entity

bidding preference" for designated entities participating in auctions for non-set-aside frequencies.

The application process should, as proposed by the Commission, be a two-step process. American Group suggests that the period to file petitions to deny conclude before the actual auction in order to discourage greenmail and post-auction litigation delays. Combina-torial bidding should not be used, as it will only encourage market consolidation. American Group supports the use of open, sequential bidding in auctions for set-aside frequencies, and sealed bidding for non-set-aside frequencies. Non-designated entities should be required to pay the full auction price shortly after the auction, while designated entities should be required to make a substantial post-auction downpayment, followed by annual royalty payments.

Licensees should have a strong renewal expectancy in order to deter frivolous renewal challenges. American Group also supports a time and percent limit on assignments and transfers for unbuilt facilities. Any management or construction contracts that licensees enter into should be filed with the FCC for evaluation and approval.

Finally, because of the unproven nature of the service, American Group proposes the use of lotteries to amend IVDS authorizations. Cellular unserved area applications that were on file with the Commission prior to July 26, 1993 also should be awarded by lottery.

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American 52 East, American 52 West, American Interactive East, American Interactive West, U.S.A. Interactive Partners, Vision Interactive and Premier Interactive ("American Group"), by counsel and pursuant to Section 1.415 of the Commission's Rules and the Commission's Notice of Proposed Rulemaking (the "NPRM"), FCC 93-455, released October 12, 1993, hereby submits its Reply Comments and states as follows:

INTRODUCTION

1. American Group is a group of entrepreneurial firms primarily engaged in developing new and emerging communications technologies. To this end, American Group and its affiliates have filed applications with the FCC for authorizations to construct Interactive Video and Data Service ("IVDS") facilities. In addition, members of American Group plan on applying for Personal Communications Service ("PCS") authorizations. American Group wholeheartedly agrees with Congress that enhancements are essential to ensure the participation of "small businesses" in the communications revolution.

I. BACKGROUND

2. On August 10, 1993, Congress adopted the Omnibus Budget Reconciliation Act of 1993 (the "Act") which, among other things, added a new Section 309(j) to the Communications Act of 1934, as amended, to authorize the use of competitive bidding (i.e., auctions) to award construction authorizations in certain circumstances when there are competing applications for the same frequencies. In establishing auction procedures, Congress directed the Commission to design a scheme that would promote investment in and rapid deployment of new technologies and services as well as promote economic opportunities for a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women. See, 47 U.S.C. § 309(j)(4). Congress offered specific suggestions, including the use of tax certificates and bidding preferences, as means of ensuring the participation of these groups in the development of new services by auction. Id.

3. In the NPRM, the Commission acknowledged the importance of providing opportunities for small businesses, rural telephone companies and businesses controlled by minorities and females to be involved in the licensing process and suggested various schemes under which participation of these groups would be promoted. See NPRM at ¶¶ 72-76. The Commission also noted that Congress intended for the Commission to separately consider the treatment of each so-called "designated entity" in fashioning rules tailored towards the ability and benefits of each such group to participate. See NPRM

at ¶ 75. Of particular concern to Congress was the fair allocation of PCS spectrum to designated entities.

4. American Group's Reply Comments will focus on: (a) defining "small businesses" for purposes of establishing eligibility for preferential treatment; (b) the criteria to be used to determine if an applicant is "minority or women owned" for purposes of receiving preferential treatment; (c) the incentives that would be most effective in ensuring the participation of designated entities in the auctioning of spectrum; and (d) the benefits of awarding IVDS and cellular fill-in authorizations by the current lottery procedures.

II. DEFINITION OF SMALL BUSINESS

5. The definition of a "small business" for purposes of receiving preferential treatment in the competitive bidding process should be flexible enough to take into account the different start-up costs and capitalization requirements for the different services being offered, and the difference in start-up costs to provide the same service in different markets. [1/] American Group concurs with the U.S. Small Business Administration ("SBA") that a "small business" should include all businesses that had annual gross revenues for the preceding fiscal year that did not exceed a particular level. Those levels should be set according to the service involved, the size of the market and the anticipated capital requirements to construct the facilities. See SBA

[1/] See Comments of the U.S. Small Business Association ("SBA Comments"), pp. 10, 11.

Comments, pp. 9-10.

6. For PCS, American Group proposes that the Commission establish three market "classes", with Tier I representing the 51 Major Trading Areas ("MTAs") and the 50 most populous Basic Trading Areas ("BTAs"). Tier II would consist of the next 150 most populous BTAs, with Tier III consisting of the remaining BTAs. Because of the high start-up cost and capitalization requirements for successfully building out PCS systems in the Tier I markets, American Group would propose a $40 million maximum gross revenue criterion to qualify as a small business for purposes of preferential treatment in applying for licensees for Tier I markets. For Tier II licenses, American Group would set a gross revenue ceiling of $20 million and for Tier III licenses, a gross revenue ceiling of $5 million. [2/]

7. Based on its experience in the cellular marketplace, American Group estimates the build-out costs for cellular "fill-in" licensees to be substantially less than the costs associated with PCS. In addition, cellular is a proven industry and financing will be more readily available from sources familiar with the performance of existing cellular radio businesses. Therefore,

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[2/] With respect to PCS, cost estimates for buildout run from the $50-100 million predicted by the FCC's Small Business Advisory Committee ("SBAC Report") to the $8-250 million predicted by the SBA. SBAC Comments, p. 21; SBA Comments, p. 11, n. 17. American Group's estimates assume a build-out cost range for Tier I markets between $120-250 million; for Tier II markets of $30-120 million and for Tier III markets from $8-30 million. If further studies provide different estimates, American Group would suggest as a general rule, the threshold revenue be calculated as 1/6 of the maximum build-out cost for the most expensive market in each Tier.

American Group proposes a gross revenue ceiling of $5 million to qualify as a small business and preferential treatment in the auction process.

8. Another new service that the Commission has proposed to award licenses by competitive bidding is IVDS. [3/] Again, because it is a new service without a "track record" of past performance to provide investors with a reasonable level of comfort, and in light of buildout cost estimates significantly less than those predicted for PCS, American Group proposes a gross revenue ceiling of $10 million for all remaining markets. [4/]

9. To further level the playing field for small businesses, American Group supports rules that would allow a consortia of small businesses to participate together to reach the revenue threshold to bid on the more valuable PCS licenses. American Group also supports the implementation of safeguards to protect against the participation of "small businesses" that in reality are nothing more than alter egos of large telecommunications companies.

III. DETERMINING MINORITY AND WOMEN OWNERSHIP

10. The plain language of the Act requires the Commission to give special consideration to "businesses owned by members of minority groups and women." The Commission must now decide how to

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[3/] American Group disagrees with the Commission's tentative conclusion that IVDS licenses should be awarded pursuant to competitive bidding. See ¶¶ 37-39, infra.

[4/] American Group has also taken into account the fact that the Commission has already held lotteries to select two licensees for each of the nine most populous (and most expensive) markets to construct.

define ownership for these purposes.

11. As the SBAC Report notes, there is a simple "bright line" test that would require women and minorities to own more than 50% of the voting control and equity of the business to qualify for preferential treatment. SBAC Comments, p. 22. However, the SBA opposes this type of analysis, stating that the composition of PCS applicants, especially small business applicants, should be designed to allow for the infusion of start-up capital through dilution of the equity stake of the principals. See SBA Comments pp. 16-17. The SBA proposes that the Commission examine on a case-by-case basis the "actual operational control" of the business, and states that "the control must extend to decisions concerning capital expenditures." Id.

12. The Commission's experiences in awarding "preferences" to minority (and formerly women) applicants in the context of comparative hearings for the award of broadcast licenses provides a perfect illustration of how difficult administration of a case-by-case test can be, and how such a test can be abused. Many broadcast applicants were found to be carefully crafted "shams", set up as two-tier partnerships or corporations with minorities or women in "control" (e.g., holding a majority of the voting control according to the corporate/partnership documents) but with the non-voting equity holders possessing up to 80% of the equity and exercising dominion and de facto control over the applicant by controlling the applicant's purse strings. See, e.g., Madalina Broadcasting Co., 8 FCC Rcd 6344, ¶¶ 336-344 (ALJ 1993)(application

of Madalina dismissed on finding of non-voting shareholder as a "real party-in-interest").

13. At the same time, it is unclear whether small businesses will be able to arrange sufficient financing if only 49% of the equity is available for distribution to potential investors. Perhaps, if the Commission is to allow minority- and-women-owned applicants to be measured in terms of ownership (in addition to actual operational control), a reasonable approach would be to limit the percentage of equity that each investor is permitted to acquire. [5] For example, if the existing principals retained 20% of the equity, no single investor would be allowed to control more than 20% of the equity. Without a single entity controlling a majority of the equity, American Group believes that the likelihood of the "voting" principals ceding de facto control to investors would be reduced.

IV. APPLICATION AND SUITABILITY OF SPECIAL PREFERENCES

14. In order to satisfy Congress' mandate and provide designated entities with "opportunities to participate" in auctions, the Commission suggested several measures, including spectrum set-asides, bidding preferences, payment of royalties and preferential payment terms. American Group believes a combination of these measures will provide small businesses with sufficient

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[5] The National Association of Telecommunications Executives and Companies ("NAMTEC") proposes such a two-part test to determine whether an entity is minority or women "owned." In addition to controlling at least 50.1% of the voting interest, minorities or women must also own at least 20% of the equity of the entity. See NAMTEC Comments at p. 24.

assistance to compete with larger corporations.

A. Spectrum Set-Asides

15. American Group supports the Commission's proposal to set aside two blocks of spectrum nationwide in the broadband PCS service for bidding by designated entities only. See NPRM ¶ 121. The surest way to encourage the participation of under-represented groups is through the reservation of specific blocks of frequency. The Commission has had success in spectrum set-asides in the FM broadcast service and Instructional Fixed Television Service ("ITFS"), where it reserved blocks of channels for non-commercial educational service providers. But for the set-asides, the operators on the reserved channels likely would not have been able to provide educational messages to their local communities. These entities had to compete only with similarly situated entities for the spectrum, not commercial telecommunications companies. Consistent with the benefits of the FM and ITFS set-asides, American Group expects that the PCS set-asides proposed by the Commission will ensure the participation of small businesses, which in turn will further Congressional objectives.

B. Installment and Royalty Payments

16. American Group supports the use of installment, instead of lump sum payments by designated entities as proposed by the Commission. See NPRM ¶¶ 68-71. [6] Installment payments will allow

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[6] American Group supports the use of installment payments by designated entities in both auctions for the specially set-aside

designated entities to better devote their scarce resources to initial construction costs. The income the system generates can be used to pay the balance of the auction price. However, instead of installments based on the balance due, American Group supports a royalty payment system that is more directly tied to the licensee's receipt of income. American Group disagrees with the Commission's tentative conclusion that a royalty payment system would be too difficult to administer.

17. In its Comments, the SBA points out the flaws in the Commission's resistance to implementing a royalty system. The Commission claims there is no "measurable output" with respect to electromagnetic spectrum as there is with other resources that the government leases to entities in return for royalty payments. NPRM ¶ 70. The SBA counters, and American Group agrees, that subscription fees would be a "measurable output" which could be implemented and monitored with little difficulty. See SBA Comments, p. 25. Sound business practices will compel licensees to keep accurate track of subscription fees. Thus, the FCC's oversight will be minimal compared to the oversight currently required to administer common carrier tariff and cable rate regulation programs. See SBA Comments pp. 25-26. Finally, the Commission will be collecting royalties for only a limited time until such royalties have covered the amount of the bid made by the designated entity to acquire the license (less any down payment received from

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broadband PCS spectrum block and all other auctions where designated entities will be bidding against entities that do not qualify for special treatment.

the licensee either pre- or post-auction). Id. [7]

18. American Group proposes a royalty fee equal to five percent (5%) of the auction bid, payable to the Commission on a quarterly basis, commencing one year after the grant of the license is final. [8] It would be unfair to designated entities, and likely would needlessly increase their default rate, if they were required to commence payments before construction and before there is any income. The royalty payments to the FCC would continue until the balance (after subtraction of deposit and post-auction payment) of the auction price was paid.

C. Innovator's Bidding Preference

19. The SBAC proposed an "innovator's bidding preference" equal to 10% of an applicant's bid for either: (a) a designated entity; or (b) a consortia controlled by firms that would individually qualify as designated entities. See SBAC Report at pp. 14-15. The SBAC provided a broad list of technical and non-technical innovations that should be considered in determining whether an innovator's preference is warranted. Id. The SBA supports the concept of an innovator's preference, finding it analogous to the "pioneer's preference" rules currently in place [9]

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[7] For a discussion of the pre-auction deposit and post-auction payment proposed by American Group, see ¶¶ 21, 24, infra.

[8] The Rural Cellular Corporation ("RCC"), JMP Telecom Systems, Inc., Palmer Communications, Inc. and Taxpayer Assets Project also support a royalty-based payment plan for designated entities. See, e.g.,RCC Comments at p. 2.

[9] See 47 C.F.R. §§ 1.402, 1.403, 5.507.

but would make the preference available to all designated entities.

20. American Group believes the burdens on the Commission to analyze applicants' claims for innovators' preferences would far outweigh any benefit that might accrue. Further, as evidenced by the Commission's proceedings to award pioneer's preferences in the non-voice, non-geostationary mobile satellite service below 1 GHz and narrowband PCS services,[10] the question of which "innovator" is entitled to a preference is often very close and very costly and time consuming to litigate because of the subjective nature of the presentations. As an alternative, American Group proposes that all designated entities be entitled to a bidding preference equivalent to ten percent of the winning bid the entity makes. That is, each designated entities' bid would actually be valued at ten percent higher than the stated bid. In light of the fact that 55% of all technological innovations are attributable to firms that employ fewer than 500 persons and that small businesses "innovate" at a per person rate twice that of large firms, [11] American Group believes that the universal "designated entity bidding preference" will facilitate an equally rapid development of new technology with

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[10] See Report and Order in ET Docket No. 91-280, 8 FCC Rcd 1812 (1993)(award of pioneer's preference to Volunteers in Technical Assistance); First Report and Order in General Docket No. 90-314 and ET Docket No. 92-100, 8 FCC Rcd 7162 (1993)(award of pioneer's preference to Mtel), petitions for reconsideration and clarification pending, appeals pending sub nom. BellSouth Corp. v. FCC, No. 93-1518 (D.C. Cir., filed August 20, 1993) and Freeman Engineering Associates, Inc. v. FCC, No. 93-1519 (D.C. Cir., filed

much less burden on Commission and applicant resources then would occur with an "innovators bidding preference." [12]

V. THE APPLICATION PROCESS

21. American Group proposes a different application process from that proposed by the Commission. American Group suggests that all interested applicants file a short-form application with the Commission along with a nominal filing fee to cover the cost of processing the short-form application. The short-form application will identify the applicant and the person that will represent the applicant in any bidding processes in which the applicant proposes to take part. The short form will also contain certifications that: (a) the applicant is qualified as a "small business; (b) the applicant is qualified under Sections 309(a), 308(b) and 310 of the Communications Act of 1934, as amended; (c) the applicant satisfies the necessary financial qualifications; (d) the applicant and each of its 5% or more equity owners individually understands that the applicant must construct pursuant to the construction benchmarks in place for the particular service and will use its best efforts to meet those benchmarks; and (d) the applicant and each of its 5% or more equity owners individually will be subject to Department of Justice investigation for fraud and/or perjury in the event the applicant willfully fails to meet the construction benchmarks. Processing of the short-form applications should be pursuant to a letter-perfect standard.

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[12] NAMTEC supports such a "designated entity bidding preference." See NAMTEC Comments at pp. 14-15.

21. After the short-form applications have been processed, the Commission will release a Public Notice announcing the applicants that are eligible to bid. Applicants that wish to proceed will have 30 days from release of the Public Notice to submit a long-form application that the Commission will approve for each service subject to the competitive bidding procedure, and a $5,000 deposit to the Commission.[13] Fifteen days after the end of the long-form filing window, the Commission will release a second Public Notice announcing those applicants that have filed long-form applications. Release of that Public Notice will commence a 30 day petition to deny period where interested parties can file petitions to deny the applications of prospective bidders.[14] Only petitions to deny directed against the successful bidder will be considered. The other petitions to deny will be returned as moot upon dismissal of the unsuccessful applicants. This procedure will eliminate the delay in holding auctions that would take place if all petitions had to be adjudicated before the auction and will eliminate the delay in implementation of new service that would occur if all unsuccessful applicants were allowed to file meritless petitions to deny after the auction in an attempt to force favorable settlement.

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[13] This deposit would be refundable to all non-winning auction bidders.

[14] A pre-auction petition period is supported by several of the initial commenters. See, e.g., Comments of Paging Network, Inc. at pp. 29-34.

VI. THE BIDDING PROCESS

23. American Group proposes that sealed bids be used in auctions where designated entities are bidding against non-designated entities and open sequential bidding be used in auctions where only designated entities are bidding (i.e., where spectrum is specifically set aside for use by designated entities). Sealed bids will force large corporations to make serious projections as to what the value of a particular market is instead of just attending the auction to try to "outbid" the smaller companies.[15] By the same token, if a designated entity has a vested interest in or specific information about a particular market, it can bid a little more than the projected value in a sealed bid, without the risk of being outbid on the spot by a larger corporation with more readily available capital.

23. American Group strongly opposes combinatorial bidding as an open invitation to market consolidation. See NPRM ¶¶ 57-62. Combinatorial bidding would promote market consolidation among a few large, deep-pocketed telecommunications companies, while disregarding Congress' instruction to the Commission to establish rules that provide enhanced opportunities for the participation of designated entities. Allowing for a second round of bidding for the "winners" of individual licenses to allow them, collectively,

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[15] American Group shares Pagemart's belief that open auctions for non-set-aside frequencies favor large corporations that can test and easily exceed the limits of small and mid-sized entities. See Comments of Pagemart at pp. 5-11.

to outbid the "group bid" high bidder would not have the desired effect unless discussion among the individual bidders (which could amount to collusion) was encouraged. Further, the fate of an individual license in a particular market would hinge on the actions of individual bidders in other markets that are part of the "group." Combinatorial biding would only further the ability of large corporations to dominate the licensing of new services. [16]

25. After the winning bids have been determined, the successful designated entity applicants will have 10 days to make a post-auction downpayment. Computation of the downpayment should be made pursuant to the example offered by the Commission; 2 cents ($.02) per Megahertz per pop based on the 1990 census. See NPRM ¶ 103. Calculation of the downpayment should be provided to the successful bidder no later than the close of the auction, so that the successful applicant has the benefit of a full 10 days to make the payment. [17] Successful non-designated entity applicants will be required to pay the entire auction bid (less the initial $5,000 deposit) within 10 days of the auction.

26. American Group proposes a strong renewal expectancy for designated entities that successfully bid for licenses and construct pursuant to Commission guidelines. The expectancy would

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[16] Combinatorial bidding is also opposed by the Rural Cellular Association ("RCA"). See RCA Comments at p. 9.

[17] All checks tendered to the Commission should be in the form of banker, cashier or certified checks. American Group does not agree with the Commission's suggestion that checks must be drawn only on a bank with more than $1 billion of assets. See NPRM at p. 35, n. 95.

not be unlike the renewal expectancy awarded in the broadcast services. See Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, 22 FCC 2d 424, 18 RR2d 1901 (1970). The comparatively large investment of time and money required by the designated entities to bid successfully for the license, then construct and operate the new services will be incentive enough to perform within the rules and guidelines established by the Commission. Unsuccessful applicants or outsiders should not be allowed, at the close of the first license term, to wage a paper war on renewal applications absent serious, well documented allegations. As a threshold matter, only those parties alleging transgressions that if proven at a hearing would overcome the renewal expectancy should have their pleadings considered. Further, applicants that challenge the renewal application should also be required to submit an application and proof of financial ability to operate the system without revenue for a six month period of time (assuming the auction procedures are not used in renewal cases). These prerequisites would help eliminate frivolous license challenges.

VII. SAFEGUARDS

27. Should an applicant prevail at auction and then fail to, in the case of a designated entity, tender the post-auction downpayment or in the case of a non-designated entity, fail to tender the entire amount of the bid within the designated time period, American Group proposes serious sanctions. First, the

party would have to forfeit the construction authorization immediately. Further, the applicant and any applicant-principal holding 5% or more interest in the defaulting applicant, would be precluded from participating in any other auctions in the service the default occurred in. Finally, any application fee and the $5,000 pre-auction fee would be forfeited to the Commission.

28. To discourage greenmail and all other forms of conspiracy or collusion, American Group proposes a re-auction from among only the qualified unsuccessful bidders. Only after an applicant has tendered the required post-auction downpayment will the $5,000 pre-auction payments be returned to the unsuccessful applicants.

29. If the Commission adopts the royalty payment plan proposed by American Group, it would be able to monitor revenues and thereby eliminate any possible default on the part of designated entities during the period when they are "paying off" the purchase price. However, if the Commission adopts an installment payment plan, then there is a possibility that designated entities will default during the course of the pay-off period. In the event a designated entity defaults on the payment of its installments, [18] American Group proposes that Commission take back the license unless a "distress sale" to a designated entity can be accomplished within 45 days (i.e., a contract signed and assignment/transfer of control application on file). In addition, assuming no distress sale can

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[18] American Group proposes that a licensee be 90 days in arrears, if the installments are monthly and six months in arrears if the payments are quarterly.

be arranged, the licensee shall forfeit all of the monies paid.

30. To further Congress' goals of expediting new service to the public and reducing the ability of "spectrum speculators" to receive licenses for immediate resale at substantial profit, American Group agrees with the Commission's proposal to institute strict construction buildout guidelines and to prohibit transfers and assignments of licenses until after construction is completed. To further frustrate speculators, American Group agrees that at the time of filing its short-form application, an applicant must certify that it is "financially qualified" as that term is defined for the specific service involved. To encourage the involvement of designated entities (particularly small businesses), American Group supports the SBAC's proposal to allow financial certifications to be based on "highly confident" letters from qualified investment banking firms, venture capital funds and Specialized Small Business Investment Companies ("SSBICs"). See SBAC Comments, p. 13.

31. Voluntary transfers or assignments of licenses should be prohibited until systems have reached construction benchmarks prescribed by the Commission.[19] For example, in the cellular service licensees had five years to build out to 80% of their

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[19] Several commenters argue that there should be no restriction on transfers and assignments because the public interest is best served by getting licenses into the hands of entities that can construct and provide service as rapidly as possible. See, e.g., Comments of Nextel Communications, Inc. at pp. 12-13. American Group disagrees and find such a proposal as an open invitation to unwanted spectrum speculation allowing qualified applicants to warehouse spectrum and sell at a profit without constructing. From experience in cellular roll-out, this is an undesirable result.

service area. American Group agrees that for five years, or until a licensee serves 33% of its service population, voluntary assignments or transfers would be prohibited.[20], [21] To strike a balance between the necessity on some occasions to bring more capital into a venture during the construction phase by assigning equity to investors and the desire to prevent speculators from ceding control of the license at a large profit prior to completion of construction, American Group would propose a 40% limit on the amount of equity that could be transferred during the construction period, so long as control remains with the existing principal(s).[22]

32. "Voluntary" transfers and assignments would be permitted only upon a showing that: (a) the events leading to the need to assign or transfer a greater than 40% interest in the applicant could not have been foreseen by the applicant; and (b) the public interest will be served by the transfer or assignment.[23] In addition, American Group agrees with Sprint Corporation that the

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[20] See Letter from James H. Quello, Chairman, FCC to Hon. Edward J. Markey, October 19, 1993, p. 2, describing PCS licensee buildout requirements.

[21] NAMTEC also proposes a strict three-year prohibition against the transfers or assignments of licenses. See NAMTEC Comments at p. 23. As a general rule, American Group believes the anti-trafficking period should be service-specific based on the projected buildout time to serve 33%-50% of a service area.

[22] Palmer Communications, Inc. ("PCI") proposes that public offerings of less than 50% of the equity of an entity be exempt from any holding period restrictions. See PCI Comments at p.8.

[23] Involuntary and pro forma assignments and transfers would be permissible upon FCC consent.