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

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

Memorandum Opinion and Order

Adopted: May 27, 1994

Released: July 14, 1994

By the Commission: Chairman Hundt dissenting and issuing a statement; Commissioners
Ness and Chong not participating.

I. INTRODUCTION

1. On August 10, 1993, the Omnibus Budget Reconciliation Act 1993 (the "Budget Act") added a new Section 309(j) to the Communications Act, as amended, 47 U.S.C. §§ 151-713 (the Communications Act). This amendment to the Communications Act gives the Commission express authority to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for initial licenses. The *Second Report and Order* in this proceeding established general rules and procedures to govern the competitive bidding process.¹ We indicated in the *Second Report and Order* that unless specifically excluded, mutually exclusive applications in the Public Mobile Services filed after July 26, 1993, including cellular service, would be subject to competitive bidding.² We also indicated that we would address in a separate action the applicability of competitive bidding or lottery procedures to certain cellular

1 Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Second Report and Order, FCC No. 94-61, released Apr. 20, 1994 (*Second Report and Order*). We began the rule making proceeding approximately six weeks after passage of the Budget Act. See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rule Making, 8 FCC Rcd 7635 (1993) (*Notice*).

2 See Second Report and Order at para. 61.

radio applications filed before July 26, 1993.³

2. In this Order, we state our intention to use lotteries to award licenses for all cellular unserved areas in which applications were filed prior to July 26, 1993. We conclude for the reasons set forth below that use of random selection instead of competitive bidding to award licenses among these competing applicants would serve the public interest.

II. BACKGROUND

A. Lotteries for Cellular Unserved Areas

3. In February 1990, the Commission initiated a proceeding to adopt rules to govern the acceptance, processing, and selection of applications for authority to operate initial cellular systems⁴ in unserved areas of cellular markets.⁵ Subsequently, in 1991 the Commission adopted lottery procedures for selecting applications for unserved areas.⁶ In so doing, however, we stated that we would revisit our decision to use lotteries for unserved area applications if we received Congressional authority to conduct competitive bidding.⁷

4. As of April 11, 1994, we have received 10,900 unserved area applications for approximately 146 markets/blocks. Of these applications, all but two were filed prior to July 26, 1993. The Commission had scheduled two lotteries for these applications, but subsequently postponed the lotteries pending evaluation of the provisions of the Budget Act and possible implementation of competitive bidding procedures.⁸

B. Budget Act Authority to License by Auctions and Lotteries

3 See *id.* at para. 60, n. 55.

4 Cellular Service is governed by Part 22 of the Commission's Rules. See 47 C.F.R. Part 22.

5 The unserved areas are generally within the borders of cellular markets, namely Metropolitan Statistical Areas (MSAs), Rural Service Areas (RSAs), and the Gulf of Mexico Statistical Area (GMSAs). Two cellular systems are licensed in each market on separate frequency blocks. Each initial cellular licensee in the MSAs and RSAs was given five years from the date of initial authorization to build and expand its system within its market. The geographic area not covered by each licensee on each frequency block is considered "unserved area." See Notice of Proposed Rule Making in CC Docket No. 90-6, 5 FCC Rcd 1044 (1990).

6 First Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket 90-6, 6 FCC Rcd 6185 (1991) (*First Report and Order*).

7 *Id.* at 6217.

8 See Lottery Notice, Mimeo No. 34917 (Sept. 16, 1993).

5. Section 309(j)(1) of the Communications Act permits use of competitive bidding procedures only for mutually exclusive applications for initial licenses or construction permits. Section 309(j)(2) provides that competitive bidding may apply to a particular use of the electromagnetic spectrum if the Commission determines that the principal use of the spectrum will involve, or is reasonably likely to involve, the receipt of compensation by the licensee from subscribers in return for enabling those subscribers to receive or transmit communications signals.

6. The Budget Act also amended Section 309(i) of the Communications Act⁹ which provides for random selection of licensees. As amended, this section grants the Commission the authority to use random selection if there is more than one application for an initial license or construction permit that will involve the use of spectrum for a service that is not among the subscription-based services described in Section 309(j)(2)(A).¹⁰ The Budget Act also includes a "Special Rule" limiting the use of random selection.¹¹ The Special Rule provides that the Commission shall not use random selection to award any license or permit after August 10, 1993, unless the Commission has determined that the use of spectrum is not for the provision of a subscription-based service within the scope of Section 309(j)(2)(A) of the Act, or that one or more applications for such licenses were accepted for filing by the Commission before July 26, 1993.¹²

C. Notice and Position of the Parties

7. In the *Notice*, we concluded that in light of the criteria set forth in Section 309(j) and the Special Rule, the Commission has the discretion to select licensees for the unserved area applications filed prior to July 26, 1993 by auction rather than by lottery. Therefore, we proposed to subject these pending applications to competitive bidding procedures, and we sought comment on this proposal.¹³

8. The commenters overwhelmingly oppose the proposal to apply the competitive bidding process to the cellular unserved area applications filed prior to July 26, 1993. They argue that for the Commission to move from lotteries to auctions for these pending applications would delay service to the unserved areas;¹⁴ would be unfair to those applicants who relied in

9 47 U.S.C. § 309(i).

10 See 47 U.S.C. § 309(i)(1)(B).

11 Budget Act, § 6002(e).

12 *Id.*

13 *Notice*, 8 FCC Rcd at 7662.

14 See, e.g., Small RSA Operators Comments at 8, 12.

good faith upon the existing lottery procedures;¹⁵ would cause financial harm and economic dislocation to thousands of applicants, many of whom are small business owners;¹⁶ and would constitute an impermissible retroactive application of administrative rules and law.¹⁷

9. In the *Notice*, we also asked whether the Commission should allow full market settlements in these markets pending the decision to proceed by lottery or auctions. The commenters favor adhering to the existing cellular settlement policies. For example, Thumb Cellular Limited Partnership comments that for reasons of effectuating legislative intent and public policy, the Commission should permit settlements in order to avoid mutual exclusivity in cellular unserved areas and proceed with licensing rather than awaiting lotteries or auction proceedings.¹⁸ The Cellular Settlement Groups point out that the Commission has a well-established policy favoring full-market settlements of contested applications.¹⁹ Furthermore, they argue that the Budget Act indicates that Congress intended the Commission to proceed with its existing cellular settlement policies.²⁰

III. DISCUSSION

10. Based on the record before us, we believe that the Congressional intent and the public interest would best be served by using the statutory lottery procedures for the unserved area applications filed prior to July 26, 1993. We agree with the commenters that use of the existing lottery procedures for the markets for which applications have been pending would be consistent with the congressional intent and would serve the public interest.

11. In the *Notice*, we determined that there are compelling public interest justifications for using lotteries rather than auctions for most services for which applications had been filed before July 26, 1993. *Notice* at para. 149. Thus, we proposed to lottery MDS applications filed before July 26th in order to avoid delays in service to the public that might result from awaiting the implementation of auction rules and noted that these applicants had already incurred substantial delays. In September, 1993, we also used lotteries to issue licenses to IVDS

15 *See, e.g.*, Van R. Boyette Comments at 1; John Dudinsky Comments at 1.

16 *See, e.g.*, The Quick Call Group Comments at 1; David F. Gencarelli Comments at 1; Thomas Crema Comments at 1.

17 *See, e.g.*, The Coalition for Equity in Licensing Comments at 5-11; Wendy C. Coleman d/b/a WCC Cellular Comments at 5-11.

18 Thumb Cellular Limited Partnership Comments at 1-5.

19 Cellular Settlement Groups Comments at 6.

20 *Id.* at 7.

applications that were filed before July 26, 1993. *Notice* at para. 143, n. 150. We proposed in the *Notice* to use auctions for unserved area cellular applications and have examined the merits of this issue thoroughly. *Notice* at para. 160.

12. We have now decided not to use auctions for these services. As explained below, any concern that some speculative applications might have been filed for these cellular markets does not, by itself, justify the use of auctions in these circumstances. Rather, equitable factors must also be considered and balanced against that concern. We also believe that any concern regarding speculative applicants is mitigated considerably in view of the current rules governing cellular unserved areas. Our rules require that all facilities proposed in the application be constructed and service to the public be initiated within one year from the grant of the authorization. In addition, licensees may not transfer unserved area authorizations until after the facilities have been providing service for one year. As we indicated in the *First Report and Order*, these rules were adopted to provide service to the public as expeditiously as possible and to deter speculation.²¹ Moreover, random selection of cellular unserved area licenses may increase the likelihood of new entrants offering service in the cellular marketplace.

13. The legislative history also demonstrates that Congress recognized the equities involved in the auction law's grandfathering provisions for applications on file with the Commission before July 26, 1993. For example, Congress in the Conference Report explicitly singled out the pre-July 26th applicants in the IVDS service as examples of applicants for whom the Commission would be permitted to use lotteries. H.R. Rep. No. 213, 103d Cong., 1st Sess. 498 (1993) ("Conference Report"). From this, we infer that, whatever concerns Congress had about the possibility of speculative applications in particular services, Congress ultimately decided that other factors, including considerations of equity and administrative cost and efficiency, justified the use of lotteries for those applicants who, in reliance on the Commission's existing lottery procedures, had filed applications prior to July 26th.

14. Consistent with the considerations that motivated Congress to enact the grandfathering provision, the commenters point out that many of these cellular unserved area applications have been on file for more than a year.²² Further, they point out that these applicants' business plans did not take into account the additional expenditures that they would incur if licenses were to be awarded by competitive bidding. These arguments are, we believe, valid ones. Indeed, as a practical matter, we believe that existing applications for cellular unserved areas provide no indication that the applicants have any interest at all in participating in auctions. To ensure successful auctions, therefore, we would have to allow these applicants to clarify their intentions and to submit the information required by Section 1.2105 of our Rules. In fairness to existing applicants, moreover, those who indicate no desire to participate

21 *First Report and Order* at 6223-25.

22 *See, e.g.*, Cole, Raywid & Braverman Comments at 1; The Coalition for Equity in Licensing Comments at 18.

in auctions should also be entitled to a refund of their application processing fees. In sum, if we were to use auctions, the whole application process must begin anew at a considerable cost to the 10,900 applicants and to the Commission.

15. Another factor that militates against the use of auctions is the questionable commercial value of the cellular unserved areas. Cellular unserved areas vary in geographic size and population coverage. Few markets would be likely to attract significant bids. As for the others, it is unclear whether the bids that would be submitted for most markets would be substantial enough to create an economic incentive to construct the facilities more efficiently.²³ It would be difficult to articulate a principled basis for distinguishing between markets that would be auctioned and markets that would be subject to lotteries. Finally, we believe that using auctions for the cellular unserved area applications would be inconsistent with the Commission's decision to use lotteries for IVDS applications that were filed prior to July 26, 1993.

16. On further reflection, therefore, we are not persuaded that either Congress's intentions or the public interest support the administrative upheaval and dislocation in business plans that would result from the use of auctions in these circumstances. Indeed, no assurance even exists that using auctions for these particular applications would expedite the deployment of service to the public, a principal objective of the auction law. It has been estimated that it may take 60 days or longer to complete an auction than to complete a lottery. We believe that such estimates must take into account other possible factors creating administrative confusion and attendant delays, such as the time that may be needed to accept new applications from new parties, the time to allow current applications to be returned and refunds issued, and the time for current applicants to refile their applications under the auction process. The delay inherent in completing the administrative process of calling for and reprocessing these applications might even exceed the time savings that might result from discouraging possible speculative applications. In addition, in view of the currently scheduled auctions for narrowband PCS and IVDS applications in late July, it is unlikely that auctions could be held for cellular unserved areas in the immediate future.

17. In contrast, if we employ lotteries, we will be able to proceed almost immediately to issue authorizations for these services. As we indicated in our First Report and Order in this proceeding, we believe our existing build-out rules are likely to have a substantial impact in ensuring that service is implemented promptly.²⁴ We are also convinced that using the lottery

23 While Chairman Hundt in his dissent proposes a bifurcated process that uses auctions for "properties of meaningful value" and lotteries for the remaining markets, we believe that using the lottery process is the most consistent and the fairest method for dealing with all unserved area applications filed before July 26, 1993. Indeed, it is not clear that the Budget authorizes such a bifurcated procedure.

24 See First Report and Order in PP Docket No. 93-253, FCC 94-32, released February 4, 1994 (*First Report and Order*) at para. 9.

process for the cellular unserved area applications filed before July 26, 1993 provides an opportunity to make these systems available to new competitors in a very short period of time. Further, these new cellular unserved licensees could eventually seek joint ventures with PCS providers to offer expanded services in these markets. Therefore, taking all of these factors into account, we agree with commenters that auctions should not be used for these applications. Rather, we conclude the public interest would be furthered by using lotteries. The use of lotteries for applications filed before July 26, 1993 comports with Congressional intent.

18. For the same reasons that we are proceeding with the lotteries, we believe that it is in the public interest to utilize the full market settlement policies that apply to the cellular unserved area applications. Allowing those parties who have entered into full market settlements to proceed with licensing will expedite service to the public without expending further Commission and private resources.

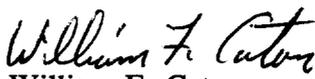
IV. CONCLUSION

19. In this *Order*, we state our intention to use existing random selection procedures to choose from among mutually exclusive applications filed prior to July 26, 1993, for authorization to provide cellular service to unserved areas. This conclusion is consistent with the Special Rule adopted in Section 6002(e) of the Budget Act. In the near future, we will issue a Public Notice rescheduling the two previously scheduled lotteries. Finally, we will consider requests for approval of full market settlements and proceed with licensing where such approval is granted. We are confident that these decisions will expedite service to the public.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that selection from among mutually exclusive applications filed prior to July 26, 1993, to provide cellular service to unserved areas shall be by random selection, in accordance with existing Commission rules, as set forth above.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Dissenting Statement
of
Chairman Reed E. Hundt

Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Cellular Unserved Areas (PP Docket No. 93-253)

The Commission's September 1993 Notice in the Competitive Bidding proceeding proposed that we use competitive bidding to award unserved area cellular licenses.¹ I concur in the Notice's tentative conclusion that competitive bidding is a better approach for awarding these licenses than lotteries. I accordingly dissent from my fellow Commissioners' decision to use lotteries for the unserved cellular area applications at issue in this proceeding. I greatly respect my colleagues' decisionmaking, but I am deeply troubled, for the reasons set forth below, by the prospect of giving away tens of millions of dollars (or more!) in public property -- spectrum -- by means of a lottery. That technique, in my judgment, does not serve any significant public policy goals, and certainly inflicts much harm on the public interest.

Unserved cellular areas are those geographic portions of an initial cellular licensee's market that the licensee fails to serve within five years of its service authorization, at which point these areas become available for separate licensing. Under the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), the Commission has the discretion to award

¹ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Notice of Proposed Rule Making, PP Docket No. 93-253, Para. 160 (released October 12, 1993) (Auction Notice).

licenses for those cellular unserved area applications filed before July 26, 1993, by either lottery or auction. It is important to note, however, that the Budget Act clearly suggests that the Commission should use auctions for applications filed before that date when auctions would further the public interest objectives of the Act more effectively than awarding the licenses by lottery.

Instead of evaluating this issue based on the public interest objectives of the Budget Act, the majority bases its conclusion that lotteries should be used to award licenses for applications filed before July 26, 1993, on the grounds that considerations of equity, administrative cost and efficiency justify lotteries for those applicants that relied on the Commission's lottery procedures in filing their applications.

In my view, none of these considerations is persuasive. First, in support of their concern with equity, the majority notes that many of these applications have been on file for more than a year, and that applicants' business plans did not take into account the additional expenditures entailed in auctions. The majority also relies on the suggestion of some commenters that switching from lotteries to auctions would cause financial harm and economic dislocation to many applicants.

This concern, however, is offset by the fundamental realities of the lottery process, as repeatedly experienced by this Commission. The Commission's extensive experience with cellular lotteries overwhelmingly demonstrates that lotteries inevitably attract applicants that

have no interest in building and operating cellular systems in the long term or in providing quality service to customers in the unserved areas. Moreover, even those who might take exception to this proposition must agree that only an auction can award a license to the applicant that most highly values a license. These are some of the reasons that the Commission so forcefully supported the Congressional grant of auction authority. Nor should anyone ignore the grave deficiencies of the lottery practice -- even without attending to the fact that the public fisc gains nothing from the lottery. This Commission's experience with lotteries in awarding cellular licenses demonstrates that lottery winners rarely intend to build and operate the cellular system proposed in their applications -- in fact, approximately 85% of non-wireline cellular licenses changed hands after the initial lotteries. The evidence suggests that lottery applicants are unlikely to invest time or money in developing detailed business plans to provide cellular service; indeed, given the arbitrary nature of lotteries, an applicant has little incentive to develop such a plan until it actually wins a lottery. Any applicants that are bona fide businesses seeking to provide cellular service in an unserved area would undoubtedly prefer the predictability of an auction to the randomness of a lottery.

Second, the majority suggests that an auction would entail considerable additional administrative costs. There is no evidence in the record to suggest the auctions would create significant additional administrative costs as compared to lotteries for this Commission. We have already developed auction procedures for other services covered by the Budget Act, and adapting these procedures and conducting auctions for cellular unserved area applications

filed before July 26, 1993, would not entail significant additional expense.

Third, the majority further suggests that an auction approach would be less efficient than a lottery. As we have already done for other services, we should address this concern by choosing an auction procedure for unserved areas that is simple and efficient. (An example would be a single round of sealed written bids.) In any event, we should consider not only the efficiency of the award process, but also the effectiveness of that process in ensuring that customers receive service from the new licensee as soon as possible. Auction winners are guaranteed to be better prepared and to have a greater incentive than lottery winners to provide better service faster to unserved areas -- generally because they have paid money for their licenses.

In short, the record does not support a conclusion that auctions would entail more "administrative upheaval and dislocation in business plans" than would occur with lotteries. Nor does the record provide any significant evidence that equitable, cost or efficiency considerations dictate that lotteries should be used to award these licenses.

In fact, the public interest factors of the Budget Act all dictate that auctions would better serve the public interest under the Act than lotteries.

The first public interest objective of the Budget Act is the promotion of "the development and rapid deployment of new technologies, products, and services for the

benefit of the public, including those residing in rural areas, without administrative or judicial delays." The majority suggests that no assurance exists that auctions would expedite service in furtherance of this objective, and observes that any speed that might be achieved by discouraging speculative applications could be eroded by the additional time required to conduct auctions. I believe the evidence supports the Notice's tentative conclusion that auctions do in fact expedite service to the public in unserved cellular areas because insincere applicants that do not intend to build out their systems would be discouraged from competing in an auction.² As noted above, the vast majority of the winners in our prior cellular lotteries sold their licenses after the lottery. That is very likely to happen here, unless by freakish chance the lottery winner proves to be a firm that would have submitted the winning bid in an auction. The result of the lottery, therefore, will be to transfer the tens of millions of dollars to be paid by these firms in auctions from the government to the lottery winner. It is not a personal judgment on these winners to say that they do not deserve the public's money.

As a result of our experience with cellular lotteries, we tightened our rules to eliminate many of the shortcomings that provided immediate, post-award windfalls to lottery winners and caused unacceptable delays in delivering service to the public in the lotteried markets. Even so, I do not believe that these revisions change the fact that cellular lotteries do not necessarily attract applicants that are fully committed to providing cellular service to customers in the unserved areas. Many, if not most, lottery applicants are not prepared for

² See Auction Notice at Para. 160.

or experienced in building and operating cellular facilities. If prior experience is any guide, lottery winners for the unserved cellular areas will devote their efforts during the post-award period to finding other entities that will provide the necessary financing and technical expertise needed to help them construct their systems in time to avoid forfeiting their licenses. This process usually consumes weeks and months, resulting in additional and, in my view, unnecessary delay before consumers in these unserved areas finally have access to modern cellular telephone service from these licensees. By contrast, licensees that acquire their service area in an auction have a compelling incentive to begin earning a return on their investment in the license as soon as possible by expeditiously constructing their facilities and providing service to the public.

It is at least arguable that lotteries could be conducted sooner than auctions -- but not by any meaningful time period. However, if we moved promptly, it could take fewer than 60 additional days to conduct auctions for the unserved areas, as compared to a lottery process. This hypothetical (but in all events short) time difference in the pre-award period could be more than offset by the auction winners' incentive to build out their service areas quickly, as compared to the extra time it would take an unprepared lottery winner to accomplish the same task. In short, from the public's perspective, auctions will result in more rapid deployment of service in unserved areas than lotteries. After many years of waiting in some unserved areas, customers deserve service sooner rather than later, and auctions would give us that result.

The Budget Act's second public interest objective is to promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the public by encouraging small businesses, rural telephone companies, and businesses owned by minorities and women to become licensees. Auctions that include meaningful preferences for these designated entities would afford such applicants that genuinely wished to provide cellular service to the public a more realistic opportunity to obtain a cellular license than if they were subject to the whims of a lottery. Lottery applicants that did not ultimately wish to provide service would likely drop out of an auction and seek a refund of their filing fee, giving new designated entity entrants that really want to enter this market a better shot at obtaining a license than if they were merely participating in a random lottery. To elect a lottery method means to disregard the goal of including small businesses, women, and minorities as fair participants in the opportunity of providing cellular services in the subject areas.

The third public interest objective of the Budget Act is recovery of a portion of the value of the public spectrum resource for the benefit of the public. Although the record does not indicate the precise amounts that potential businesses could bid for these cellular unserved areas, we do know that hundreds of applications have been filed for some of these markets. For example, 513 applications were filed for the Los Angeles frequency block B unserved area, and 11 other markets drew more than 400 applications each. I believe conducting auctions for cellular unserved markets has the potential of generating substantial sums for the U.S. Treasury, as Congress intended in the Budget Act. The evidence suggests

that it is reasonable to expect that these unserved cellular auctions would generate revenues of as much as \$32 million, and perhaps significantly more.³ Certainly the Commission has no evidence to disprove these estimates. In fact, there is no evidence in the record to support any contention that the auction of these licenses would draw only insignificant bids. I see no reason to deprive the U.S. Treasury of meaningful tangible revenues, particularly if we simply propose to give these spectrum licenses away in a lottery to applicants that are likely to resell them privately for significant amounts as soon as our rules permit such a transfer. In addition to being inconsistent with the intent of Congress, using a lottery for these cellular unserved areas would produce the incongruous result of needlessly giving away valuable spectrum at the same time we are conducting auctions for other potentially less valuable properties.

I recognize that each and every cellular unserved property would not necessarily generate significant revenues in an auction. Indeed, it might not be appropriate to auction unserved cellular markets that are of such low value that the revenues generated would not justify the effort and expense of an auction for the participants. We could, however, sort out such properties by setting a reservation price (say, \$50,000) for the cellular unserved auctions which bidders would have to meet or exceed in order to receive the license. If no bids were received at or above a specified level, the Commission could promptly conduct a lottery to award the license to one of the pending applicants. This dual approach, perfectly

³ See Letter from G. Salemme, McCaw Cellular Communications, Inc. to W. Caton, Acting Secretary, Federal Communications Commission (May 13, 1994)

consistent with the statute, would ensure the public would receive the financial and quality of service benefits from auctioning licenses in markets that have commercial value, while allowing use of lotteries in markets where auctions do not produce the desired incentive to proceed promptly with construction.

The Budget Act directs us to use the technique of competitive bidding where it is more likely than the lottery method to lead to efficient use of the electromagnetic spectrum. An auction winner for an unserved cellular area will have an economic incentive to design and build its system to offer low-cost service to the public by, among other things, using spectrum-efficient technology that minimizes the need for future upgrades of its facilities to accommodate spectrum shortages. By contrast, a lottery winner that anticipated the subsequent sale of its license as soon as our rules permit would be more likely to build out its system as quickly as possible using relatively inexpensive, spectrum-inefficient technology in order to meet its deadline under our rules.

I think it also bears emphasis that my conclusion that auctions should be used, wherever economically feasible, to award licenses for unserved cellular areas is the same conclusion that this Commission tentatively reached in the Notice of Proposed Rule Making. In that Notice, the Commission unanimously proposed the use of auctions for these licenses on the grounds that it would discourage insincere applicants and "provide more opportunity for a wider variety of applicants to become cellular licensees."⁴ For the reasons set forth

⁴ Auction Notice at Para. 160.

above in this Dissenting Statement, I see no basis in the extensive record in this proceeding for changing this well-reasoned conclusion.

In sum, the Congressional intent reflected in the public interest objectives of the Budget Act requires us in my view to subject mutually exclusive applications for cellular unserved areas to auctions whether they were filed before or after July 26, 1993. Competitive bidding is a better way than lotteries to serve the interests of consumers and service providers alike.