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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)
)
Amendment of Part 90 of the)
Commission's Rules to Adopt)
Regulations for Automatic Vehicle)
Monitoring Systems)
Telecommunications Act of 1996)

PR Docket No. 93-61

To: The Commission:

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COMMENTS OF TELETRAC, INC.

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SUMMARY

A multiple round competitive bidding design for the LMS auction would provide bidders significant flexibility to adjust their choices of markets as prices rise and reduce the likelihood that a bidder will be stuck with a set of licenses that it feels is inferior to another set that it could otherwise afford. The Commission may undercut the efficiency of this design, however, if it adopts minimum bidding requirements or reserve prices. Minimum bidding requirements might have merit in other circumstances, but in the LMS band they present a serious danger that the Commission will miscalculate the appropriate levels for minimum bids. The LMS band is unique in the extent of unlicensed and therefore difficult-to-track radio transmission activity, and LMS is a new type of service, from both technological and marketing perspectives. If the Commission sets minimum prices too high, bidders seeking to maintain required activity levels could be tempted to "park" their bids in other markets and end up getting stuck with licenses that they do not want. Reducible minimum bids would ameliorate but not eliminate this problem, because bidders could trigger reductions only by using up scarce bidding waivers.

To the extent that the purpose of minimum bids or reserve prices is to ensure that bidders are prepared to make serious investments in developing systems, and are not merely bidding as prospective arbitrageurs, the better approach would be for the Commission to convince prospective bidders that it will rigorously enforce construction deadlines. A credible assertion that enforcement of LMS construction deadlines will be rigorous would help to deter entities that might otherwise be tempted to engage in speculative spectrum warehousing or obstructionist greenmail strategies.

The Commission properly has recognized that even the most detailed attribution rules cannot anticipate every form of affiliate relationship between a small business and its financial

backers. Apparently for that reason, the Commission has proposed to use Subpart Q attribution rules that are less complicated but are also more ambiguous than the rules that were used to determine small business status for broadband PCS. Teletrac does not object to this approach, but recommends that the Commission establish a formalized procedure enabling prospective bidders to obtain a preliminary determination of their small business status before the LMS auction begins.

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COMMENTS OF TELETRAC, INC.

Teletrac, Inc. ("*Teletrac*")^{1/} hereby submits its comments in response to the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rule Making, PR Docket 93-61, FCC 97-305 (released September 16, 1997) (the "*LMS Further Notice*").

The Commission has sought comments on the competitive bidding design to be used in the LMS auction and attribution rules to be used in determining whether or not bidding entities qualify for preferential treatment as small businesses. Teletrac recommends that the Commission use a multiple round competitive bidding design without setting reserve prices or minimum bids, and that it clearly indicate before the auction begins that it will rigorously enforce construction deadlines. Teletrac also recommends that the Commission establish a formal procedure for determining whether or not entities qualify for small business status before the LMS auction begins.

^{1/} Teletrac, Inc. is the parent company of Teletrac License, Inc., which operates multilateration LMS systems pursuant to grandfathered multilateration LMS authorizations.

I. THE COMMISSION SHOULD USE THE SAME KIND OF AUCTION DESIGN IT HAS USED SUCCESSFULLY IN THE PAST.

In the *LMS Further Notice*, the Commission proposed to adopt for the LMS auction the simultaneous multiple round competitive bidding design used in the PCS auctions. The Balanced Budget Act of 1997 requires the Commission to design and test a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round,^{2/} although not every auction must follow that method. In addition, the Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price is required or minimum opening bid established, unless it determines that such an assessment is not in the public interest.^{3/}

For reasons discussed below, the Commission should use a simultaneous multiple round competitive bidding design and forego any attempt to use a combinatorial bidding system for multilateration LMS. Furthermore, the Commission should avoid the use of reserve prices or minimum opening bids for LMS, but adopt instead a policy of rigorously enforcing construction deadlines to deter bidders that are not prepared to make serious capital commitments in connection with any LMS licenses that they obtain. Finally, the Commission should adopt a formalized process by which prospective bidders can obtain determinations of their status with respect to the small business classification before the auction begins.

^{2/} Balanced Budget Act of 1997, P.L. 105-33, 111 Stat. 251 (1997) ("Balanced Budget Act"); 47 U.S.C. §§309(j)(3) and (4) (as newly amended).

^{3/} 47 U.S.C. §309(j)(4)(F) (new section).

A. THE COMMISSION SHOULD USE A SIMULTANEOUS MULTIPLE ROUND COMPETITIVE BIDDING DESIGN.

For multilateration LMS, the Commission proposes to adopt the simultaneous multiple round competitive bidding system used in the PCS auctions. Teletrac supports adoption of a simultaneous multiple round auction because such a design best achieves the Commission's goal of assigning licenses to bidders that place the highest value on the spectrum. The distinguishing feature of that design is that it allows bidders significant flexibility to adjust their choices of markets as prices rise. This reduces the likelihood that a bidder will be stuck with a set of licenses that it feels is inferior to another set that it could afford, given the final prices. A sequential auction design entails significant risks of this kind and can therefore lead to less efficient assignments. In addition, a simultaneous multiple round design allows a great deal of information to flow to bidders, thereby reducing winner's curse problems while increasing efficiency.

The Budget Act requires the Commission to design and test a combinatorial bidding system, but does not require that the Commission undertake such a system with any particular service auction. Teletrac submits that the LMS auction would be a particularly bad place to experiment with combinatorial bidding. The perceived benefit of combinatorial bidding is that, in the appropriate circumstances, it may be easier for bidders to avoid getting stuck as the high bidder on a subset of the licenses it would like to win as a group when being outbid for other licenses in the group. The main cost of combinatorial bidding is that it adds significant complexity for bidders as well as for the implementation and operation of the auction. The appropriate setting to experiment with combinatorial bidding is where the risk is large of a

bidder getting stuck with a part of its desired aggregate. This risk will be greatest when two conditions occur: (1) the pattern of complementarities across licenses varies across bidders, so that, for example, one bidder has a technology and business strategy such that it wants to win many densely-populated markets while another bidder has a technology and business strategy such that it wants to win all licenses in a particular part of the country; and (2) there are many bidders with diverse marketing plans in the auction. Teletrac does not anticipate, based upon its knowledge, that the LMS auction would satisfy these criteria.

B. THE COMMISSION SHOULD NOT SET RESERVE BIDS OR MINIMUM BIDS IN THE LMS AUCTION.

The Balanced Budget Act of 1997 calls upon the Commission to prescribe reasonable reserve prices or minimum opening bids, unless it determines that such assessments are not in the public interest. Teletrac believes that the unique characteristics of the LMS band render it an unsuitable candidate for reserve prices or minimum bids. Such mechanisms are intended to deter bidders that are not prepared to make serious commitments of capital resources; rigorous enforcement of construction deadlines is a better way to achieve the intended result in the LMS band. The Commission has already expressed an intention to enforce its construction deadlines for LMS, but the policy would not suffer from further articulation and emphasis.

In a recently adopted order, the Commission established minimum opening bid requirements for an auction of licenses in the 800 MHz Specialized Mobile Radio Service ("SMR auction").^{4/} The Commission acknowledged that valuation of licenses in the affected band may be subject to a high degree of uncertainty because the band is heavily encumbered by

^{4/} *In the Matter of Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices*, Order, (DA 97-2147, released Oct. 6, 1997) ("*SMR Order*").

incumbent grandfathered users, but asserted that the uncertainty could be adequately addressed by the use of reducible minimum opening bids.^{5/} Whatever merit reducible minimum bids might have in the SMR auction, Teletrac submits that reducibility would not cure the defects of any minimum bids that might be required in the LMS auction.

In past auctions, the Commission has required participants to maintain minimum levels of bidding activity in every round, except that it has granted a finite number of waivers (five, in some cases) enabling participants to sit out a limited number of rounds. In an auction where the Commission has set the minimum bids for some licenses at levels that are more than the licenses are worth, the only way for participants to inform the Commission of its miscalculation is to refrain from bidding for those licenses in the first round. In doing so, the participants would use one of their available waivers.

At that point, the Commission would know that it had overestimated the value of the licenses, but it would have no way of knowing *by how much* it had overestimated their value. This uncertainty could lead to a second bidding round that required participants to use up yet another waiver, and so forth, until the Commission at last reduced the minimum bid to an appropriate level. In effect, the Commission would be conducting a distorted form of Dutch auction within the context of another auction, except that the participants would be limited in the number of opportunities for bidding, and the form of the auction would change as soon as someone placed a bid. Until the minimum bids were reduced to realistic levels, some participants could be expected to "park" their bids in other markets to maintain bidding eligibility levels. Inevitably, some participants would end up getting stuck with markets they do

^{5/} *Id.* at ¶¶10-14.

not really want and have no intention of serving. In short, making minimum bid requirements reducible does not cure the problems associated with such mechanisms when they are applied to licenses whose value is subject to a high degree of uncertainty.

Minimum opening bids are particularly inappropriate for the multilateration LMS auctions because it is extraordinarily difficult to value spectrum in the LMS band. In the first place, LMS is a new service. Both market demand and the technologies required to support LMS are evolving. Broadband PCS, by contrast, typically provides a service that is similar in most respects to cellular telephone service, which had been widely deployed on a commercial basis long before the first PCS auction was conducted.

The greatest source of uncertainty for LMS, however, is the presence of many unlicensed or classified present and future users in the affected band. Unlike any other spectrum that has been auctioned or will be auctioned in the near future, the 902-928 MHz band is shared by many users of multiple types whose locations and levels of activity are often difficult to predict. With such heavy and unpredictable encumbrances, the uncertainty surrounding valuation of the 902-928 MHz spectrum is surely the highest faced by the Commission.

As the Commission is aware, multilateration LMS operates on a secondary basis to two other services. The primary allocation for the 902-928 MHz band includes the operation of Industrial, Scientific, and Medical (ISM) devices under Part 18 of the Commission's Rules.^{6/} The locales and times of interference that multilateration LMS systems must accept from devices such as industrial heaters, welding equipment and magnetic resonance scanners cannot be

^{6/} *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695, 4704 (1995) ("LMS Report and Order").

predicted with any degree of certainty, and even informed estimates require time-consuming research into patterns of industrial development. Such studies can be very expensive. The knowledge gained can provide a significant competitive edge to the companies that perform such studies or pay for them. For that reason, the results are proprietary. LMS systems must also accept interference from Federal government Radiolocation, Fixed and Mobile services.^{7/} Interference from military radar, data and video links, tracking systems, NASA aircraft and other federal usage may require testing, adjustment and accommodation in affected locales to permit reliable LMS service and will limit the technologies that can be used in the band, thus rendering the spectrum less valuable. Much of the Federal government activity in the band is classified, though it is possible to develop informed estimates of interference based on unclassified, publicly available information. Again, such studies can be very expensive, and, even when completed, are subject to a high degree of uncertainty. Unless the Commission is prepared to perform such studies on its own, its estimates of license value are likely to differ substantially from those of well-informed bidders, both in the aggregate and especially with respect to individual license valuations.

Amateurs and unlicensed devices operating under Part 15 of the Commission's Rules also use the 902-928 MHz spectrum. Penetration in this band of unlicensed devices such as cordless telephones, alarm systems, wireless Internet and LAN services, remote utility meter readers and remote video cameras and links is thought to be sizable.^{8/} While amateur and Part 15

^{7/} *Id.*

^{8/} See *Amendment of the Commission's Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHz Frequency Range*, 12 FCC Rcd 1576, 1579-80, 1583-84 (January 9, 1997); *Plan for Reallocated Spectrum*, 11 FCC Rcd 17841, 17868 (1996); *LMS Report and*

devices are secondary to LMS systems, the Commission has created a “safe harbor” that definitionally establishes non-interference for those devices complying with the safe harbor’s criteria. LMS licensees must accept interference from those amateur and Part 15 devices which operate in the safe harbor.^{9/} Additionally, the Commission recently decided to expand the safe harbor to include schools, libraries and rural health care providers.^{10/} Again, a substantial amount of proprietary research is required to produce even informed guesstimates of the locations and levels of interference multilateration LMS operators must tolerate from the amateur and Part 15 devices. Furthermore, use of these bands is not frozen: the Commission put multilateration LMS licensees on notice that interference in the band could increase in the coming years.^{11/} Thus, estimates used for valuation purposes must include projections of future use.

The 902-928 MHz band is further encumbered by non-multilateration LMS use. The 2 MHz in sub-band D is to be shared by multilateration and non-multilateration users.^{12/} While the Commission contemplated that this structure would allow non-multilateration users to obtain additional spectrum, the price of such flexibility and sharing is an additional level of complexity in valuation (though, admittedly, only for one sub-band).^{13/}

Order, 10 FCC Rcd at 4699-4700, 4711-12 (1995).

^{9/} *LMS Report and Order*, 10 FCC Rcd at 4715-16.

^{10/} *LMS Further Notice* at ¶36.

^{11/} *LMS Report and Order*, 10 FCC Rcd at 4712.

^{12/} *Id.* at 4722.

^{13/} *Id.* at 4723.

Lastly, 902-928 MHz holds a type of encumbrance that is at least familiar to the Commission in the auction process: incumbent licensed operations. Multilateration LMS operators who built out and placed their systems in operation prior to January 1, 1997, were grandfathered and allowed to maintain their existing service.^{14/} Compared to other encumbrances in the band, there is at least some certainty present with respect to location and type of operation of the incumbent multilateration LMS systems. Even this degree of confidence, however, is undermined by the flexibility offered by the rules. Grandfathered systems are expected to operate on a “*co-equal shared basis* with stations of . . . the exclusive [geographic-based] licensee.”^{15/} If this is not possible, auction winners must either geographically isolate their systems or acquire the grandfathered systems.^{16/} The sharing and uncertainty surrounding this paradigm further adds to the complexity of the Commission’s spectrum valuation.

One way of addressing these uncertainties would be for the Commission to ask LMS auction participants to share with it the proprietary studies they have conducted to estimate the value of the licenses being offered, and to keep those studies confidential. The problem with that approach is that the minimum bidding levels set thereafter by the Commission would necessarily reflect the valuation estimates contained in the private studies. Under those circumstances, setting minimum bidding levels would constitute an indirect release of confidential information

^{14/} *Id.* at 4728; *Extension of Construction Deadline for Grandfathered Multilateration Licensees*, Order, 11 FCC Rcd 13986 (1996).

^{15/} *LMS Report and Order*, 10 FCC Rcd at 4728 (emphasis added).

^{16/} *Id.*

in a situation where the number of auction participants conducting comprehensive studies is likely to be very small, perhaps even as small as one or two. The results would be very damaging to the company or companies providing the information.

In sum, the Commission lacks sufficient information to establish minimum bidding levels that properly reflect the likely market value of LMS licenses. Reducible minimum bids may ameliorate the resulting ill effects to some degree but will not eliminate them. Minimum bids set too high will produce phantom bids that will distort the auction process and could leave licenses in the hands of participants with no desire to serve the affected markets.

C. BEFORE THE AUCTION BEGINS, THE COMMISSION SHOULD CLEARLY INDICATE THAT IT WILL RIGOROUSLY ENFORCE CONSTRUCTION DEADLINES.

To the extent that the purpose of minimum bids or reserve prices is to ensure that bidders are prepared to make serious investments in developing systems, and are not merely bidding as prospective arbitrageurs, the better approach would be for the Commission to convince prospective bidders that it will rigorously enforce construction deadlines. A recently adopted Commission rule will require that multilateration LMS systems must be constructed and provide service to one-third of an Economic Area's ("EA's") counties within one year of grant or else the authorization will be canceled.^{17/} A credible assertion that enforcement will be rigorous would have a number of positive effects on the auction process, including, but not limited to, the deterrent effect against entities that might otherwise be tempted to engage in speculative spectrum warehousing.

^{17/} 47 C.F.R. § 90.155(d), as amended by *LMS Further Notice*, Appendix D (rule changes to become effective 60 days after publication in the *Federal Register*).

Strict enforcement of the build-out requirements will ensure the rapid deployment of LMS to the public. A definitive advance commitment to strict build-out enforcement would decrease the possibility of another C block-type scenario with its prospects of delayed service deployment and litigated licenses.^{18/} Bidders would be on notice that build-out requirements are taken seriously and that licensees who fail to comply will have their authorizations recovered for subsequent auction. A clear and believable assertion of the Commission's intention to enforce construction deadlines would increase the level of certainty regarding LMS spectrum valuation and auction strategy because bidders who intend to play by the rules will be able to rely on Commission enforcement.

These policies would make sense for any radio license auction; they are doubly important for LMS, for two reasons. LMS can play a vital role in reducing crime and promoting public safety, especially when widespread deployment facilitates the cost savings and size reductions that mass production can support. Companies that are serious about building LMS systems, however, will be unusually vulnerable to greenmailers.

Teletrac and other vehicle-tracking systems have already demonstrated their ability to deter hijackings, cargo thefts, and assaults on drivers of large trucks in cities like Los Angeles, where many local trucking companies have installed Teletrac equipment — which provides features such as panic buttons — enabling drivers to transmit emergency messages along with

^{18/} In *Amendment of the Commission's Rules Regarding Installment Payment Financing for PCS Licensees*, Second Report and Order and Further Notice of Proposed Rule Making (WT Docket No. 97-82, released Oct. 16, 1997), the Commission faced the difficult prospect of *ex post* modification of policies concerning auction installment payments for C block licenses. Teletrac urges the Commission to indicate clearly the extraordinary circumstances surrounding that decision and that the integrity of the LMS rules will be maintained.

their vehicle locations when faced with threatening situations.^{19/} Results are equally impressive for personal vehicles. Teletrac records indicate that 214 consumer vehicles equipped with the Teletrac system were stolen in the Los Angeles and Miami areas in 1995-1996. With the aid of Teletrac, 189, or 88 percent of the vehicles, were recovered. More impressive, 156, -- 73 percent -- of these vehicles, were recovered in less than two hours.

The need for solutions is not confined to big cities. In 1995, the latest year for which final crime statistics are available, more than 1.5 million motor vehicles were stolen in the United States.^{20/} In the same year, 54 percent of the 580,545 robberies committed in this country occurred on streets and highways.^{21/} Many of those crimes could have been prevented if LMS units were widely available. The investments to drive that production will be made only if manufacturers and their financial backers are convinced that LMS is real and that LMS base stations will be rapidly deployed.

Companies with operational LMS stations have already demonstrated a serious commitment to system deployment, but existing site-licensed operators will be especially vulnerable to greenmailers who have no serious intention of building systems. By submitting high bids for EA licenses in markets with incumbent LMS operators, greenmailers effectively can surround the incumbents and demand ransom-like buy-outs to release warehoused spectrum. This observation does not imply that all or even a majority of bidders in those circumstances

^{19/} See C.J. Driscoll & Associates, *Vehicle Tracking – Is this Technology Useful for Local Trucking Fleets?* (attached).

^{20/} Federal Bureau of Investigation, *Crime in the United States*, as quoted on the FBI's World Wide Web page at <http://www.fbi.gov/ucr/ucr95prs.htm>.

^{21/} *Id.*

should be regarded as greenmailers, but the Commission already has effective countermeasures in place. The most effective greenmail deterrent would be a resolute, clearly expressed determination to enforce the Commission's already-adopted one-year construction deadline for multilateration LMS. Such a policy would effectively subvert any ransom demands by forcing EA licensees either to construct or lift their sieges within one year, thereby limiting the delay before LMS service is made available.

In signaling its intention to enforce construction deadlines rigorously, the Commission can point to its own well-considered waiver rules and policies regarding construction deadlines. Under Part 90 of the Commission's Rules, a party seeking a request for waiver must show (1) that unique circumstances are involved and (2) that there is no reasonable alternative solution within existing rules.^{22/} As an ordinary matter, the Commission and the courts have consistently held that the consequences of independent business decisions do not justify a waiver or release the licensee from its responsibilities to construct stations in accordance with the rules.^{23/} The Commission has declined to grant extensions for circumstances that it deems to be within the control of the licensee. Problems with fraud,^{24/} financing,^{25/} marketing strategy,^{26/} site

^{22/} 47 C.F.R. § 90.151.

^{23/} See, *P & R Temmer v. FCC*, 743 F.2d 918 (D.C. Cir. 1984); *Daniel R. Goodman, Receiver; Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission's Rules*, 10 FCC Rcd 8537 (1995) ("Goodman").

^{24/} *Goodman*, 10 FCC Rcd at 8547-48.

^{25/} *Authorization of Cable TV Services, Inc., For MMDS station WHT578*, 8 FCC Rcd 3204 (1993); *JET-TEL Group Limited Partnership Air-Ground Station KNKG802 Request for Waiver*, 1996 FCC LEXIS 6841 (1996).

^{26/} *P & R Temmer*, 743 F.2d at 930.

selection,^{27/} zoning difficulties,^{28/} equipment,^{29/} and proposed service novelties^{30/} have all been found to stem from a licensee's own independent business judgment and control and thus did not warrant an extension.

The Commission has granted extensions when the Commission itself has changed service or construction requirements,^{31/} or where important policy matters remained pending as construction deadlines approached.^{32/} Since the Commission has nearly completed an exhaustive, multi-stage review of the rules underlying LMS, it should be able to ensure that the regulatory environment will be stable by the time the LMS auction takes place. It is vitally important for the Commission to ensure that it has resolved all important issues affecting the service before it conducts the LMS auction. The Commission should present auction

^{27/} *Id.* Teletrac notes that the Commission granted Teletrac's request for waiver regarding a site, but the waiver related to the location of the site and not an extension for construction. *Teletrac License, Inc. Request for Waiver of Section 90.363(a)*, 11 FCC Rcd 17499 (1996). Teletrac had been constrained by a two-kilometer relocation restriction for its grandfathered sites. Bidders who receive their LMS licenses via auctions will have an entire EA over which to select site construction.

^{28/} *Business Radio Communications Systems, Inc.*, 102 FCC 2d 714 (1985).

^{29/} *AAT Electronics Corporation*, 93 FCC 2d 1034 (1983); Letter from Terry L. Fishel, Chief, Land Mobile Branch, Private Radio Bureau, to John W. Harris (Aug. 24, 1993).

^{30/} *PowerSpectrum, Inc., Request for Rule Waiver*, 8 FCC Rcd 4452 (1993).

^{31/} *Goodman*, 10 FCC Rcd at 8548; *Rush Network Corp. Request for Extension of Time to Construct a 220-222 MHz Commercial Nationwide Land Mobile Radio System*, 1997 FCC LEXIS 3545 (July 7, 1997).

^{32/} *Extension of Construction Deadline for Grandfathered Multilateration Licenses in LMS*, 11 FCC Rcd 13986 (1996); *Request of Pinpoint Communications Networks, Inc., MobileVision L.P., Uniplex Corporation and Roger D. Linquist for Waiver of Section 90.363(d)*, 11 FCC Rcd 8760 (1996); *Requests by Interactive Video and Data Service Lottery Winners*, 1997 FCC LEXIS 1312 (March 13, 1997).

participants with a fully considered regulatory framework that will remain in place without significant change at least until construction deadlines have passed. The Commission and its staff should carefully avoid making any pronouncements, formal or informal, that might lead to speculation that the rules governing LMS could change. The agency should explain that, in taking these precautions, it intends to add certainty to bidders' spectrum valuation and deprive those who win of any excuses that could otherwise justify delay in meeting construction deadlines.

II. THE COMMISSION SHOULD ESTABLISH A PROCEDURE FOR DETERMINING WHETHER OR NOT ENTITIES QUALIFY FOR SMALL BUSINESS STATUS BEFORE THE LMS AUCTION BEGINS.

For purposes of determining whether or not an entity qualifies for small business status in the multilateral LMS auction, the Commission has proposed to apply the attribution rules set forth in the general competitive bidding procedures of Part I, Subpart Q, and to attribute the gross revenues of all controlling principals in the small business applicant as well as its affiliates.^{33/} Teletrac does not oppose use of the Subpart Q rules but urges the Commission to augment them with administrative procedures to provide determinations of affiliation status before the auctions begin.

The definition of "affiliate" in Subpart Q is not as specific as the highly detailed and somewhat complicated attribution rules used in the auctions for broadband PCS licenses in blocks C and F.^{34/} As the Commission discovered in the controversy surrounding NextWave

^{33/} *LMS Further Notice* at ¶¶74-76.

^{34/} Compare 47 C.F.R. §1.2110(b)(4) (definition of affiliate in Subpart Q) with 47 C.F.R. §24.709 (eligibility for licenses for frequency blocks C and F).

Personal Communications, Inc., detailed attribution rules do not always preclude necessary resort to case-by-case determinations.^{35/} In that context, the Subpart Q rules can be seen as an appropriate and well-considered reformulation, founded upon a recognition that even the most carefully crafted rules cannot anticipate every form of control or business relationship.

Having recognized that, however, the Commission should also acknowledge that the definition of affiliate in Subpart Q provides little guidance to potential bidders. On the contrary, the rule maximizes the discretion that can be exercised by the Commission and its staff when making case-by-case determinations. Thus, for example, with respect to affiliation through contractual relationships, the rule says, "Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern."^{36/} The generality of this language may be unavoidable, but it can invite litigation by disappointed bidders after the auction has concluded. In doing so, it presents a danger that an auction could be declared invalid after the fact, i.e., after the Commission and the winning bidder have invested substantial resources in the auction process.

The Commission should establish a formalized process enabling prospective bidders to submit descriptions of their capitalization structures before the LMS auction begins and to obtain a preliminary determination of the entities' status with respect to the small business classification. To the extent that the Commission determines that a prospective bidding entity

^{35/} See *In re Applications of NextWave Personal Communications, Inc. for Various C-Block Broadband PCS Licenses*, Memorandum Opinion and Order, 6 CR 650 ("P&F") (DA 97-328, released Feb. 14, 1997).

^{36/} 47 C.F.R. ¶1.2110(b)(4)(ix).

does not qualify for small business status, the Commission should allow an adequate opportunity to reconfigure the entity's capitalization structure. The Commission need not make this process mandatory for all bidders, but it should provide participants with the opportunity to obtain such a preliminary certification before the auction begins. This process will obviously involve a certain amount of time and resources by the Commission and its staff, but the alternative can also involve substantial costs.^{37/}

CONCLUSION

Teletrac urges the Commission to conduct a multiple simultaneous auction of multilateration LMS licenses without reserve prices or minimum bidding requirements. It should provide a forceful, well-articulated, convincing pronouncement before the auction begins that it will rigorously enforce LMS construction requirements. The Commission should also

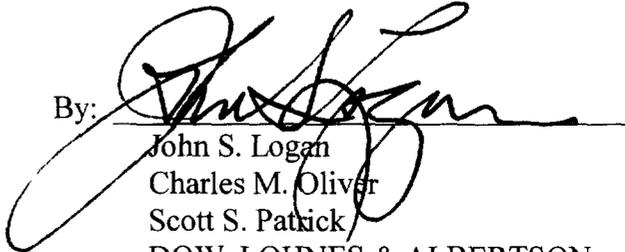
^{37/} Teletrac recognizes that the Commission's staff already provides informal advice to prospective bidders but seeks a more formalized process to provide a higher level of certainty and stronger deterrents against litigation after the auction concludes.

provide an opportunity for auction participants to obtain determination of their status with respect to the small business classification before the auction begins.

Respectfully submitted,

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ATTACHMENT

Vehicle Tracking –

Is This Technology Useful for Local Trucking Fleets?

A Study by C.J. Driscoll & Associates

Overview

Mobile communications systems, which include a vehicle tracking capability, have been used by longhaul trucking companies since the late 1980's. An estimated 70,000 linehaul trucks, including trucks operated by J.B. Hunt, Schneider Transport and M.S. Carriers, use mobile communications and tracking to improve fleet management efficiency.

Monitoring the location of trucks which are on the road for days at a time has a number of obvious benefits. These include keeping customers informed of the status of important shipments and scheduling new assignments based on informed estimates of each truck's arrival time. But do these benefits apply to local trucking operations as well?

This study seeks to determine whether vehicle tracking systems are useful fleet management tools for local trucking operators. Some of the major issues confronting metro area trucking fleets are reviewed and industry executives

provide their views on whether tracking systems are useful for addressing these issues. The study covers the following:

- a summary of the advantages of mobile communication/tracking systems for truckload operators
- a look at some major issues facing local trucking operators today
- opinions of executives of LTL, P&D and shuttle companies on the benefits of vehicle tracking systems in local trucking operations
- an overview of tracking systems available for local carriers
- a look at the future.

Will tracking systems become commonplace in local trucking operations? ■

Communication/Tracking Systems for Longhaul

A growing number of longhaul operators are installing mobile communication systems which include vehicle tracking capability. These systems, which first became available in the late 1980's, provide for data, and, in some cases, voice communication between drivers and dispatch. They also enable fleet managers and dispatchers to monitor the location of fleet vehicles by viewing the location of each vehicle on a computer map display.

Suppliers of these mobile communication systems report that the systems provide longhaul customers with a wide range of benefits. Monitoring the location and status of each truck enables them to schedule drivers and vehicles more efficiently, increasing the number of loads. The convenience of data or voice communications in the cab helps to reduce driver turnover, which is a major problem plaguing the longhaul segment. By avoiding the time and

expense of using pay phones at truck stops, drivers save time, telephone expenses are reduced and some truck stop accidents may even be avoided. Customer service is improved as shipment status information is always current. Data communications make dispatching more efficient, allowing fewer dispatchers to handle more vehicles.

In general, mobile communication systems have been demonstrated to help linehaul operators increase productivity, enhance customer service, improve driver morale and retention and increase driver security. The majority of the nearly 300 longhaul operators using mobile communication and tracking systems find their investment in these systems to be worthwhile.

But are these systems also a solution to the problems facing local trucking fleets? ■

Issues Facing Metro Trucking Fleets

While the truckload segment's business volume is growing and rates are increasing, metro area trucking operators face a number of problems. According to *Fleet Owner* magazine, truckload traffic increased 4.8% in the second half of 1993, while LTL showed virtually no growth at all for the year. Local trucking operators are clearly faced with the need to increase productivity in order to maintain reasonable margins and remain competitive. Issues confronting the industry today include the following:

- Many LTL carriers are unionized. According to the Regular Common Carrier Conference, wages and benefits for a union LTL driver average about \$56,000 per year. Unionized companies face competition from non-union carriers whose typical wage and benefits packages average over \$20,000 less. They also face competition from package delivery companies such as UPS, where the driver wages and benefits scale in 1991 averaged \$34,000. Driver wages and benefits often account for 60% or more of a carrier's overall costs.

Thus, LTL operators, particularly union companies, must sustain a high level of driver productivity and operational efficiency to be competitive.

- LTL carriers are being squeezed on one end by truckload carriers competing for shipments of over 10,000 pounds and on the other end by package delivery companies willing to carry larger packages for lower rates and with guaranteed delivery times. For LTL carriers, maximizing operational efficiency and maintaining loyal customers are critical.

- "Just-In-Time Delivery" and "Quick Response" logistics have put pressure on local carriers to respond quickly to customer needs. For many carriers, fast customer response is a requirement for keeping important accounts.

- LTL rates declined .8% in 1993, compared to an overall inflation rate of 2.5%. This emphasizes the need to cut costs and operate efficiently.

- Fleet Owner's *Trucking Quarterly* reports that LTL carrier expenses per ton fell 1.7% in the second half of 1993 as operators cut back personnel and facilities in an effort to increase competitiveness.

- Security is a major problem for local carriers, particularly in Los Angeles and other port cities. The Los Angeles Cargo Criminal Apprehension Team (Cargo Cats) estimate losses in the Los Angeles area due to hijackings and cargo thefts at \$1 million a day. ■