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Reply Comments of BellSouth Corporation
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IB Docket No. 99-81
July 26, 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
The Establishment of Policies)
And Service Rules for the Mobile)
Satellite Service in the 2 GHz Band)

IB Docket No. 99-81

To: The Commission

REPLY COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation, on behalf of itself and its affiliates ("BellSouth"), by its attorneys, respectfully submits the following limited reply comments in the above-captioned proceeding. BellSouth continues to advocate the use of competitive bidding as the assignment mechanism for the licenses in the 2 GHz Mobile Satellite Service ("MSS") band and the imposition of financial qualifications standards, to include a showing that applicants can meet their relocation obligations, and enhanced 9-1-1 obligations on 2 GHz MSS providers.

THE COMMISSION SHOULD USE COMPETITIVE BIDDING AS THE ASSIGNMENT MECHANISM FOR THE 2 GHz MSS LICENSES

In its Comments, BellSouth argued for the use of competitive bidding as the assignment mechanism for the licenses to be issued to 2 GHz MSS providers. No commenter supported BellSouth's position. Those opposing auctions argued, in general, that: (1) an auction in the

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U.S. would encourage other countries to follow suit resulting in a myriad of dire consequences;¹ and (2) because the Commission has determined already that no mutual exclusivity exists, the Commission would be violating the law if it uses competitive bidding.²

As BellSouth's Comments noted, at 4-5, section 309(j)(6)(E) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(6)(E), does not dictate that the Commission must avoid mutual exclusivity. Yet, if the 2 GHz MSS interests are correct, the Commission must take great strides in all wireless services to find a way to grant all individual applications. In that event, the Commission's auction authority could amount to a nullity and the prospect for future auctions of

¹ See Comments of Mobile Communications Holdings, Inc. ("MCHI Comments"), at 17-18 ("Competitive Bidding will render the development of a global MSS satellite system economically feasible"); Comments of Iridium LLC ("Iridium Comments"), at 24-29 ("Use of auctions in the U.S. would actually impede deployment of global services because of the high probability that other countries would follow suit"); Comments of the Satellite Industry Association ("SIA Comments"), at 3-4; Comments of Celsat America, Inc. ("Celsat Comments"), at 17-20; Comments of Globalstar, L.P., ("Globalstar Comments"), at 12-13; Comments, filed by Constellation Communications, Inc. ("Constellation Comments"), at 6-7 ("[T]he advent of worldwide sequential auctions would undercut any applicant's ability to judge the correct market value of the initial auction in the United States and may raise costs for 2 GHz MSS implementation to the point where the system implementation is foreclosed"); Comments of TMI Communications and Company, Limited Partnership ("TMI Comments"), at 8 ("Granting authorizations by auction to operate in the U.S. would set a precedent for multiple auctions in different jurisdictions, resulting, at a minimum, in delay and potentially rendering provision of MSS services in the 2 GHz band commercially non-viable"); Comments of Inmarsat Ltd. ("Inmarsat Comments"), at 12 ("At best, if an operator succeeded in piecing together a global system, service prices would be driven prohibitively high").

² See Iridium Comments, at 25 ("[T]he Commission has already determined, . . . that engineering solutions exist that would permit all nine proposals to be granted . . . [t]hus, the Commission, by law, cannot conduct an auction"); SIA Comments, at 4 ("Since the Commission has concluded that it can avoid mutual exclusivity in the 2 GHz band through engineering solutions, U.S. law that grants the Commission auction authority would prohibit the use of auctions in the band"); Globalstar Comments, at 13 ("[T]he mutual exclusivity requirement for implementing competitive bidding for 2 GHz MSS is not present"); TMI Comments, at 8; Comments of ICO Services Limited ("ICO Comments"), at 4 ("A needless finding of mutual exclusivity would violate the Commission's obligations under the Act and create a predicate for assignment of 2 GHz spectrum through competitive bidding") and 11-14 ("[A] decision to assign 2 GHz MSS spectrum by competitive bidding cannot be squared with the plain requirements of the Communications Act"); and Comments, filed by ICO USA Service Group ("IUSG Comments") at 34-37 ("Quite apart from the legal impropriety of employing spectrum auctions in the instant proceeding, the IUSG submits that to do so would be a terrible policy error").

spectrum would be dim, at best. On the other hand, Congress, recognizing the revenue raising potential of spectrum auctions, surely did not preclude the Commission's discretion to adjust its assignment policy for satellite services and utilize competitive bidding.³

It is not only the financial uncertainty concerning today's only operational MSS provider that should cause the Commission to disregard its tentative conclusion to avoid mutual exclusivity. Four of the nine 2 GHz MSS aspirants opposed any use of financial qualifications.⁴ In sum, none of those desiring licenses is willing to bid for the licenses and nearly half are unwilling or unable to demonstrate their financial *bona fides*.

In addition, the applicants, individually and as a group, did not help the Commission in its efforts to avoid mutual exclusivity. There is no consensus on which one of the three band plans proposed by the Commission should be employed.⁵ Indeed, one applicant proposed two

³ See *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997).

⁴ See n.12, *infra*.

⁵ See MCHI Comments, at 3-9 ("MCHI fully supports and endorses the Commission's Flexible Band Arrangement"); Iridium Comments, at 16-19 ("[T]he Commission's Traditional Band Plan approach most effectively addresses the range of complex issues that confront the Commission"); Comments of the Boeing Company ("Boeing Comments"), at 19-22 ("In advocating an initial authorization of 3.75 MHz of paired spectrum, Boeing maintains its support for the Commission's Traditional Band Arrangement for 2 GHz MSS licensees"); Celsat Comments, at 6-14 (If the Commission does not adopt either of its preferred alternative approaches (*see*, n.4, *infra*), Celsat America, Inc. would opt for the Flexible Band Arrangement); and TMI Comments, at 5 ("TMI supports the selection of the Flexible Band Arrangement").

wholly different approaches⁶ and others saw the need to suggest varying combinations of or significant modifications to one or more of the Commission's proposed plans.⁷

Presumably the Commission can adopt one of its band plans and each applicant in the now defined group will have to choose whether or not to remain an applicant under that regimen. However, it would more administratively efficient and result in a more timely determination of who will be a licensee for the Commission to prescribe competitive bidding as the assignment mechanism.

The international implications of a U.S. auction were also raised by the commenters opposing competitive bidding.⁸ BellSouth's Comments, at 5, recognized that these very same concerns were considered and rejected by the Commission in the Big LEO proceeding.⁹

BellSouth, also, is unaware of any auction of satellite spectrum or orbital slots by other countries

⁶ See Celsat Comments, at 5 (“[G]rant the applications in their unamended form, . . . order[] licensees to comply with all rules adopted for licensed systems and to file a letter with the Commission stating their intention to construct a system in compliance with those rules”), and 6 (“The second approach would be for the Commission to announce the final band plan as quickly as possible so that applicants may prepare and resubmit their satellite applications without unnecessary delay” and “[s]ervice rules could then be prepared and released in a separate order later this fall”).

⁷ See Globalstar Comments, at 11-12 (“[A]ll systems should be assigned all spectrum to be shared through coordination”); and Constellation Comments, at 19-21 (“[M]odification of the Traditional Band Approach with some of the elements of the Negotiated Entry Approach appears to be the best basis for defining a frequency assignment approach to resolve this proceeding”); Inmarsat Comments, at 3-6 and Annex I (“Inmarsat believes, however that the flexible band arrangement proposed by the Commission can be improved substantially in several ways”); ICO Comments, at 6-10 (“ICO urges the Commission to combine the negotiated entry approach with a phased process for both spectrum use and relocation of 2 GHz terrestrial incumbents”); and IUSG Comments, at 4-16 (“IUSG . . . recommends . . . additions and modifications” to the Commission's Negotiated Entry Approach).

⁸ See, e.g., n.1, *supra*.

⁹ See *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band*, CC Docket No. 92-166, Report and Order, 9 F.C.C.R. 5936 (1994) (“Big LEO R&O”) modified in part, Memorandum Opinion and Order, 11 F.C.C.R. 12861 (1996).

or foreign administrations since. Thus, the Commission's earlier stated belief that an auction in the United States will not disadvantage U.S. licensees globally still has validity.¹⁰

Competitive bidding continues to be a viable assignment mechanism and it should be used for 2 GHz MSS license assignment.

**2 GHZ MSS LICENSEES SHOULD BE REQUIRED TO DEMONSTRATE
FINANCIAL QUALIFICATIONS INCLUDING ABILITY TO
COMPENSATE INCUMBENTS FOR RELOCATION COSTS**

BellSouth asserted in its Comments that, absent an auction, the Commission should require MSS entities to demonstrate their financial qualifications.¹¹ As noted above, a number of the applicants oppose such a requirement.¹² They argue, instead, that construction milestones are the more appropriate regulatory yardstick against which they should be measured.

To the contrary, Boeing Company argues that the Commission has authority to impose financial qualifications requirements¹³ and should do so for a number of salutary purposes.¹⁴

While opposing financial qualifications showings in general, Inmarsat Ltd. does ask that they be

¹⁰ See *Big LEO R&O, supra*, 9 F.C.C.R. at 5971 ("We doubt, first, that our choice of licensing method will determine foreign licensing practices as much as the commenters predict").

¹¹ See BellSouth Comments, at 5-8.

¹² See MCHI Comments, at 22 ("Strict financial qualifications requirements are unnecessary . . . because the Commission's Flexible Band Arrangement will successfully avoid mutual exclusivity"); Globalstar Comments, at 6-8 ("[I]t would be difficult for the Commission to conduct the searching review and analysis necessary to make [its] financial qualification standard reflect . . . [the] critical features of a financing plan"); Constellation Comments, at 3 ("Constellation supports the Commission's conclusion that a frequency assignment procedure can be fashioned that accommodates all applicants, and that an examination is not required of the financial qualifications of any of the 2 GHz MSS applicants"); and TMI Comments, at 3-4.

¹³ Boeing Comments, at 28.

¹⁴ See Boeing Comments, at 29-33 ("deter speculative applications" and "assure[] the Commission that an applicant can promptly begin to construct and operate its system").

applied “prior to licensing in the event that any spectrum limitations are placed on the applicants . . . to weed out any underfunded applicant or applicants whose presence would only serve to block better-qualified applicants from the opportunity to serve the public.”¹⁵ ICO Services Limited supports the use of financial qualifications if “the Commission concludes that not all proposed 2 GHz systems can be accommodated within the available spectrum.”¹⁶

In the main, the 2 GHz MSS applicants have tried to avoid their obligations to compensate incumbent licensees that are required to relocate out of the 2 GHz MSS band.¹⁷ As mentioned above, this group does not want to have to pay for its spectrum at auction. In light of these factors, it is not unreasonable to suggest that adequate funding, or the lack thereof, to meet the relocation expenses this part of the satellite industry will face is a serious question for both the 2 GHz MSS hopefuls and incumbent licensees whose facilities will have to be moved to accommodate them. The straightforward way to answer this legitimate concern is to require a financial qualifications demonstration, as proposed by BellSouth in its Comments, at 5-8, by each applicant for a 2 GHz MSS license. Such a requirement eliminates any doubt that the potential licensees will have the wherewithal to clear the spectrum and initiate interference free operations.

¹⁵ Inmarsat Comments, at 16.

¹⁶ ICO Comments, at 5-6.

¹⁷ See BellSouth Comments, at 6, and *see also, e.g.*, MCHI Comments, at 26 (“The Commission can increase directly the number of under-served communities served by the Applicants at affordable rates by reducing the relocation costs that the Applicants must bear to the greatest extent possible”); and ICO Comments, at 8; IUSG Comments, at 15 (“[O]ne major difficulty inherent in the relocation of 2 GHz incumbents is the fact that most 2 GHz MSS applicants will not be able to afford to relocate significant numbers of incumbents until their systems are at or near operational status”).

ENHANCED 9-1-1 CAPABILITIES SHOULD BE REQUIRED OF MSS LICENSEES

Some of the 2 GHz MSS entities and their supporters oppose having to design their systems to include enhanced 9-1-1 capabilities.¹⁸ The National Telecommunications and Information Administration and the United States Coast Guard disagree. They want the Commission to mandate that the 2 GHz MSS systems provide the enhanced 9-1-1 capabilities required of other wireless communications providers.¹⁹ The Association of Public-Safety Communications Officials-International, Inc., states that

. . . all commercial mobile radio services must have “enhanced 9-1-1” capability, including Automatic Location Information (“ALI”) and Automatic Number Information (“ANI”). This requirement should apply to satellite based services such as MSS, at least to the extent that subscribers of those systems have the same expectations as cellular and PCS customers when making a 9-1-1 call. They expect their call to be answered, and they expect to be found.

¹⁸ See Iridium Comments, at 45-48 (“It is still premature to require that MSS terminals have E911 and related capabilities”); SIA Comments, at 2; Globalstar Comments, at 41-44 (“Given the most efficient deployment of MSS technology, it makes little sense for callers to use MSS systems for localized emergencies”); Constellation Comments, at 26-27 (“[I]t is premature for the Commission to impose enhanced 9-1-1 . . . obligations on MSS operators within the United States”); TMI Comments, at 10-11; ICO Comments, at 19; and IUSG Comments, at 42-44 (“The imposition of an enhanced 9-1-1 capability requirement on 2 GHz MSS operators would be particularly unfair to those 2 GHz MSS system operators that have made the most progress to date towards implementing their systems”).

¹⁹ See Comments of the National Telecommunications and Information Administration, at 15-17 (“NTIA believes that a user in need of emergency assistance should receive help independent of whether the network is terrestrially based or satellite-based”); and Comments of the United States Coast Guard, at ¶ 5 and Attachment 1 (“Coast Guard command centers must rely on a MSS mobile system’s capability to provide information to enable them to identify and locate callers needing assistance, and to assist in the prosecution of hoax callers”).

See Comments of APCO, at 2-3. At least one 2 GHz MSS applicant, Celsat America, Inc.

(“Celsat”), welcomes the enhanced 9-1-1 obligations.²⁰ Indeed, Celsat asserts that

[s]uch a requirement at this stage of the 2 GHz MSS proceeding is fully consistent with the technological capabilities of MSS systems and will ensure that these systems – many of which may not initiate service for many years – will be designed from the outset to provide these valuable services.²¹

The Commission should adopt what the experts in the delivery of emergency services are telling it. The 2 GHz MSS providers should be required to deliver enhanced 9-1-1 capabilities. Those functionalities should be designed into their systems now. If the requirement is not levied before the systems are constructed and placed into operation, these potential links to unserved and underserved communities and areas likely will never have the enhanced 9-1-1 capabilities needed.

CONCLUSION

Based on the foregoing and its earlier filed Comments, BellSouth recommends that the Commission employ competitive bidding as the mechanism for assigning spectrum to those seeking a 2 GHz MSS license. BellSouth reiterates its request that each applicant be required to demonstrate its financial qualifications including its ability to meet the relocation costs it will incur under the Commission's rules through the first year of operation of its system. Finally,

²⁰ *See* Celsat Comments, at 28-30 (“Celsat would willingly accept a Commission requirement that all 2 GHz MSS applicants provide such services regardless of their stage of development or whether they are designed to complement terrestrial systems”).

²¹ Celsat Comments at 30.

BellSouth simply echoes the call, by the emergency experts, for the Commission to impose on the eventual 2 GHz MSS licensees the obligation to provide enhanced 9-1-1 capabilities.

Respectfully submitted,

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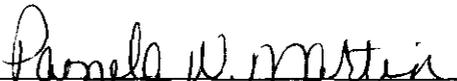
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