

**REDACTED – FOR PUBLIC INSPECTION**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of:	)	
Auction of Priority Access Licenses for the 3550-3650 MHz Band;	)	AU Docket No. 19-244
Comment Sought on Competitive Bidding Procedures for Auction 105;	)	WAIVER – EXPEDITED ACTION REQUESTED
Bidding in Auction 105 Scheduled to Begin July 23, 2020	)	

**PETITION FOR WAIVER –  
EXPEDITED ACTION REQUESTED**

Pursuant to Section 1.925 of the Commission’s rules, Comcast Corporation (“Comcast”) seeks a waiver of two auction rules to ensure that, should it choose to do so, it is able to participate in the upcoming auction of Priority Access Licenses in the 3.5 GHz Citizens Broadband Radio Service (Auction 105). Sections 1.2105(a)(3) and 1.2105(b)(1)(ii)(B) of the rules prohibit an entity from having a controlling interest in more than one auction application.<sup>1</sup> A controlling interest is defined in a separate rule to include any general partnership interest,<sup>2</sup> and Comcast holds such an interest in Midcontinent Communications (“Midco”), a partnership that may file its own application. However, Comcast does not manage or control that

---

<sup>1</sup> 47 C.F.R. § 1.2105(a)(3) (“In any auction, no individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application.”); 47 C.F.R. § 1.2105(b)(1)(ii)(B) (if “entities commonly controlled by the same individuals or same set of individuals submit applications for any set of licenses in the same or overlapping geographic area in a single auction, then only one of such application may be deemed complete, and the other such application(s) will be deemed incomplete, such applicants will not be found qualified to bid, and the associated upfront payment(s), if paid, will be returned.”).

<sup>2</sup> 47 C.F.R. § 1.2105(a)(4)(i) (“The term controlling interest includes individuals with positive or negative *de jure* or *de facto* control of the application. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership.”).

**REDACTED – FOR PUBLIC INSPECTION**

partnership, and cannot prevent it from applying. Should Midco file an application, the rules appear to preclude Comcast from participating in Auction 105 absent a waiver.

Section 1.925(b)(3) states that the Commission can grant a waiver regarding an application for wireless service on either of two grounds: “(i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” Grant of the waiver requested here meets both grounds.

First, the purpose of banning controlling interests in multiple applications – to prohibit collusive or anticompetitive conduct – would not be served by barring Comcast’s participation in Auction 105, because there is no risk of collusive or anticompetitive behavior. The Midco partnership was established over 20 years ago for the principal purpose of operating cable television systems. It was not created for this auction, and Comcast neither manages nor controls it. In addition, Comcast and the managing general partner, Midcontinent Communications Investor, LLC (“MCI”), have implemented numerous safeguards to prevent any information related to the auction, including either party’s bids or bidding strategies, to be shared between them or between Comcast and Midco. Second, on the unusual facts here, prohibiting Comcast from participating in the auction would be inequitable to Comcast because it has “no reasonable alternative” – it cannot prevent Midco from filing an application that would potentially disqualify Comcast. Grant of the requested waiver would serve the public interest – an important element of both waiver grounds – because it would enable Comcast to be a bidder in the auction, and the Commission has repeatedly stated that maximizing the number of bidders benefits the

**REDACTED – FOR PUBLIC INSPECTION**

public by promoting a successful auction that realizes the value of the spectrum and returns a portion of that value to the government. Thus, precluding Comcast’s participation clearly would be contrary to the public interest.

Given the impending short-form filing window, which will close on May 7, 2020,<sup>3</sup> Comcast seeks expedited action on this waiver petition to allow it and Midco to independently plan for Auction 105.

**I. COMCAST DOES NOT MANAGE OR CONTROL THE MIDCO PARTNERSHIP OR ITS DECISION TO PARTICIPATE IN AUCTION 105.**

Comcast indirectly holds a general partnership interest in Midco, which was formed as its current partnership in 1999. It is a South Dakota general partnership between Midcontinent Communications Investor, LLC (“MCI”) and Comcast Midcontinent, LLC (“Comcast Midcontinent”), an indirectly owned subsidiary of Comcast, each of which is a 50 percent general partner. The partnership was created to provide cable television service in certain states in the upper Midwest and Plains (including South Dakota, North Dakota, Nebraska, Minnesota, Kansas, and Wisconsin). Comcast understands that Midco may apply to participate in Auction 105.

Although MCI and Comcast Midcontinent have equal ownership, the Partnership Agreement specifically provides that MCI is the managing general partner of Midco. As such, MCI – not Comcast – manages and controls Midco, and it has “complete and unrestricted power and authority to manage the day-to-day business and operations of the Partnership in its sole and

---

<sup>3</sup> *Auction of Priority Access Licenses for the 3550-3650 MHz Band Rescheduled to Begin July 23, 2020 – Auction 105 Short-Form Application Deadline Postponed to May 7, 2020*, AU Docket No. 19-244, Public Notice, DA 20-330 (rel. Mar. 25, 2020).

**REDACTED – FOR PUBLIC INSPECTION**

absolute discretion.”<sup>4</sup> The Partnership Agreement also establishes a Management Committee and gives that committee the right to review a limited number of extraordinary decisions made by MCI, including mergers and acquisitions, related-party transactions, dissolution, and other fundamental decisions. But MCI also has the right to designate three of the five members of the Management Committee, with Comcast appointing the other two (the “Comcast Midcontinent Managers”).<sup>5</sup>

Under the Partnership Agreement, Comcast, through Comcast Midcontinent, is permitted to initiate removal of MCI as the managing general partner *only* for a defined and limited number of reasons, including willful misconduct, gross negligence, reckless disregard of duties, the commission of a felony, acceleration of any material indebtedness of the Partnership, or the willful and material breach of the Partnership Agreement. Comcast would not generally have authority under the Partnership Agreement to remove MCI from its role managing Midco based on any decision MCI might make with regards to Midco’s participation in a Commission auction.

**II. COMCAST AND MIDCO HAVE IMPLEMENTED SAFEGUARDS TO ENSURE THEIR COMPLIANCE WITH AUCTION RULES AND TO PROHIBIT COMMUNICATIONS BETWEEN THEM RELATED TO AUCTION 105.**

Comcast and Midco are distinct entities with distinct business plans and strategies. They have not discussed their own or any other applicant’s bids or bidding strategies relating to

---

<sup>4</sup> Second Amended and Restated Partnership Agreement of Midcontinent Communications § 6.1(a), Aug. 6, 2010 (Attachment 1 (redacted in this public filing), the “Partnership Agreement”). For its part, Midco confirmed this fact in its application to participate in the FCC’s Connect America Fund Phase II auction. *See* FCC File No. 0008155327 (filed Mar. 30, 2018), Ownership Information Exhibit at 1. (The full Partnership Agreement and amendments thereto, which contain competitively sensitive information, are attached to a version of this waiver request being filed separately with Commission staff under a request for confidential treatment.).

<sup>5</sup> *Id.* at § 6.2.

## REDACTED – FOR PUBLIC INSPECTION

Auction 105 or the post-auction marketplace, nor will they engage in any such discussions until after the rule prohibiting certain communications in Auction 105 is no longer in effect.

Therefore, Comcast and Midco each would be able to accurately certify in its short-form application, as required by section 1.2105(a)(2)(ix) of the Commission's rules, that it has not entered into any joint bidding agreement, arrangement, or understanding.

Furthermore, the Management Committee meets annually to set the overall direction of the partnership and is not involved in the day-to-day management of Midco's operations. The Management Committee does not expect to meet during the Auction 105 quiet period. In any event, in order to ensure that no information concerning bids or bidding strategies is shared between Comcast and Midco, and to ensure that neither can exert any influence over the other's decisions related to the auction, if both parties do file applications to participate in the auction, the parties have agreed to internal controls to prevent the communication of any information related to bids or bidding strategies prior to the Auction 105 short-form application deadline and throughout the auction until after the down payment deadline.

The internal controls that Comcast and Midco have implemented are consistent with those contemplated by the Commission's rules for parties submitting a short-form application that also have a disclosable interest in another short-form application.<sup>6</sup> These measures will preclude any individual acting on behalf of either Comcast or Midco from possessing information about the bids or bidding strategies of the other and from communicating such information with respect to their own company to anyone with the other company. They include the following:

- Comcast will ensure that the Comcast or Comcast Midcontinent personnel who interact with Midco (including the Comcast Midcontinent Managers) do not and will not have

---

<sup>6</sup> See 47 C.F.R. § 1.2105(c)(2).

## REDACTED – FOR PUBLIC INSPECTION

access to information concerning Comcast's plans for Auction 105 and related information.

- Similarly, Midco has implemented measures to prevent any MCI or Midco personnel who interact with Comcast Midcontinent or Comcast from either possessing any information related to Midco's bids or bidding strategies in the auction or communicating to Comcast Midcontinent or Comcast any such information they do possess.
- The Comcast Midcontinent Managers have recused themselves from receiving any information regarding Midco's plans for the auction and from all meetings or discussions related to the auction, including discussions related to capital expenditures in excess of those contemplated by the Partnership Agreement.
- Midco has agreed not to provide any information regarding Midco's plans for the auction to the Comcast Midcontinent Managers.
- With respect to any Management Committee matters related to Auction 105, Comcast Midcontinent has waived the Partnership Agreement requirement that at least one Comcast Midcontinent Manager must be present for a quorum.
- Comcast Midcontinent has committed not to seek access to any of the books and records of the partnership until after the deadline for submitting down payments for Auction 105 because of the potential that they could reveal Midco's plans with regard to Auction 105.

With the foregoing protective measures in place, Comcast and Midco each will be able to pursue its independent Auction 105 strategy without any involvement from the other, preventing any exchange of information about either party's bids or bidding strategies.

### **III. THE FACTS AND COMMISSION PRECEDENT STRONGLY SUPPORT GRANT OF A WAIVER.**

The facts above meet each of the standards for a waiver set forth in Section 1.925(b)(3).

First, the purpose of sections 1.2105(a)(3) and 1.2105(b)(1)(ii)(B) would not be served by applying them to Comcast's interest in Midco. When it adopted these rules, the Commission stated that their objective is to ensure that commonly controlled entities do not submit multiple short-form applications, thus preventing them from engaging in "anticompetitive bidding activity

**REDACTED – FOR PUBLIC INSPECTION**

by manipulating elements of the auction process.”<sup>7</sup> The Commission reiterated that the prohibition is “designed to ensure that auction participants bid in a straightforward manner.”<sup>8</sup>

In this case, the rules’ objective to prevent improper collusion between multiple applicants is not implicated, because Comcast and Midco are separate and distinct entities and neither controls the other with regard to auction strategy, the post-auction marketplace, or generally. Comcast and Midco’s managing general partner MCI do not seek to and will not engage in any joint bidding. They have not discussed, nor will they discuss, bids or bidding strategies or the post-auction marketplace. The Partnership Agreement does not relate to the licenses being put up for bid in Auction 105 or include any terms or conditions regarding, or even contemplate, a shared bidding strategy in any FCC auction.<sup>9</sup> Nor does it contain agreements or information related to either entity’s bids or bidding strategies for this or any other FCC auction. Moreover, until the rule prohibiting certain communications in Auction 105 is lifted after the deadline for Auction 105 down payments, Comcast, MCI, and Midco will abide by the internal controls, already established, to ensure that prohibited information does not flow between them and that neither acts as a conduit of bids or bidding strategies to any other applicant in the auction.

---

<sup>7</sup> See *Updating Part 1 Competitive Bidding Rules, Report and Order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order*, 30 FCC Rcd 7493, 7578 ¶ 202 (2015).

<sup>8</sup> *Id.* at 7580 ¶ 206.

<sup>9</sup> Comcast and Midco each is therefore in compliance with section 1.2105(a)(2)(ix), which states that the applicant “has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure with: any other applicant (or any party that controls or is controlled by another applicant).”

## REDACTED – FOR PUBLIC INSPECTION

The Commission has previously pointed to similar safeguards that two potential auction applicants adopted in granting them a waiver of FCC rules that otherwise could have precluded them from participating. Months after Sprint and T-Mobile entered into a Business Combination Agreement, the Commission announced an auction of licenses for the Upper Millimeter Flexible Use Service (“UMFUS”). The Sprint and T-Mobile merger agreement could have precluded them from making required auction certifications, but they included prophylactic provisions in their agreement to prevent the communication of auction-related information between them. The Commission was “persuaded that the terms of these provisions are designed as safeguards against anticompetitive behavior and that they demonstrate the parties’ intention to comply with the Commission’s rules.”<sup>10</sup> Comcast, MCI, and Midco’s safeguards detailed above serve the same purpose and thus likewise support a waiver.

When the Commission granted a waiver of auction rules to Sprint and T-Mobile, it also pointed to the fact that the merger agreement that created the risk of non-compliance with those rules had been entered into well before the announcement of the auction, holding that “the timing and underlying purpose of the agreement” also supported the waiver.<sup>11</sup> Similarly, the partnership between Comcast and Midco was established long before the multiple applications rule was adopted and for business reasons that are obviously independent of Comcast’s and Midco’s interest in Auction 105. This fact underscores that the purpose of preventing multiple

---

<sup>10</sup> *Competitive Bidding Procedures for Auction 101 (28 GHz) and Auction 102 (24 GHz); Request of T-Mobile US, Inc. for Confirmation or Waiver of Section 1.2105(a)(2)(ix) of the Commission’s Rules; Petition of Sprint Corporation for Expedited Declaratory Ruling or Waiver of Section 1.2105(a)(2)(ix) of the Commission’s Rules and Request of Sprint Corporation for Limited Waiver of Section 1.2105(b)(2) or Section 1.2105(b)(4) of the Commission’s Rules*, Order, 33 FCC Rcd 8667, 8673 ¶ 14 (WTB 2018) (“*Sprint T-Mobile Waiver Order*”).

<sup>11</sup> *Sprint T-Mobile Waiver Order* at 8674 ¶ 16.

**REDACTED – FOR PUBLIC INSPECTION**

applications by commonly controlled entities is not relevant here and supports a waiver here as well under Section 1.925(b)(3)'s first test.

Second, if Comcast's non-controlling, non-managing interest in Midco were determined to be disqualifying in the event Midco filed its own application, Comcast would have no recourse, because it has no right or authority to prohibit Midco from filing. Consequently, barring Comcast from participating in the auction would be inequitable to Comcast, and it has no reasonable alternative to that outcome because it does not exercise control over Midco's decision to participate in Auction 105. These unusual facts warrant a waiver under the second test in Section 1.925(b)(3) as well.

Third, the goals of the Commission's competitive bidding policies would be undermined by applying Sections 1.2105(a)(3) and 1.2105(b)(1)(ii)(B) to preclude Comcast from participating in Auction 105 if Midco decides to submit its own application. Those policies seek to promote competition and ensure that "new and innovative technologies are readily accessible to the American people."<sup>12</sup> To help support rapid deployment of new technologies, the Commission must avoid the concentration of licenses and must disseminate "licenses among a wide variety of applicants."<sup>13</sup> The Commission also is required to recover for the public a portion of the value of the public spectrum. The Commission pointed to the benefits of maximizing the number of competitors in an auction when it granted a waiver to Sprint and T-Mobile to allow both to file applications despite their pending merger agreement. It held that "the public interest will be most effectively served by permitting these parties to seek to participate and avoiding unnecessary disqualifications of applicants that may otherwise be

---

<sup>12</sup> 47 USC § 309(j)(3)(B).

<sup>13</sup> *Id.*

**REDACTED – FOR PUBLIC INSPECTION**

determined qualified to bid.”<sup>14</sup> In another case, the Commission granted a similar waiver of auction rules to parties that had entered into an acquisition agreement before Auction 903, holding that a waiver would ensure the auction’s purpose “will be most effectively met by encouraging participation and avoiding unnecessary disqualification.”<sup>15</sup> The circumstances here present no less compelling a case for a waiver, as the public interest favors maximizing the number of bidders in Auction 105 and ensuring a robust, competitive auction that will recoup a portion of the spectrum’s value for the public.

**IV. CONCLUSION**

For the above reasons, and given the approaching deadline for short-form applications to participate in Auction 105, Comcast respectfully asks that the Commission expeditiously grant a waiver of Sections 1.2105(a)(3) and 1.2105(b)(1)(ii)(B) to ensure that, should it choose to do so, it (as well as Midco) can apply to participate in the auction.

Respectfully submitted,

/s/ Francis M. Buono  
Francis M. Buono  
*Legal Regulatory Affairs*

*Of Counsel*  
Jonathan V. Cohen  
WILKINSON BARKER KNAUER, LLP  
1800 M Street, N.W.  
Suite 800N  
Washington, D.C. 20036

Kathryn A. Zachem  
David M. Don  
*Regulatory Affairs*

COMCAST CORPORATION  
300 New Jersey Avenue, N.W.  
Suite 700  
Washington, D.C. 20001

April 15, 2020

---

<sup>14</sup> *Sprint T-Mobile Waiver Order* at 8674 ¶ 15.

<sup>15</sup> *Connect America Fund; Petition of Hawaiian Telcom, Inc. and Cincinnati Bell Inc. for Expedited Waiver of Section 1.21001(d)(4) of the Commission’s Rules, Request of Horizon Telcom, Inc. for Waiver of Section 1.21001(d)(4) of the Commission’s Rules*, Order, 33 FCC Rcd 6208, 6211 ¶ 10 (WCB/WTB 2018). This waiver was pursuant to the “good cause” standard of Section 1.3 of the Commission’s rules, which the Commission has recognized is substantially the same as the waiver standard under Section 1.925. See *Sprint T-Mobile Waiver Order* at 8671 ¶ 10 n. 26.

**REDACTED – FOR PUBLIC INSPECTION**

**ATTACHMENT 1**

**SECOND AMENDED AND RESTATED PARTNERSHIP AGREEMENT  
OF MIDCONTINENT COMMUNICATIONS  
AND AMENDMENTS THERETO**

**[[REDACTED – CONTAINS CONFIDENTIAL INFORMATION]]**