

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Expanding Flexible Use of the 3.7 to 4.2 GHz) GN Docket No. 18-122
Band)

To: The Commission

APPLICATION FOR REVIEW AND REQUEST FOR WAIVER

I. INTRODUCTION

Vertex Consulting LLC (“Vertex”), pursuant to Section 1.115 of the Commission’s Rules, seeks the Commission’s review of the Wireless Telecommunication Bureau’s (“WTB”) approval of CohnReznick LLP (“CR”) as the Relocation Payment Clearinghouse (“Clearinghouse”) as set forth in the *3.7 GHz Report and Order*.¹ The WTB approval of CR is not in the public interest, deviates from the transparency and equality expected in government procurements, and introduces significant risk to the C-Band auction and transition that follows.

II. BACKGROUND

Vertex Consulting LLC (“Vertex”) assembled a team with unparalleled experience and expertise to act as the Clearinghouse. This team included:

- Deloitte, the world’s largest professional services firm
- BNY Mellon, the world’s largest global custodian bank

¹ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order, GN Docket No. 18-122, DA 20-1251 (released Oct. 22, 2020) (“WTB Order”) (WTB’s selection of CR); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Proposed Modification, 35 FCC Rcd, 2343, 2450-52, ¶¶ 273-80 (2020) (“3.7 GHz Report and Order”) (Commission’s criteria for Clearinghouse selection); see also 47 CFR § 27.1414 (setting forth the selection process and criteria for the Clearinghouse).

- Venable & Lerman Senter, legal firms with the scale and expertise to mediate disputes; and
- NTC and RFK Engineering, two firms with deep technical and domain expertise

This team (the “Vertex Team”), among others, submitted a proposal to the search committee established under the 3.7 GHz Report and Order in response to an RFP (the “Search Committee”). Following oral presentations and various follow-up requests, the Search Committee announced CR as their selection for the Clearinghouse on July 31, 2020. After a public comment period and various meetings with involved parties, the WTB issued the “WTB Order” indicating that they approve CR as the Clearinghouse based on what the WTB considered to be its extremely narrow role set forth in the 3.7 GHz Report and Order. The WTB based its decision on assumptions that it does not have the latitude to assess the soundness and fairness of the selection process, the risk introduced by the result, or whether the selection is in the public interest. As such, and in consideration of the information set forth herein, we believe there to be sufficient justification to review and reverse the WTB Order, and require the selection of a different entity to serve as the Clearinghouse.

III. DISCUSSION

As mentioned above, there are four primary factors justifying the reversal of the decision to approve CR as the Clearinghouse:

- A. Their selection is not in the public interest;
- B. Their selection and approval deviates from the transparency and equality expected in government procurement;
- C. Their selection introduces significant risk to the C-Band auction and transition that follows; and

D. The WTB order itself is flawed in its findings

A. Selection is not in the Public Interest

WTB determined that CR satisfied the selection criteria in spite of the fact that the CR proposal includes estimated costs that are more than \$20M higher than those proposed by other bidders, including the Vertix Team. This amount is significant, as the CR bid totaled approximately \$62 million. The CR bid thus exceeds the next lowest bid by a significant margin. These costs are borne by those entities bidding on the spectrum and will indirectly reduce the funds that will flow to the US Treasury. Bidders are responsible for the costs associated with the Clearinghouse and for the costs of incumbent licensee transition. As with any investment, Bidders will look at the totality of costs associated when developing budgets and entering bids. Accordingly, every additional dollar that Bidders calculate they will spend on the Clearinghouse or transition of incumbents is a dollar that does not flow to the US Treasury. This \$20 million+ premium for CR's services has no justification and would not withstand even basic scrutiny in a typical government or private procurement process. In fact, CR's proposed team is materially less qualified than the other bidders and their proposed processes and controls are meaningfully deficient as evidenced by their publicly available proposal. This \$20 million+ premium could grow significantly as CR climbs the learning curve and develops a better understanding of the technical capabilities required to perform the role of the Clearinghouse. Once CR is selected, however, there are few checks and balances available to prevent this significant and potentially growing expense from being borne by the public.

B. Selection and Approval Deviates from Transparency and Equality Expected in Government Procurement

The 3.7 GHz Report and Order sets forth the construct by which a Search Committee is created to identify a qualified entity to act as the Clearinghouse. Even though an RFP was

released and proposals were evaluated, WTB erred in finding that CR satisfied the selection criteria set forth by the Commission. WTB has not explained how it is consistent with those criteria to approve selection of an entity that:

- Has no demonstrated collection and distribution methodology for relocation payments;
- Did not understand the importance of including a bank directly on their team that meets the requirements of the 3.7 GHz Report and Order;
- Has no demonstrated accounting methodology;
- Has no demonstrated chain of custody;
- Has no demonstrated similar risk management experience;
- Has no demonstrated approach to prevent waste, fraud, and abuse;
- Lacks sufficient technical capabilities to evaluate requests for reimbursement;
- Indicated that reconciling a monthly bank statement was sufficient to identify fraudulent activity; and
- Charges a premium over the other bidders in excess of \$20 million spite of all of these shortcomings

When Vertex presented these deficiencies to the WTB through a series of meetings and public filings, CR acknowledged many of the aforementioned deficiencies and suggested various ways to remediate them. In its *ex parte* filing dated October 1, 2020², CR sought to cure after the fact the noncompliance and insufficiency of their Clearinghouse proposal, specifically identifying the lack of a banking agreement, the lack of sufficient internal controls, and the lack

² Letter from Scott D. Delacourt, Wiley Rein LLP, Counsel to CR, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Oct. 1, 2020).

of a sufficient privacy and data security plan. CR indicated their willingness to work with the Commission to address these deficiencies *after* the award is finalized. This approach is unacceptable, as Paragraph 310 of the Report and Order makes clear that if the Clearinghouse criteria have not been satisfied (which CR essentially acknowledged in this filing), then “the search committee will submit a new proposed entity.” There is no provision that allows for the recommended entity to improve their proposal and to address deficiencies well after and outside of the Search Committee-run process.

In the Vertex’s broad commercial and federal experience, we have never seen a procurement where opposing parties highlight the clearly deficient bidder issues and that bidder subsequently is allowed to remedy the substance of its entire bid. By filing, late in the process, that it would select a bank, CR implicitly acknowledges our multiple submissions that the Clearinghouse needs a robust financial institution to safeguard the public interest and meet the C-Band requirements. Now CR is proposing that it be allowed to select a bank outside of the RFP process. By this logic, the Search Committee could have picked any firm and that firm could significantly modify its bid after award, adding or subtracting parties and functions. There is a reason for RFPs: they elicit fair and transparent submissions from competing firms. By allowing CR to select a bank after we have raised that very issue goes against not just federal procurement procedures, but commonly used commercial procedures.

CR did not provide a proposal that met the Report and Order requirements. Their *ex parte* filing confirms that. In addition to not complying with the process set forth in the Report and Order, allowing a bidder who has not submitted an adequate proposal to modify its faulty proposal outside of the competitive process is not consistent with providing a level playing field

for all bidders. The Commission must enforce the basic requirement that a clear set of evaluation criteria applies throughout the selection process.

C. Selection Introduces Significant Risk to the C-Band Auction and Transition that Follows

The C-Band auction and transition are unique in scale and scope. Preliminary transition plans by the satellite operators indicate the need for the design, development, and production of 14 new satellites, seven launches and on-orbit deployment of 12 of these satellites into their respective geosynchronous orbital slots, and physical upgrades to approximately 12,000 to 17,000 earth stations across the US.

While some earth station upgrades can be accomplished with relatively minor equipment changes, others may require significant infrastructural and operational changes. Physical access, security, supply chain and inventory management, planning and coordination of skilled resources, testing, operational cutover, and flow of funds will need to be carefully orchestrated to complete the transition on time and on budget, and to minimize service disruption to existing customers.

Preliminary estimates based on draft transition plans from the satellite operators indicate that the transition is estimated to cost more than \$3.5 billion. These transition costs, coupled with Commission accelerated clearing incentive payments of up to \$9.7 billion, suggest that over \$13 billion of funding may be required to execute and complete the transition. If the Clearinghouse experiences performance issues in managing this flow of funds, those issues can result in serious repercussions for both users of the current satellite services, collectively the cable, broadcast, radio, religious, and data customers, and anticipated spectrum bidders/mobile operators who will be relying on timely access to the cleared spectrum.

Given the scale, scope and complexity of the planned transition, and the risks and issues that can arise from Clearinghouse non-performance in support of this undertaking, it is imperative that a fully qualified entity which satisfies the criteria established by the Commission in the 3.7 GHz Report & Order is selected to perform the Clearinghouse duties. CR is not that qualified entity and their proposal makes that clear.

D. The WTB Order Itself is Flawed in its Findings

In setting forth the basis for CR's approval as the Clearinghouse, the WTB Order make several claims that are at best unverified and at worst incorrect:

- In paragraph 4 of the WTB Order, the WTB correctly identifies several requirements that the selected Clearinghouse must comply with. In particular, item (4) indicates that they must be “using best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of the funds.” Any reasonable review of the CR proposal would conclude that it did not demonstrate their ability to comply with this requirement. By way of example, CR indicates that their approach to preventing fraud is to validate bank statements on a monthly basis and identify any inconsistencies. Further, CR indicates that they plan to accept checks in the mail for reimbursement payments. Any firm with meaningful experience managing funds would know these controls are woefully insufficient and far from a best practice. There are multiple layers of up-front and real-time process and system controls that should be implemented to prevent fraud, none of which are identified in the CR proposal with any level of detail sufficient to determine that they will use (or are even familiar with) best practices in their execution of the program.

- In paragraph 12 of the WTB Order and specifically in regard to the Clearinghouse RFP requiring the use of US Treasury Bonds, the WTB indicates that “Vertex did not object to this requirement at the time that the Search Committee issued, and the Commission published, the RFP.” This is not correct. Vertex submitted a question to the Search Committee during the Q&A on this topic. Vertex directly addressed this inappropriate requirement in its proposal, specifically suggesting alternative approaches and the benefits of such. And finally, Vertex raised this specific concern in oral presentations to the Search Committee, in discussions with various staff members of the Commission, and in its *ex parte* filings, noting multiple times that this requirement does not serve the public interest, is likely to entail greater cost (e.g., for custody of securities) than more suitable alternatives (which we specified), and introduces the risk of loss of investment principal.
- In paragraph 11 and footnote 37 of the WTB Order, the WTB indicates that it does not agree that a banking institution must be formally included as part of any viable Clearinghouse proposal. The WTB further indicates that it does agree that a bank is “likely necessary to perform the functions of the Clearinghouse,” and that CR has promised to execute an agreement with Truist within 30 days of the WTB Order. To be clear, nothing prevents CR from relieving Truist of their duties at any point after signing an agreement with them, as any such agreement would have been made after and outside the selection process. CR could elect to use a different bank that lacks sufficient scale and qualifications. CR could theoretically elect to conduct the functions of the Clearinghouse with no bank at all, or elect to utilize an offshore bank. Every other credible respondent to the Clearinghouse RFP formally included a large global custodian

bank on their team. CR did not, further highlighting their lack of understanding of the scale and complexity of this program.

- The WTB's rationale, process and conclusion lack internal consistency. On one hand, the WTB concluded that it cannot opine on the search committee process; then the WTB concludes that a financial institution would be needed, but not required; and then later the WTB concludes that Truist is a reputable financial firm. Vertex is not questioning Truist's capabilities, we are disputing the WTB's rationale and conclusion. If the WTB does not have a role in reviewing the Search Committee's decision; how is it in the WTB's purview to determine whether a financial institution is reputable? WTB either has the ability to review and approve the Search Committee's process, or it does not, and if the latter is true then why would the Commission require WTB approval?

CR pointed to their role as the auditor on the 800MHz program as their sole meaningful relevant experience on programs such as this. Vertex has raised multiple concerns related to their role on this program to the WTB in its discussions. First, in that guise as auditor, CR had no operational responsibilities in the facilitation of reimbursement reviews or in the handling of funds. They were simply the outside auditor. This lack of actual relevant experience is apparent throughout the CR responses and manifests itself as an inadequate proposal devoid of best practices, all at a premium of more than \$20 million. Second, since CR used its role as the 800 MHz auditor as a reference, Vertex believes that it is incumbent for the Search Committee and the WTB to verify that qualification. Vertex does not know if the Search Committee asked the WTB or the Transition Administrator about CR's reference; Vertex does know that it asked that the WTB confer with the Public Safety and Homeland Security Bureau ("PSHSB")

regarding CR's reference. Based on this Order, it appears that WTB did not reach out to PSHSB. Validating and verifying references is a basic, and crucial, part of any procurement.

IV. CONCLUSION

In light of the foregoing, Vertix respectfully requests that the Commission reverse the decision set forth by the WTB and direct the Search Committee to identify an alternate entity to act as the Clearinghouse as set forth in the 3.7 GHz Report and Order.

Respectfully submitted,

VERTIX CONSULTING LLC

/s/ Gregory Weiner

By: Gregory Weiner
Vertix Consulting
2961-A Hunter Mill Rd
Suite 640
Oakton, VA 22124

Declaration of Gregory Weiner

My name is Gregory Weiner, and I am a Partner with Vertex Consulting LLC. My address at Vertex Consulting is 2961-A Hunter Mill Road, suite 640, Oakton, Virginia 22124. I hereby certify under penalty of perjury that the facts stated in the foregoing Application for Review are true and correct to the best of my knowledge, information and belief.

/s/ Gregory Weiner _____

Gregory Weiner

November 23, 2020 _____

PROOF OF SERVICE

I, Gregory Weiner, certify that on this 23rd day of November, 2020, I served copies of the foregoing Application for Review by causing them to be delivered by first class, postage prepaid U.S. mail to the following:

Donald K. Stockdale, Jr.
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Jennifer L. Oberhausen
CTIA
1400 16th Street NW
Suite 600
Washington, DC 20036

Thomas M. Johnson, Jr.
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Wladimir Bocquet
Director, Regulatory Affairs & Spectrum
Eutelsat S.A.
c/o Carlos M. Nalda
LMI Advisors LLC
2550 M Street NW
Washington, DC 20037
Counsel for Eutelsat S.A.

Scott D. Delacourt
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
Counsel for CohnReznick LLP

Michael J. DeMarco
Executive Vice President & Chief
Services Officer
Susan H. Crandall
Associate General Counsel
Intelsat LLC
7900 Tysons One Place
McLean, VA 22102-5972

Bruce Olcott
Jones Day
51 Louisiana Avenue NW
Washington, DC 20004-20001
Counsel for The Boeing Company

Patrick McFadden
Deputy General Counsel
National Association of Broadcasters
1 M Street SE
Washington, DC 20003

Ross J. Lieberman
Senior Vice President of Government Affairs
ACA Connects—America's Communications
Association
Seven Parkway Center
Suite 755
Pittsburgh, PA 15220-3704

Danielle Piñeres
Vice President & Associate General
Counsel
NCTA—The Internet & Television
association
25 Massachusetts Avenue NW
Suite 100
Washington, DC 20001

Alexi Maltas
Senior Vice President & General Counsel
Competitive Carriers Association
601 New Jersey Avenue NW, Suite 820
Washington, DC 20001

Christophe De Hauwer
SES Americom, Inc.
c/o Brian D. Weimer
Sheppard, Mullin Richter & Hampton
LLP
2009 Pennsylvania Avenue NW
Suite 100
Washington, DC 20006-6801
Counsel to SES Americom, Inc.

Richard Bernhardt
Wireless Internet Service Providers
Association (WISPA)
4417 13th Street, #317
Saint Cloud, FL 34769



Gregory Weiner