

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

In the Matter of	)	
	)	
Updating Part 1 Competitive Bidding Rules	)	WT Docket No. 14-170
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver	)	RM-11395
	)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures	)	WT Docket No. 05-211
	)	
	)	

**COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Steven K. Berry  
Rebecca Murphy Thompson  
C. Sean Spivey  
COMPETITIVE CARRIERS ASSOCIATION  
805 15th Street NW, Suite 401  
Washington, DC 20005  
(202) 449-9866

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**COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Competitive Carriers Association (“CCA”) hereby submits the following comments in the above-captioned proceedings in response to the Commission’s Notice of Proposed Rulemaking regarding the revision of the competitive bidding rules in Part 1 of the Commission’s rules.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes more than 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents

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<sup>1</sup> *Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WT Docket No. 05-211, 29 FCC Rcd 12426 (2014) (“*Notice*”).

approximately 200 associate members consisting of small businesses, vendors, and suppliers that serve carriers of all sizes. CCA's diverse membership uniquely positions it to offer insights and recommendations regarding the competitive bidding rules that aim to promote increased auction participation by a wide array of carriers.

In an increasingly consolidated market, where the largest two carriers control a majority of all spectrum holdings below 1 GHz, and can foreclose opportunities both on the secondary market and at auction for other carriers to acquire spectrum, CCA takes a keen interest in the Commission's competitive bidding rules. The recently completed Auction 97 proves how important these rules are to smaller carriers and CCA urges the FCC to ensure all carriers—large and small—have a fair opportunity to bid on and win spectrum in all auctions by providing opportunities for small businesses to participate in spectrum auctions. Specifically, CCA recommends that the Commission continue to use bidding credits and supports the Commission's proposal to increase the gross revenue threshold to account for inflation. Bidding credits have served as a proven mechanism to facilitate the investment necessary for small businesses to acquire spectrum at auction. CCA supports the continued use of gross revenue thresholds to gauge small business eligibility for business credits, as determined on a service-by-service basis. In addition, the Commission should explore the benefits of utilizing other types of bidding credits, in particular for small businesses or other designated entities that deploy facilities to unserved or underserved areas. Moreover, CCA supports the adoption of the Commission's proposed two-pronged control approach for determining an entity's eligibility as a small business (in lieu of a focus on "attributable material relationships" as a defined term).

CCA also supports the Commission codifying the limited exclusions from its rule requiring an increased upfront payment for former defaulters, consistent with the Commission's

grant of a limited blanket waiver of such rules for participants in Auction 97. In addition, the Commission should codify its competitive bidding procedures prohibiting an individual or entity (and commonly controlled entities) from submitting multiple auction applications. Further, joint bidding and other arrangements among non-nationwide providers should be deemed presumptively pro-competitive, and arrangements between or among nationwide providers and non-nationwide providers or new entrants should be evaluated on a case-by-case basis. Finally, CCA urges the Commission to refrain from including in its definition of “joint bidding and other arrangements” agreements relating to post-auction market structure or operation, which would sweep too broadly and potentially lead to confusion and unintended consequences.

## II. BACKGROUND

The Commission’s competitive bidding rules are particularly important given the need to preserve opportunities for competitive carriers to participate in upcoming spectrum auctions, especially the 600 MHz auction. As the Commission has recognized, spectrum is a key input for competitive carriers and is “the lifeblood of the wireless industry.”<sup>2</sup> Further, access by multiple carriers to spectrum below-1 GHz, or “low-band” spectrum is critical to ensure that consumers have competitive alternatives for high-quality, affordable wireless broadband services.<sup>3</sup> The Commission and the Department of Justice both have recognized that low-band spectrum has unique and highly valuable propagation characteristics that allow greater coverage quality, and is less costly to deploy as compared to spectrum above 1 GHz.<sup>4</sup> Such spectrum inherently is scarce, and the majority of low-band spectrum suitable and available for mobile services is

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<sup>2</sup> *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589 ¶ 30 (2011).

<sup>3</sup> *See, e.g., Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133 ¶ 3 (2014) (“*Mobile Spectrum Holdings Order*”).

<sup>4</sup> *Id.* ¶¶ 266-67.

currently held by AT&T and Verizon.<sup>5</sup> Thus, to ensure that the ever-increasing consumer demand for mobile voice and data services can be met, the Commission should promote opportunities for competitive carriers serving a wide range of customers and regions—including many carriers that qualify as small businesses under Commission rules—to access these critical spectrum resources.

Indeed, enabling wider access to spectrum is even more important as a result of the significant consolidation that the wireless industry has undergone in recent years. Acquisitions by the two largest carriers of smaller rivals<sup>6</sup> and their disproportionate success in the recent AWS-3 auction<sup>7</sup> continue to strengthen their control of vital spectrum inputs, to the potential detriment of competitive carriers, consumers and the public interest. The Commission has acknowledged the ability of the two largest carriers to use their dominant positions to impair competitors' access to spectrum, particularly spectrum below 1 GHz, and the importance of multiple providers having access to low-band spectrum.<sup>8</sup> CCA has been a strong proponent of spectrum aggregation rules in this regard. In that same vein, CCA urges the Commission here to

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<sup>5</sup> *Id.* ¶ 46.

<sup>6</sup> *See, e.g., Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T, Inc. for Consent to Transfer of Control of Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735 (2014); *Applications of AT&T Inc. and Atlantic Tele-Network, Inc. (For Consent to Transfer Control of and Assign Licenses and Authorizations)*, Memorandum Opinion and Order, 28 FCC Rcd 13670 (2013); *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698 (2012).

<sup>7</sup> *See, e.g., Phil Goldstein, AWS-3 Auction Results: AT&T leads with \$18.2B, Verizon at \$10.4B, Dish at \$10B and T-Mobile at \$1.8B*, FierceWireless, Jan. 30, 2015, <http://www.fiercewireless.com/story/aws-3-auction-results-att-leads-182b-verizon-104b-dish-10b-and-t-mobile-18b/2015-01-30>.

<sup>8</sup> *Mobile Spectrum Holdings Order* ¶¶ 60-62.

affirm and refine its other policies that facilitate the participation of competitive carriers, including small businesses, in competitive bidding proceedings.

### **III. THE COMMISSION SHOULD CONTINUE TO USE BIDDING CREDITS TO PROMOTE OPPORTUNITIES FOR SMALL BUSINESSES IN SPECTRUM AUCTIONS**

CCA supports the continued use of bidding credits to promote opportunities for small businesses to acquire spectrum and increase their participation at auction. While the bidding credit mechanism currently in the rules has proven successful in encouraging auction participation by smaller carriers, the Commission also should take this opportunity to consider other types of bidding credits, such as for small businesses or other designated entities seeking to deploy facilities to unserved or underserved areas. In addition, CCA endorses the Commission's proposed two-pronged approach for evaluating eligibility for benefits as a small business.

#### **A. Bidding Credits Have Proven to Be an Effective Means for Small Businesses to Access Necessary Capital**

CCA encourages the Commission to continue to make bidding credits available to qualifying small businesses. Bidding credits have been effective in promoting participation in spectrum auctions by rural, mid-size and regional carriers, both by providing smaller carriers a discount on an increasingly expensive critical input<sup>9</sup> to their businesses, and by facilitating access to capital needed to acquire spectrum. Indeed, many CCA members were able to participate in the AWS-1, 700 MHz and AWS-3 auctions, among others, by taking advantage of the Commission's bidding credits for small businesses. For example, 57 bidding credit-eligible entities were provisionally winning bidders following Auction 66.<sup>10</sup> And, of the 37 qualified Auction 97 bidders

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<sup>9</sup> Auction 97 raised almost \$45 billion, which amounts to \$2.21 price per MHz/pop for all spectrum and \$2.71 for paired spectrum.

<sup>10</sup> See FCC Advanced Wireless Services Auction No. 66 \*\*\*Final\*\*\*, <http://wireless.fcc.gov/auctions/66/charts/66cls1.pdf>.

eligible to receive bidding credits, almost half of those entities won spectrum in the auction.<sup>11</sup>

Although many major spectrum auctions have been dominated by the largest wireless companies,<sup>12</sup> including the most recent AWS-3 auction where Verizon and AT&T won at least 20 MHz in almost every market,<sup>13</sup> the bidding credit program nonetheless has facilitated participation by competitive industry players, which is a pro-competitive outcome and acts as a defense against collusion.<sup>14</sup>

In today's highly concentrated marketplace, it is critical that rural, mid-size and regional carriers have a meaningful opportunity to participate and bid on spectrum in future auctions. And in light of the scarcity of low-band spectrum, the availability of bidding credits in the upcoming 600 MHz auction is particularly important. Bidding credits can level the playing field and help to counteract the potential for the largest carriers to acquire spectrum merely to foreclose competition from smaller rivals. Keeping spectrum out of the hands of their competitors allows the largest carriers to reap benefits beyond the value of the spectrum itself (which is already a scarce

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<sup>11</sup> See Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97, DA 15-131, Exh. B (rel. Jan. 30, 2015).

<sup>12</sup> See, e.g., Testimony of Coleman Bazelon, Principal, The Brattle Group, Before The U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet (Apr. 15, 2008), at 1, 14-15 (noting the outcome of Auction No. 73, in which AT&T and Verizon won most of the 700 MHz licenses).

<sup>13</sup> See Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97, DA 15-131, Exh. B (rel. Jan. 30, 2015). In the most-valuable 20 MHz J Block, for example, AT&T and Verizon won all the licenses and 100% of the MHz-pops in the top 10 markets, all but 1 license and 97% of the MHz-pops in the top 25 markets, and all but 3 licenses and 95% of the MHz-pops in the top 40 markets.

<sup>14</sup> See, e.g., P. Cramton and J. Schwartz, *Collusive Bidding: Lessons from the FCC Auctions*, Journal of Regulatory Economics, 17, 229-252 (May 2000), at 22 (awarding smaller parties bidding credits can stimulate competition between large bidders and small bidders); see also P. Cramton, E. Kwerel, G. Rosston and A. Skrzypacz, *Using Spectrum Auctions to Enhance Competition in Wireless Services*, Journal of Law & Economics, vol. 54, S167-S188 (Nov. 2011), at S180-81 ("the increased competition in the auction due to a bidding credit can increase revenues at the same time that it increases the possibility of a new entrant").

commodity), increasing the “foreclosure value” that the largest carriers may assign to spectrum. And as the Commission has recognized, the impact of foreclosure reverberates into smaller carriers’ access to other critical inputs, such as roaming agreements or devices and other inputs.<sup>15</sup>

In maintaining the current bidding credit regime, “gross revenues” remains a reasonable and administratively workable criterion for measuring small business size. CCA agrees that the proposed changes to gross revenues thresholds, calibrated to changes in the GDP price index, reflect the changing nature of the wireless industry, including larger network sizes and increased capital costs.<sup>16</sup> Updating these thresholds would more accurately capture the entities that may not otherwise be able to participate effectively in the auction; this increased access to spectrum could then increase the potential for improved competition in the wireless marketplace.

Under the current rules, the Commission establishes the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.<sup>17</sup> This practice has served the Commission well in tailoring bidding credit thresholds to the characteristics and capital requirements of individual services. Therefore, CCA supports maintaining this rule.

In the alternative, as stated in the past, CCA also would support the adoption of the U.S. Small Business Administration (“SBA”) small business employee-based size standard.<sup>18</sup> Although this standard would result in the inclusion of significantly more of the wireless industry as small businesses,<sup>19</sup> the statistic should not be discounted without consideration of the marketplace realities. Significantly, firms that would qualify as small businesses under this

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<sup>15</sup> *Mobile Spectrum Holdings Order* ¶¶ 58, 62.

<sup>16</sup> *See Notice* ¶ 58.

<sup>17</sup> 47 C.F.R. § 1.2110(c)(1); *see also Notice* ¶ 63.

<sup>18</sup> *See Notice* ¶ 61.

<sup>19</sup> *Id.*

standard were only responsible for approximately \$10 billion in receipts in 2007, out of \$170 billion total earned in the industry in the same year.<sup>20</sup> Moreover, the results of the most recent auctions illustrate a severe imbalance among the winners and losers in acquiring spectrum. Because the divide between the very largest carriers on one hand, and smaller carriers on the other, has increased dramatically, it is reasonable for most of the competitive wireless industry to be considered to be “small” for purposes of assessing auction participation and awarding bidding credits.

**B. The Commission Should Consider Other Types of Bidding Credits As Well**

The Commission also should consider additional proposals and refinements to provide opportunities for competitive carriers who are willing and able to put spectrum resources to use for the benefit of consumers. In the *Notice*, the Commission considers bidding credits for winning bidders that deploy facilities to unserved or underserved areas. This proposal has merit.<sup>21</sup> These types of bidding credits would promote incentives for auction participation and help to attract capital investment in unserved and underserved areas. To maximize the beneficial competitive impact of bidding credits for facilities deployment in unserved and underserved areas and to mitigate any potential “foreclosure value” of granting preferences to the largest carriers, such credits should be available only to designated entities as defined in this proceeding. These credits should be cumulative with any small business credits.<sup>22</sup> Moreover, these credits

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<sup>20</sup> See U.S. Census Bureau, Table No. EC0751SSSZ5, Information: Subject Series - Establishment and Firm Size: Employment Size of Firms for the United States: 2007 (NAICS code 517210), [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ5](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5) (last visited Feb. 16, 2015).

<sup>21</sup> *Notice* ¶¶ 67-69.

<sup>22</sup> The Commission previously has taken the approach of aggregating small business credits with other credits. See, e.g., *Implementation of Section 309(j) of the Communications Act*

should be calculated independently from any receipt of USF funds. Excluding geographic areas from bidding credit eligibility on the basis of USF funding would be counter-productive to carriers already providing service to rural, unserved and underserved areas.

While bidding credits have increased participation in auctions and facilitated access to capital among smaller businesses, this will remain true only if the FCC establishes clear, upfront rules. Providing mobile broadband service to consumers is an extremely capital-intensive business, including the initial upfront investment of acquiring spectrum. Strong *ex ante* rules will allow participants to plan for and execute on a bidding strategy before raising capital and spending resources on filing detailed and time-consuming auction applications.

**C. CCA Supports the Proposed Two-Pronged Approach for Evaluating an Entity’s Eligibility for Small Business Benefits**

In the *Notice*, the Commission proposes to modify the standard for evaluating whether an entity is eligible as a small business by looking to (i) whether an applicant meets the applicable small business size standard, and (ii) whether it retains control over the spectrum associated with the licenses for which it seeks small business benefits.<sup>23</sup> These factors would be applied using the existing *de facto* and *de jure* control analysis, instead of the bright-line attributable material relationship (“AMR”) criteria currently in the rules.<sup>24</sup> CCA endorses this two-pronged proposal and the repeal of the AMR requirements. CCA believes the Commission should still generally pursue policies that promote the development of facilities-based wireless service as spectrum is intended to be used to serve consumers. However, for purposes of enhancing competitive carrier auction participation, CCA agrees with a more flexible approach that would look to the

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– *Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order, 10 FCC Rcd 175 ¶ 58 (1994) (confirming that bidding credits for women- and minority-owned businesses would be combined with benefits applicable to small businesses).

<sup>23</sup> *Notice* ¶ 28.

<sup>24</sup> *Id.* ¶ 29.

Commission's well-understood controlling interest and affiliation standards to determine what revenues are attributable to an applicant, based on a rigorous review of *all* relevant relationships and agreements. Nevertheless, similar to bidding credits, the Commission must establish clear, *ex ante* rules to provide transparent and sufficient information to participants for these benefits to be meaningful.

The added flexibility afforded by this modified approach can be adequately balanced by continuing to impose the existing unjust enrichment restrictions, which in most cases have provided effective safeguards against abuse of small business benefits. Thus, CCA also generally supports the maintenance of the current unjust enrichment restrictions, including the existing five-year payment schedule.<sup>25</sup> In its *Notice*, the Commission explores whether the five-year unjust enrichment rule is sufficient.<sup>26</sup> In certain contexts, CCA agrees that a ten-year payment schedule could help deter speculation and spectrum warehousing, and also promote facilities-based service. On the other hand, as the Commission recognizes, a ten-year unjust enrichment restriction can be a significant impediment for carriers, especially small businesses, to access capital and attract the financing necessary to participate in spectrum auctions and subsequently build out licenses.<sup>27</sup>

Overall, given the consolidated state of the wireless industry, it is appropriate to re-balance the Commission's historical policy priorities to afford small businesses that truly intend to become facilities-based providers new opportunities to gain access to capital for participation in spectrum-based services, while also guarding against unjust enrichment. Adopting a rigorous two-pronged review approach combined with the current five-year unjust enrichment restriction

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<sup>25</sup> 47 C.F.R. § 1.2111.

<sup>26</sup> *See Notice* ¶¶ 44-46.

<sup>27</sup> *See id.* ¶ 45.

and payment schedule represents a sensible calibration of policy objectives that strikes a balance between increasing participation of small businesses in auctions and promoting the deployment of spectrum-based services.

#### **IV. THE CODIFICATION OF PRIOR CHANGES TO THE FORMER DEFAULTER RULE AND OTHER ESTABLISHED COMPETITIVE BIDDING PROCEDURES ARE IN THE PUBLIC INTEREST**

##### **A. The Commission Appropriately Narrowed the Circumstances under Which an Auction 97 Applicant Would be Considered a Former Defaulter, and That Relief Should Be Incorporated into the Competitive Bidding Rules**

CCA supports the Commission’s proposal to limit the applicability of the larger upfront payment for a “former defaulter” as it did in granting a limited blanket waiver of that rule in the context of Auction No. 97.<sup>28</sup> Specifically, CCA urges the Commission to exclude from the former defaulter rule any cured default on any Commission license or delinquency on any non-tax debt owed to any federal agency for which any of the following criteria are met: (i) the notice of the final payment deadline or delinquency was received more than seven years before the relevant short-form application deadline; (ii) the default or delinquency amounted to less than \$100,000; (iii) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (iv) the default or delinquency was the subject of a legal or arbitration proceeding that was cured upon resolution of the proceeding. The Commission has already recognized that the current former defaulter rule sweeps too broadly and imposes unnecessary costs and burdens on auction applicants.<sup>29</sup> A rule reflecting the new

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<sup>28</sup> See *Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver*, Order, 29 FCC Rcd 10828 (2014) (“*Auction 97 Former Defaulter Waiver Order*”). CCA, along with CTIA and NTCA, worked with the Commission to craft the contours of the limited waiver granted for Auction No. 97. See *id.* ¶¶ 4-5.

<sup>29</sup> *Id.* ¶¶ 15, 16; see also *Notice* ¶ 86.

balance struck in the *Auction 97 Former Defaulter Waiver Order*, which CCA actively facilitated, will promote increased auction participation.

CCA also urges the Commission to ensure that only individuals and entities that are in a position to affect whether an applicant meets its auction-related financial responsibilities is encompassed by the certification in the auction “short-form” application regarding any defaults or non-tax debt delinquencies. Tailoring the certification in this manner would ensure that the underlying purposes of the increased upfront payment—to preserve the integrity of the auction process and confirm that bidders are capable of meeting their financial commitments to the Commission—are met without imposing unnecessary burdens or ambiguities as to application accuracy.

**B. A Rule Restricting the Filing of Multiple Auction Applications by the Same Individual or Entity Will Improve Auction Transparency and Impede Anticompetitive Auction Behavior**

CCA recommends the Commission adopt its proposal for a new rule limiting entities under the common, exclusive control of a single individual, or set of individuals, to only one short-form application.<sup>30</sup> In the context of adopting competitive bidding procedures for specific auctions, the Commission has long prohibited the same individual or entity from submitting multiple short-form applications to prevent duplicative filings and curb anticompetitive behavior.<sup>31</sup> Thus, the proposed codification and modest extension of existing Commission practice and policy are straightforward and uncontroversial. The Commission should extend this policy to commonly controlled bidders for the same reasons. Codifying this longstanding policy will improve transparency and auction efficiency, and provide increased protection against auction manipulation.

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<sup>30</sup> See Notice ¶ 103.

<sup>31</sup> *Id.* ¶ 99.

On a related note, the Commission should also consider whether further restrictions are necessary where an investor may be privy to the bidding strategy of multiple applicants, even in the absence of common control. Strategic behavior among multiple applicants coordinating bidding actions is not limited to scenarios involving commonly controlled applicants.<sup>32</sup> For example, an applicant that bids on a standalone basis but that also has multiple non-controlling investments in other applicants may be privy to and participate in the financing and bidding strategy of multiple applicants. While this scenario may not trigger a violation of the anti-collusion rules if the applicants have entered into a joint bidding arrangement that is fully disclosed in their respective short-form applications, such an arrangement nonetheless may facilitate the type of coordinated strategic activity that prejudices other bidders and harms the integrity of the auction process.

**V. THE PROPOSED RULES ON JOINT BIDDING ARRANGEMENTS GENERALLY WILL SERVE THE PUBLIC INTEREST, BUT THE COMMISSION’S DEFINITION OF “JOINT BIDDING AND OTHER ARRANGEMENTS” IS OVERBROAD**

**A. Joint Bidding Arrangements between Non-Nationwide Providers Should Be Presumed Pro-Competitive**

In this proceeding, the Commission also seeks to undertake an evaluation of whether its rules and policies governing joint bidding and other arrangements are effective in promoting robust competition and in preventing collusive behavior among bidders.<sup>33</sup> In evaluating the Commission’s joint bidding policies, CCA agrees with the Commission’s tentative conclusion that it would best serve the public interest to maintain the presumption that joint bidding and

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<sup>32</sup> See *id.* ¶ 104.

<sup>33</sup> *Id.* ¶¶ 109, 110.

other arrangements among non-nationwide providers are pro-competitive.<sup>34</sup> The Commission has long recognized the competitive benefits of joint bidding arrangements between non-nationwide providers, and experience has borne this out. These arrangements have allowed non-nationwide providers to maintain or increase their competitive position in auctions,<sup>35</sup> which, given the overwhelming dominance of the two largest carriers, has served to benefit consumers. Moreover, the likelihood of competitive harm is low. As the Commission concluded in its *Mobile Spectrum Holdings Order*, non-nationwide carriers are unlikely to be able to foreclose competition or raise the cost of rivals because of their relative lack of resources.<sup>36</sup> Providing a tool to pool resources at auction is pro-competitive.

**B. Arrangements Between or Among Nationwide Providers and Other Entities Should Be Evaluated on a Case-by-Case Basis**

In general, CCA also does not believe that joint bidding and other arrangements between or among nationwide providers and non-nationwide providers or new entrants are *per se* anticompetitive.<sup>37</sup> For instance, designated entity structures in which a nationwide carrier and other entities form strategic alliances have been found to offer pro-competitive benefits and deployment of services to consumers in unserved or underserved areas. However, such arrangements need to be evaluated contextually. CCA therefore urges the Commission to continue to review arrangements between or among a nationwide provider and non-nationwide providers on a case-by-case basis to determine whether these arrangements have pro- or

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<sup>34</sup> See *id.* ¶ 129.

<sup>35</sup> See, e.g., Application of West Carolina Piedmont Bidding Consortium, ULS File No. 0002604993 (agreement between West Carolina Communication, LLC and Piedmont Rural Telephone Cooperative, Inc., facilitating successful participation in Auction No. 66).

<sup>36</sup> *Mobile Spectrum Holdings Order* ¶ 180.

<sup>37</sup> See Notice ¶ 135.

anticompetitive implications. To provide certainty to auction participants regarding any limitations in applying for licenses at auction, CCA recommends that the Commission allow parties contemplating such arrangements to seek confidential, informal staff guidance in advance of the short-form deadline regarding whether an arrangement is acceptable. These policies and practice would promote increased numbers of potential bidders participating in an auction and will be balanced by the anti-collusion safeguards in the Commission's rules. Moreover, antitrust laws also will serve to deter collusive or anticompetitive behavior.

**C. The Commission's Proposed Definition of "Joint Bidding and Other Arrangements" Is Overbroad**

In the *Notice*, the Commission proposes to define "joint bidding and other arrangements" as including any "arrangement relating to the competitive bidding process, including any agreement relating to post-auction market structure or operation."<sup>38</sup> The latter portion of this proposed definition in particular is overbroad, and has the potential to sweep in certain arrangements that should not be considered in determining the propriety of a joint bidding arrangement. For example, arrangements that relate to post-auction market structure separate and apart from auctions, such as pending acquisitions or roaming arrangements, do not involve coordination among the parties to bid at auction in a certain manner. Similarly, CCA's innovative Rural Roaming Preferred Provider ("R2P2") program with Sprint arguably implicates post-auction market structure, but should not be characterized as a "joint bidding" arrangement. Nor should many designated entity corporate and financing agreements that are vital to competitive participation in auctions but have nothing to do with auction mechanics or bidding. Thus, CCA recommends that this definition be narrowed to include only arrangements that are directly related to the coordination of bidding strategies or mechanics to avoid confusion and

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<sup>38</sup> *Notice* ¶ 121.

unintended consequences. While it may be appropriate to look more broadly at arrangements relating to post-auction market structure in the context of applying the anti-collusion rules, it does not make sense to include these types of arrangements within the Commission's joint bidding definition.

## **VI. CONCLUSION**

For the foregoing reasons, CCA respectfully requests that the Commission update and modify its competitive bidding rules to encourage participation in spectrum auctions by a wide range of carriers and to promote opportunities for competitive carriers to access critical spectrum resources.

Respectfully submitted,

*/s/ Rebecca Murphy Thompson*

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Steven K. Berry

Rebecca Murphy Thompson

C. Sean Spivey

COMPETITIVE CARRIERS ASSOCIATION

805 15th Street NW, Suite 401

Washington, DC 20005

(202) 449-9866

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