

**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 CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION AND SUMMARY

CTIA – The Wireless Association® (“CTIA”) respectfully submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) seeking comment on proposed revisions to the Commission’s Part 1 rules governing competitive bidding to reflect changes in the marketplace.¹ These initial comments will be limited to the NPRM’s proposal to

¹ *Updating Part 1 Competitive Bidding Rules, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, 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, and Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Notice of Proposed Rulemaking, FCC 14-146 (Oct. 10, 2014) (“NPRM”).

narrow the scope of the Commission’s former defaulter rule to “balance concerns that the current rule is overly broad” with the continued need “to ensure that auction bidders are financially reliable.”²

CTIA and its members applaud the Commission for recognizing that its former defaulter rule may inhibit auction participation.³ In reaching this conclusion, the Commission recently granted a limited blanket waiver of the rule⁴ for the recent AWS-3 auction (Auction 97) to “help promote broad, robust participation.”⁵ Acknowledging that this rule may be overly broad and impose unnecessary costs on auction applicants, the Commission in this proceeding proposes narrowing the scope of the defaults and delinquencies that would be considered in determining whether or not an applicant is a former defaulter.⁶ CTIA supports the Commission’s tentative conclusion in this proceeding that the former defaulter rule is too broad and its proposal to permanently codify the changes to the former defaulter policies adopted in connection with the

² *Id.* ¶ 2.

³ Under the Commission’s current rule, applicants that have ever been in default on a Commission license or delinquent on any non-tax debt owed to any Federal agency are considered “former defaulters.” 47 C.F.R. §§ 1.205(a)(2)(xi); 1.2106(a). In turn, former defaulters are required to provide significant additional upfront payments before they can participate in a Commission spectrum auction. Indeed, former defaulters are required to submit an upfront payment that is 50 percent more than what would otherwise be required. 47 C.F.R. § 1.2106(a).

⁴ *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; Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014 (Auction 97), Order, RM-11395, AU Docket No. 14-78, ¶ 16 (Aug. 29, 2014) (“Auction 97 Former Defaulter Waiver Order”).*

⁵ *Id.*

⁶ *NPRM* ¶ 86.

Auction 97 limited waiver.⁷ CTIA urges the Commission to adopt its proposed revisions, as (1) the circumstances and risks of default that led the Commission to adopt the current version of its former defaulter rule no longer exist today; and (2) the proposed revisions will prevent overbroad application of the rule, ensure that the rule is consistent with the goals of preserving the integrity of the auction process, ensuring bidders' financial stability and promoting broad participation in auctions.

CTIA strongly agrees that the former defaulter rule should be narrowed in scope. Limiting the former defaulter rule as the Commission has proposed will serve the public interest by promoting wide-spread participation in Commission auctions. At the same time, the more narrowly tailored rule will continue to preserve the integrity of Commission auctions.

II. THE PROPOSED REVISIONS TO THE FORMER DEFAULTER RULE SERVE THE PUBLIC INTEREST

CTIA commends the Commission for advancing its proposed reforms to the former defaulter rule.⁸ Reforming this rule will enable broad, robust participation in Commission spectrum auctions while continuing to ensure that prospective bidders are financially qualified.

⁷ *NPRM* ¶ 86. To curtail the broad reach of the rule, the Commission proposes excluding the following categories of cured defaults or delinquencies: (1) where the notice of the final payment deadline or delinquency was received more than seven years before the relevant short-form application deadline; (2) where the default or delinquency amounted to less than \$100,000; (3) where the default or delinquency was paid within two quarters (six months) after receiving the notice of the final payment deadline or delinquency; or (4) where the default or delinquency was the subject of a legal or arbitration proceeding that was cured upon resolution of the proceeding. *Id.*

⁸ Section 1.2106(a) of the Commission's rules requires applicants that have been in default or delinquent on any Commission license or "on any non-tax debt owed to any Federal agency" to submit an upfront payment "equal to 50 percent more than that set for each particular license" before it can participate in an auction. 47 C.F.R. § 1.2106(a). No interest is paid on upfront payments even though they may be held for months. *Id.* In its current form, the former defaulter rule applies regardless of the size of the past debt, or the amount of time that has passed since the default was cured. Thus, a potential bidder that once had a trivial debt – long since repaid – must

The circumstances that led the Commission to adopt the former defaulter rule no longer exist today, arguably obviating the need for the rule at all. The former defaulter rule was initially adopted at a time when the financial responsibility of applicants carried far greater risks. The Commission adopted the former defaulter rule in 2000, after some winning bidders defaulted on installment payments on auctioned PCS licenses.⁹ At the time, Commission rules permitted issuance of licenses before full payment was received. The Commission also permitted installment payments for winning bidders that could extend for up to the term of the license (*e.g.*, 10 years for PCS licenses). These rules extended the risk of default over the entire license term. The Commission has since moved away from these approaches, and the risks entailed, by requiring bidders to make full payment for licenses won at auction, before issuing the licenses. Of course, the Commission still must ensure applicants' financial stability, but it has implemented critical safeguards that mitigate the risks previously associated with potential default by winning bidders. Moreover, since the former defaulter rule was adopted, the wireless industry has cemented its position as a formidable driver of the U.S. economy. Commission auctions are thus "less likely to produce bidders who . . . [may place] unrealistic bids and bidding

nevertheless submit an upfront payment of 150 percent of what would otherwise be required to participate in a Commission spectrum auction.

With the rule's incredibly broad reach, the former defaulter rule has, in past auctions, required bidders to make millions of dollars in additional upfront payments, complicating bidders' financial planning and inhibiting robust auction participation. *See* Letter from Competitive Carriers Association, Consumer Electronics Association, CTIA – The Wireless Association®, and NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, RM-11395, GN Docket No. 13-185, AU Docket No. 14-78, GN Docket 12-268, at 2 (May 30, 2014) ("Four Associations May 2014 Letter") (noting that former defaulters paid an additional \$619 million in upfront payments in the AWS-1 auction and an extra \$496 million in upfront payments in the 700 MHz auction).

⁹ Part 1 Fifth Report & Order at 15316 ¶ 40.

defaults that could threaten the integrity of the auction.”¹⁰ In sum, the proposed revisions to the rule appropriately reflect both the maturation of the Commission’s auctions program and the wireless industry’s growth into a major segment of the U.S. economy. In light of these reduced risks, the Commission should adopt the proposed provisions to narrow the existing rule and thereby encourage greater participation by potential bidders, while still safeguarding the integrity of the auction process.

In addition, the proposed revisions would help remedy overbroad applications of the rule, advance the underlying purpose of the rule, and serve the public interest by encouraging greater participation in Commission auctions. Countless commenters have explained that the current version of the former defaulter rule has the potential to disproportionately penalize certain auction applicants.¹¹ As commenters have detailed, the rule applies to *any* and *all* debts, no matter how small or how long ago they were incurred.¹² Minor or *de minimis* debts should not

¹⁰ Auction 97 Former Defaulter Waiver Order ¶ 15.

¹¹ See, e.g., Letter from Rebecca Murphy Thompson, CCA, Julie Kearney, CEA, Scott K. Bergmann, CTIA, and Jill Canfield, NTCA, to Marlene H. Dortch, FCC, RM-11395, GN Docket No. 13-185, AU Docket No. 14-78, GN Docket No. 12-268, at 2 (May 30, 2014) (“May 2014 Ex Parte”); Comments of Verizon Wireless, AU Docket No. 14-78, at 3 (Jun. 9, 2014) (“Verizon AWS-3 Procedures Comments”); Letter from Stacey Black, Assistant Vice President Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, FCC, AU Docket No. 14-78, at 2 (Jun. 27, 2014) (characterizing the former defaulter rule as a “disproportionate and draconian penalty”).

¹² Accordingly, a debt as small as \$10 that was cured ten years ago would still trigger the former defaulter rule and require an additional upfront payment—150 percent of what would otherwise be required. See Reply Comments of CTIA – The Wireless Association®, AU Docket No. 14-78, at 5 (Jun. 23, 2014) (“CTIA AWS-3 Procedures Reply Comments”); Verizon AWS-3 Procedures Comments at 3 (“In the AWS-3 auction, a long-since paid \$10 late payment could result in a monetary penalty of millions of dollars.”). Moreover, a potential bidder could easily fall within the scope of the former defaulter rule for reasons that do not accurately reflect their ability or willingness to pay for spectrum licenses. For example, if a potential bidder once forgot to timely submit a monthly Universal Service Fund Payment, it would be required to submit an additional 50 percent upfront payment under the Commission’s current rule. See May 2014 Ex Parte at 2. Occasionally, bills may be misaddressed, lost, or paid late, resulting in a delinquency.

result in an upfront payment penalty. The proposed revisions to the former defaulter rule also are consistent with the underlying purposes of the rule. As the Commission notes, the underlying purposes of the former defaulter rule are to “preserve the integrity of the auction process and ensure that bidders are capable of meeting their financial commitments to the Commission.”¹³ Consistent with these purposes, former defaults or delinquencies that are small or that were cured several years ago do not reflect upon a potential bidder’s ability to meet its financial obligations to the Commission.¹⁴ Thus, narrowing the scope of debts that could trigger the former defaulter rule would encourage broader auction participation while still “appreciably ameliorating the risk of bidder defaults.”¹⁵ Finally, the proposed rule revisions will serve the public interest by broadly encouraging participation in Commission auctions. In its current form, the former defaulter rule likely would make upfront payments prohibitively expensive for some potential auction participants. As such, the existing rule has the strong potential to deter bidders from participating in spectrum auctions. By contrast, the revised rule will “simplify the bidding

But these incidents do not demonstrate that a bidder is less likely to pay for the licenses it may win at auction.

¹³ *NPRM* ¶ 87 (quoting *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Order on Reconsideration, Fifth Report & Order, and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 15293, 15316 ¶ 40 (2001) (“Part 1 Fifth Report & Order”).

¹⁴ See CTIA AWS-3 Procedures Reply Comments at 5; Verizon AWS-3 Procedures Comments at 3-4; Reply Comments of NTCA – The Rural Broadband Association, AU Docket No. 14-78, at 4 (Jun. 23, 2014) (“NTCA AWS-3 Procedures Comments”); Comments of AT&T, AU Docket No. 14-78, at 4 (Jun. 9, 2014) (“AT&T AWS-3 Procedures Comments”); Comments of DISH Network Corp., AU Docket No. 14-78, at 19 (Jun. 9, 2014) (“DISH AWS-3 Procedures Comments”).

¹⁵ Auction 97 Former Defaulter Waiver Order ¶ 18.

process and minimize implementation costs for bidders.”¹⁶ Revising the former defaulter rule as the Commission has proposed would remove an important barrier to auction participation, thereby maximizing potential auction revenues. As the Commission has recognized time and again, promoting broad participation in spectrum auctions falls squarely within the public interest.¹⁷

III. CONCLUSION

CTIA and its members appreciate the Commission’s efforts to narrow the scope of the former defaulter rule. The former defaulter rule in its current iteration is overly broad and creates a significant barrier to maximizing auction participation. For the reasons set forth above, CTIA submits that the Commission should adopt its proposed former defaulter rule revisions. By adopting these revisions, the Commission will ensure that the public interest is served by encouraging broad participation in future spectrum auctions. Further, the more narrowly tailored

¹⁶ *Id.* ¶ 16.

¹⁷ *See, e.g., id.* (noting that waiving the former defaulter rule as in the public interest because it would “help promote broad, robust participation”).

former defaulter rule will provide ample assurance that bidders are financially reliable while also preserving the integrity of spectrum auctions.

Respectfully submitted,

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