



March 6, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: *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

Dear Ms. Dortch:

Cellular South, Inc. (d/b/a C Spire) ("C Spire") submits the following in reply to comments filed in response to the Commission's Notice of Proposed Rulemaking regarding proposed revisions to the competitive bidding rules in Part 1 of the Commission's rules.

The Commission Should Not Relax Its Designated Entity, Small Business, or Attributable Material Relationship Rules.

C Spire shares the concerns of commenters who urge the Commission **not** to relax its Designated Entity ("DE"), Small Business, and Attributable Material Relationship ("AMR") rules. Instead, the Commission should redouble its efforts to ensure that any bidding credits made available at auction are used **solely** by qualifying DEs or small businesses for the direct and long-term benefit of the recipient. Additionally, the Commission should evaluate whether its existing AMR rules effectively prevent parties from undermining the competitive benefits of spectrum auctions.

While an effective bidding credit program may be needed to comply with Congress's mandate that the Commission design and conduct spectrum auctions in a manner that "promote[s]

economic opportunity and competition,” Congress has also required the Commission to “avoid excessive concentration of licenses....”¹ As various commenters note, in recent auctions, bidding credits appear have been leveraged by complicit speculators or pre-existing proxies of incumbent spectrum-holders seeking to gain access to spectrum at discounted prices.

For example, commenters point out that concerns regarding potential misuse of bidding credits have arisen in the context of the AWS-3 auction.² Additionally, it is also important to remember that much of the Lower 700 MHz spectrum acquired at auction with the assistance of bidding credits is now in the hands (either by lease or by sale) of large nationwide operators who were financially capable of acquiring the spectrum licenses at full price at auction.³ Such auction and secondary market results are inconsistent with the Commission’s goal of facilitating entry of new players into the market and can be avoided with more robust bidding credit rules.

C Spire, therefore, agrees with commenters who advocate for the Commission to enact robust policies that promote acquisition of spectrum for development of facilities-based wireless service by new providers or by small, existing providers seeking to expand their current service capacity or footprint.

C Spire urges the Commission to consider adoption of many of the suggestions offered by commenters, including:

- Limiting small business benefits to small businesses.⁴
- Changing the attribution rules to “attribute to a DE the revenues and spectrum of any spectrum holding entity that holds an interest, direct or indirect, equity or non-equity of

¹ See 47 U.S.C. § 309(j)(4)(B).

² See, *In Re Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, Comments of T-Mobile USA, Inc. (Feb. 20, 2015) (“T-Mobile Comments”), p. 6-8; *In Re Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, Comments of AT&T Services, Inc. (Feb. 20, 2015) (“AT&T Comments”), p. 5-8.

³ See, e.g., *Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations*, WT Docket No. 07-265, Memorandum Opinion and Order, 23 FCC Rcd 2344 (2008).

⁴ See, AT&T Comments, pp. 16-17. (“Pursuant to the SBA’s guidelines, the small business size limit for ‘all other telecommunications’ is \$32.5 million in annual receipts.”)

more than 10 percent.”⁵ This would limit carriers who do not otherwise qualify as DEs from accessing discounted spectrum via an investment in new entities who have a bidding and spectrum strategy designed or coordinated with a larger carrier’s (or other large business’s) approval.⁶

- Strengthen the Attributable Material Relationship rules to prohibit DEs from leasing more than 25 percent of their spectrum in to any one lessee and an additional prohibition against any single operator having access to more than 25 percent of any single DEs spectrum.⁷
- Require DEs to have a 25 percent minimum equity investment threshold to ensure the controlling interests have sufficient incentive in the bidding entity.⁸

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

C Spire agrees with commenters who urge the Commission to consider additional restrictions preventing an investor who holds an interest in multiple auction participants from directing or participating directly in the bidding of more than one of those participants, regardless of whether there is common control of the bidding entities.

As CCA points out, “[s]trategic behavior among multiple applicants coordinating bidding actions is not limited to scenarios involving commonly controlled applicants.”⁹ 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.

C Spire agrees with commenters, such as T-Mobile, who note “it is critical that the Commission...address the potential for coordinated behavior by bidders that are linked by

⁵ *Id.*

⁶ *See, id.*

⁷ *See*, T-Mobile Comments, p. 13-14.

⁸ *See, id.*, p. 15.

⁹ CCA Comments, p. 13 (internal citations omitted).

common attributable interests.”¹⁰ Such “entities have unfair advantages in an auction and can manipulate bidding to the detriment of other participants and the public.”¹¹

The Commission should, therefore, take greater steps to prevent investors in multiple auction participants from engaging in coordinated bidding at auction. “[I]ndividuals and entities that are listed as disclosable interest holders on more than one short-form application” should be required to “expressly certify that they are not privy to, or involved in, the bidding strategy of more than one auction participant.”¹²

Respectfully submitted,

s/ Ben Moncrief

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¹⁰ T-Mobile Comments, p. 3

¹¹ *Id.*

¹² *Id.*, pp. 3-4.