

Spectrum Financial Partners, LLC

Stephen Wilkus, CTO
15 Hickory Lane
Lincroft, NJ 07738
Phone: +1 732 533 3286
Stephen.Wilkus@SpectrumFinancialPartners.com
Web: www.SpectrumFinancialPartners.com

Via Electronic Filing

March 6, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

Re: **Reply Comments**
WT Docket No. 14-170, et al. Updating Part 1 Competitive Bidding Rules;
GN Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions;
WT Docket No. 05-211, Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

Dear Ms. Dortch:

Spectrum Financial Partners, LLC ("Spectrum Financial"), hereby submits its reply comments in the above-captioned proceedings¹.

Spectrum Financial is planning to partner with others in bidding in the upcoming 600 MHz incentive auction, and is keenly interested in the opportunities for small businesses to competitively participate in the auction. We commend the Commission for its efforts to expand the available spectrum for broadband use and implement the National Broadband Plan.

In most respects, Spectrum Financial is in general agreement with the comments of the Competitive Carriers Association filed February 20, 2015.² In addition, Spectrum Financial tracked the developments of Auction 97 (AWS-3) and took a number of lessons from that experience, the following of which should inform the Commission's action in the pending proceedings.

1) **Revenues are not the goal of the spectrum auctions:**

A number of participant filings, public comments and statements of most of the Commissioners as well as the "Official FCC Blog" have referred to the great success of the AWS-3 auction.³ While

¹ *Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, GN Docket No. 12-268, WT Docket No. 05-211, 29 FCC Rcd 12426 (2014) ("Notice").

² **Comments of Competitive Carriers Association in WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WTW Docket No. 05-211** (Feb. 20, 2015).

³ See, e.g., Dish's filing of 2/23/2015, ("AWS-3 auction, on a gross and net basis, [was] the most successful spectrum auction in FCC history.") available on-line at: <http://apps.fcc.gov/ecfs/document/view?id=60001032640>; "Dish, FirstNet, tower companies and FCC are the early winners in wildly successful AWS-3 auction," by Mike Dano, Fierce Wireless, Nov. 20, 2014 available on-line at: <http://www.fiercewireless.com/story/dish-firstnet-tower-companies-and-fcc-are-early-winners-wildly-successful-aw/2014-11-20>; Statement of Commissioner Mignon L. Clyburn on the results of the AWS-3 Auction

self-congratulatory comments such as these are understandable, we should recall that the success of the auctions is not to be measured in the revenue raised but rather in the efficiency with which public resources are put to public use. We would certainly not call an auction successful if it does not meet the reserve price, but neither would we call an auction successful that leads to bankruptcy of the winning bidders. The success of an auction will be reflected in the use to which the spectrum is put. The auction is to put the radio spectrum to the greatest public good. Theoretically, this results in high revenue, but the rules inevitably balance multiple criteria.⁴

One might try to defend the results of the recent AWS-3 auction results by an appeal to the claim that multiple cross-owned bidders with bidding credits for small companies helped to raise the revenues from the auction. This is not a justification for poor regulations or their abuse. Successful auctions ought to raise the minimum fair price, not some larger amount resulting from abuse of poor rules.

Even so, a simple analysis of the recent AWS-3 auction results shows that if all the discounted winning bids by NorthStar and SNR were replaced by the net bid, we find that all but 9 of the 702 licenses won would have gone to the next higher bids, which were typically without benefit of the small-company bidding credits. Consequently, the net proceeds actually increase by \$1.58 Billion to \$42.910 Billion.⁵ This suggests that there was a willingness to pay even more than the net proceeds, had there been no bidding credits.

Granted, the NorthStar and SNR bidding in earlier rounds helped drive the other bidders to these high levels, and if NorthStar and SNR had not had the bidding credits, the auction results may have seen American AWS-3 Wireless (aka Dish Networks) or these other bidders concentrating their smaller purses to a smaller number of items.

2) **Joint Bidding Agreements are essentially Collusive:**

The procedures Public Notice for the just-completed AWS-3 Auction #97, quite reasonably states, “A violation of section 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants.”⁶ However reasonable, this is inherently difficult to police so the Commission has given some teeth to the prohibition with a reporting requirement. But the Commission has gone beyond reason in 47 C.F.R. §§ 1.2105(c) when it permits *de facto* collusion if joint bidding arrangements are reported,

(c) Prohibition of collusion. (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to,

of January 29, 2015, available on-line at: <http://www.fcc.gov/document/statement-commissioner-clyburn-aw-3-auction-results>; Statement of Commissioner Jessica Rosenworcel on the AWS-3 Auction of January 29, 2015, available on-line at: <http://www.fcc.gov/document/statement-fcc-commissioner-jessica-rosenworcel-aws-3-auction>; Statement of Commissioner Ajit Pai on the Completion of the AWS-3 Auction, of January 29, 2015 (“The AWS-3 auction has been a historic success, raising almost \$45 billion..”) available on-line at: <http://www.fcc.gov/document/commissioner-pais-statement-completion-aws-3-auction>; Statement of Commissioner Michael O’Rielly on the Conclusion of the AWS-3 Auction, January 29, 2015 (“directives that allowed for such a successful outcome.”) available on-line at: <http://www.fcc.gov/document/commissioner-michael-orielly-comments-conclusion-aws-3>; Official FCC Blog, “Putting Auction 97 in the History Books,” by Roger C. Sherman, January 29, 2015, (“by any measure it’s safe to say that the auction was an overwhelming success.”) available on-line at: <http://www.fcc.gov/blog/putting-auction-97-history-books>.

⁴ See “You Say you want a Revolution: A Story of Information Age Politics,” Reed E. Hunt, Yale University Press, 2011. “Actions are typically held to raise the maximum amount of money. But our <FCC> staff had designed an auction that, if successful, would obtain the *minimum* fair price for every license.”

⁵ For easy reference:, the net proceeds of auction 97 were \$41,329,673,325. The Gross proceeds (the PWBs without consideration for the bidding credits was: \$44,899,451,600 (8.6% above the net). From our quick evaluation, NorthStar and SNR’s highest bids the net proceeds would have been \$42,909,673,325 (3.8% above the actual net value).

⁶ Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014, Public Notice, DA-14-1018 at ¶17.

discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).⁷

This section, titled “Prohibition of collusion,” essentially permits collusion provided the existence of collusive bidding arrangements is reported, even though the content of the arrangements themselves are not reported.

There are many ways of programmatically communicating during an auction through the use of bidding arrangements. For example, bidder A and B might have an arrangement by which bidder A only bids a minimal increment on J block licenses when in the previous round A bid on corresponding H blocks (or I blocks in the case of bidder B). This can give a third bidder the appearance that there are three separate bidders for J block licenses when in fact A and B will have some statistical assurance that they will not “leap frog” each other. Just slightly more elaborate bidding arrangements could include signaling between bidders in ways that a good communications engineer could easily design, effectively communicating between bidders that would overcome the interference of other’s bids, even without human involvement during the auction. It appears that such arrangements would be legal as long as its existence is reported in the long form.

To an interested citizen, this has all the appearance of collusion; yet the rules specifically permit it. If the Commission were to disallow joint bidding arrangements or, alternatively, require that the full details of the arrangement be made public in the long form filing, the collusive possibilities would be substantially ameliorated, and the transparency would be reassuring to both the participants and interested citizens.

3) **Cross Ownership is Inherently Collusive:**

Cross ownership of multiple bidding entities is clearly, to this layman’s eyes, to be tantamount to collusion. Granted, a small stockholder in both AT&T and Verizon certainly has no control or prohibited communications between the two, but 85% ownership in two separate bidders is an immensely rude affront to the spirit of the law and to respect for common sense and civility.

Anti-collusion rules for future auctions ought to limit joint ownership to much less than controlling interest, certainly less than 50%.

4) **Designated Entity Bidding Credits Encourage Competition:**

A simple and sure way to stop these machinations would be to eliminate designated entities and their bidding credits. But these, of course, attempt to serve other social purposes; particularly the encouragement of competition, rural service, preference for “pioneers” and affirmative action. The importance of these objectives can and should vary with time and experience, as judged by the Commission and the national political processes as they respond to the failures or insufficiencies of the free market.

As an aspirant to participate in spectrum auctions, Spectrum Financial can vouch for the importance of the bidding credits when seeking funds from the capital market. Several substantial potential investors were even dubious that a bidding credit of only 25% would suffice to “out maneuver “ the bidding of the tier 1 bidders in today’s marketplace.

Based upon interest observed in the capital markets, setting aside reserved spectrum for designated entities in the upcoming incentive auction will undoubtedly encourage new entrants and additional competition in wireless broadband market.

5) **The “Family Rule” is ill defined and needlessly restrictive:**

In seeking investors, small businesses such as Spectrum Financial will commonly seek family

⁷ 47 CFR §1.2105 available on line at: <http://www.gpo.gov/fdsys/pkg/CFR-2008-title47-vol1/xml/CFR-2008-title47-vol1-sec1-2105.xml>.

members for partners. Yet the participation of a family member with attributable material interests that exceed the designated entity limits will disallow small business status for such familial investments. To the extent that this is the interpretation of family rule limitations this is problematic.

A family rule should properly exclude, say, a husband and wife from controlling separate bidding entities and can be assumed to violate prohibited communications, but sibling and more distant relations where the investors have no attributable interest in telecommunications or spectrum assets should not prohibit DE status for the invested bidding entity.

Of course, large corporations seeking to take advantage of bidding credits should not be allowed to use family investments as a “front”; and so such investors should disclose their interests in the long form filings.

Spectrum Financial submits these candid comments in the hope of providing the Commission with insights of a small aspiring company with interest in an efficient and well-regulated radio spectrum.

Respectfully Submitted,
Spectrum Financial Partners, LLC

/s/ Stephen A Wilkus
Stephen A. Wilkus, CTO
Spectrum Financial Partners, LLC
15 Hickory Lane, Lincroft, NJ 07738
(732) 533-3286

/s/ Giovanni Vannucci
Giovanni Vannucci, Principal
Spectrum Financial Partners, LLC

President, Milvius LLC
329 Rutledge Dr., Red Bank, NJ 07701