

**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
)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) hereby replies to comments filed on the Federal Communications Commission’s (“Commission” or “FCC”) Notice of Proposed Rulemaking proposing various changes to the Commission’s Part 1 competitive bidding rules.¹ The Commission’s competitive bidding rules have a significant impact on the ability of competitors to acquire the critical input of spectrum, requiring enormous outlays of capital. To ensure fairness, enhance auction participant certainty, and promote competition, the Commission should prioritize clarity in developing its rules.

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; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Notice of Proposed Rulemaking, 29 FCC Rcd 12426, ¶ 107-40 (2014) (“NPRM”).

More specifically, the comments filed in this proceeding offer no support for the Commission's proposed prohibition against joint bidding arrangements between nationwide providers. Rather than adopt that flawed proposal, the Commission should apply a balanced policy that permits pro-consumer arrangements between competitive carriers that may desire to pool their resources to gain access to a critical foundation of low-band spectrum. This targeted approach will generate substantial public interest benefits by promoting more robust competition against the nation's two dominant wireless providers. It will also provide *ex ante* clarity for bidders ahead of the auction, avoiding the cloud of uncertainty that would arise from after-the-fact, case-by-case review.

I. RATHER THAN PROHIBIT ALL JOINT BIDDING ARRANGEMENTS BETWEEN NATIONWIDE PROVIDERS, THE COMMISSION SHOULD APPLY A TARGETED APPROACH THAT PROMOTES COMPETITION

In its rulemaking on competitive bidding rules for the 600 MHz Broadcast Television Spectrum Auction ("Incentive Auction") and beyond, the Commission's fundamental goal should be to promote competition in the wireless marketplace. In pursuing this goal, the Commission should recognize the key structural reality in today's wireless environment: The enormous gap between the two most dominant providers, AT&T and Verizon, and all other wireless carriers in the United States. In response to this entrenched industry structure, the Commission should adopt auction policies that enable competitive carriers to overcome the economic challenges of acquiring high-utility spectrum and building state-of-the-art wireless broadband networks.

As Sprint pointed out in its comments, the Commission's proposed prohibition against joint bidding arrangements between nationwide providers will only impede, rather than enhance,

wireless competition.² The Commission in the *NPRM* offered no evidence of competitive benefit from this policy, instead providing only general statements and conclusory characterizations regarding the existing wireless marketplace – statements at odds with the Commission’s well-developed record on the state of competition in the industry.³ T-Mobile agrees with this assessment of the *NPRM*, stating that it “present[ed] no evidence of market failure, or even change in market structure, that the Commission must remedy to justify a reversal of policy.”⁴

Not surprisingly, no commenter in this proceeding has expressed support for the proposed restriction on joint bidding among the nationwide carriers.

In its comments, T-Mobile argues that joint bidding arrangements can help it and other similar carriers “to meet the substantial capital costs required to acquire spectrum, invest in network infrastructure, and expand service coverage.”⁵ According to T-Mobile, “[c]onsumers could [also] benefit from these collaborations, as the participants are able to lower prices, improve quality, and/or bring new products or services to market faster.”⁶ T-Mobile points out that, “[b]y automatically prohibiting T-Mobile and other carriers from pursuing such opportunities, the Commission is unnecessarily eliminating a potentially key tool for advancing wireless offerings to consumers and overall marketplace competition.”⁷ CCA similarly argues

² Comments of Sprint Corporation, WT Docket No. 14-170, at 8-11 (Feb. 20, 2015) (“Sprint Comments”).

³ See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311, ¶ 22 (WTB 2014) (DA 14-1862).

⁴ Comments of T-Mobile USA, Inc., WT Docket No. 14-170, at 20 (Feb. 20, 2015) (“T-Mobile Comments”).

⁵ *Id.* at 22.

⁶ *Id.* at 23.

⁷ *Id.*

against a *per se* determination that arrangements between nationwide providers should be deemed anticompetitive, arguing instead that arrangements should be “evaluated contextually” to determine whether they have pro-competitive implications.⁸

Sprint respectfully submits that the Commission’s proposed joint bidding prohibition would only further entrench the Twin Bells’ dominant holdings of low-band, high-utility spectrum. Instead of the Commission’s proposed restriction, Sprint favors a balanced approach that permits pro-consumer arrangements between competitive carriers while preventing competitively harmful joint bidding agreements. Under this approach, the Commission would tie the Incentive Auction eligibility of any joint bidding arrangement between nationwide providers to the aggregate low-band spectrum holdings of those parties in the particular markets in which they desire to bid jointly. Specifically, as explained in Sprint’s comments, the Commission should allow joint bidding arrangements in Partial Economic Areas (“PEAs”) only where the agreeing parties collectively hold less than 45 MHz of below-one gigahertz spectrum on a population-weighted basis.⁹ Such an approach has the advantage of providing bidders with clear guidance, well ahead of short-form submission, regarding which arrangements would be deemed harmful to competition and thus prohibited. This 45 MHz threshold is consistent with the Commission’s long-time approach to evaluating spectrum concentration in the wireless marketplace and closely corresponds to the Commission’s precedent on monitoring undue concentration of *low-band* spectrum.¹⁰ Building on prior decisions scrutinizing the concentration

⁸ Comments of Competitive Carriers Association, WT Docket No. 14-170, at 14-15 (Feb. 20, 2015) (“CCA Comments”).

⁹ Sprint Comments at 11-13.

¹⁰ The Commission applied a “one-third” spectrum threshold in the context of its pre-2004 spectrum cap, and continues to use a one-third threshold in applying its spectrum screen to secondary market transactions. *See, e.g., Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,*

of low-band spectrum, the Commission last year established a new “enhanced review” of transactions which would result in a carrier having more than 45 MHz of below-one gigahertz spectrum in an affected market,¹¹ and it also set a 45 MHz cut-off for applicant eligibility to bid on the 600 MHz “reserve spectrum” blocks in the Incentive Auction.¹²

Joint bidding arrangements may better enable competitive nationwide carriers to acquire the low-band spectrum essential to achieving the deployment and operating economies and expanded network coverage and in-building penetration they need to compete with the two largest carriers – each of which already enjoy the benefits of robust low-band spectrum deployments. Competitive carriers’ success at auction would revitalize mobile broadband performance and competition; this increased competition would likely lead to greater innovation and improved service quality as AT&T and Verizon are motivated to invest more in their networks.

II. THE COMMISSION SHOULD ADOPT OTHER JOINT BIDDING POLICIES TO ENHANCE WIRELESS COMPETITION

Joint venture/consortium requirement for joint bidders. In its comments, AT&T argues that the Commission should not permit parties to enter into any joint bidding arrangements that enable those parties to bid separately at auction. AT&T expresses concern that multiple bidders can use such joint bidding arrangements “to put themselves in a position of unassailable

Report and Order, 29 FCC Rcd 6133, ¶¶ 70, 246 (2014) (“*Mobile Spectrum Holdings Order*”); *Applications of AT&T Wireless Inc. and Cingular Wireless Corporation for Consent to Transfer of Control of Licenses and Authorizations, et al.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶¶ 106-12 (2004).

¹¹ *Mobile Spectrum Holdings Order* ¶¶ 286-88.

¹² *Id.* ¶¶ 154, 174-78.

advantage through their coordinated bidding activity.”¹³ AT&T proposes that any joint bidding should take place through joint ventures or consortia, which would bid as a single applicant at auction and then divide the licenses between participants afterwards. According to AT&T, a joint venture or consortium “offers the benefits associated with joint bidding arrangements without jeopardizing the integrity or transparency of an auction,” by “appropriately channel[ing] joint bidding activity through a single entity.”¹⁴

Sprint supports this proposed joint venture/consortium requirement and agrees that this rule would enhance the transparency and efficiency of Commission auctions and help prevent anti-competitive conduct. At the same time, Sprint believes that a joint venture requirement must be effectively tailored to avoid unintended harmful consequences. Specifically, only where applicants are bidding with the intention of pooling their post-auction licenses (which normally necessitates a disclosable joint bidding arrangement) should the applicants be required to create a single bidding entity. Thus, instead of permitting separate bidding, immunized by disclosure of joint bidding agreements for the benefit of what is essentially a single entity, the Commission should require applicants whose bidding reflects coordinated interests to bid through a single auction application.

Upfront guidance from Commission. Sprint agrees with CCA that the Commission should “allow parties contemplating [joint bidding] arrangements to seek confidential, informal staff guidance in advance of the short-form deadline regarding whether an arrangement is acceptable.”¹⁵ As Sprint described in its comments, the Commission whenever possible should

¹³ Comments of AT&T Services Inc., WT Docket No. 14-170, at 6 (Feb. 20, 2015) (“AT&T Comments”). AT&T states that DISH and its Designated Entity affiliates engaged in coordinated bidding activity detrimental to other auction participants.

¹⁴ *Id.* at 8.

¹⁵ CCA Comments at 15.

provide guidance regarding joint bidding arrangements prior to the short-form application deadline, including those bidding arrangements between competitive nationwide carriers that would be generally allowed under Sprint’s proposal.¹⁶ As applicants determine bidding strategies and take other pre-auction actions, they will benefit greatly from early feedback and clarity regarding any applicable auction restrictions. The Commission should give such guidance sufficiently ahead of the short-form deadline so that prospective bidders have a reasonable opportunity to come into compliance.

III. COMMENTERS FAVOR ELIMINATION OR NARROWING OF THE FORMER DEFAULTER RULE

Numerous commenters support eliminating or narrowing the former defaulter rule, while no party opposes those actions.¹⁷ For the reasons that Sprint described in its comments, the Commission should eliminate that rule.¹⁸ There is no evidence in the record that requiring a larger upfront payment from a former defaulter provides any substantive benefits. Without compelling evidence that the former defaulter rule provides substantive benefits, the Commission should delete this rule to avoid discouraging bidding activity and stifling competition. At a minimum, the Commission should adopt its proposal to “narrow the scope of the defaults and

¹⁶ See Sprint Comments at 14.

¹⁷ See, e.g., CCA Comments at 11-12 (urging the Commission to exclude from the former defaulter rule the four types of debts identified in the *NPRM*); Comments of CTIA – The Wireless Association, WT Docket No. 14-170, at 4-5 (Feb. 20, 2015) (urging the Commission to adopt its proposal to narrow the existing rule, thereby encouraging greater participation by potential bidders while safeguarding the integrity of the auction process); Comments of NTCH, Inc., WT Docket No. 14-170, at 7 (Feb. 6, 2015) (urging the Commission to delete the former defaulter rule given the absence of any data that it is effective).

¹⁸ Sprint Comments at 15-18.

delinquencies that will be considered in determining whether or not an auction participant is a former defaulter.”¹⁹

III. CONCLUSION

For the foregoing reasons, rather than barring all joint bidding arrangements between nationwide providers, the Commission should apply a balanced policy that helps competitive carriers access a critical foundation of low-band spectrum. This targeted approach will benefit the public interest by generating more robust competition against the nation’s two dominant wireless providers.

Respectfully submitted,

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¹⁹ NPRM ¶ 86.