



**Law Offices of Bennet & Bennet, PLLC**

**Maryland**

6124 MacArthur Boulevard  
Bethesda, Maryland 20816  
Tel: (202) 371-1500  
Fax: (202) 371-1558  
[www.bennetlaw.com](http://www.bennetlaw.com)

**District of Columbia**

5185 MacArthur Boulevard, NW, Suite 729  
Washington, DC 20016

**Caressa D. Bennet**

**Michael R. Bennet**

**Marjorie G. Spivak\***

**Howard S. Shapiro**

**Daryl A. Zakov^**

\* Admitted in DC & PA Only  
^Admitted in DC & FL Only

**Robert A. Silverman**

**Anthony K. Veach#**

**Erin P. Fitzgerald**

**Of Counsel**

**Tara B. Shostek**

^Admitted in DC & WA Only

April 23, 2015

**Via ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**RE: Notice of Ex Parte Presentation**

*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;*  
*Implementation of the Commercial Spectrum Enhancement Act and*  
*Modernization of the Commission's Competitive Bidding Rules*  
*and Procedures, WT Docket No. 05-211;*  
*Universal Service Reform – Mobility Fund, WT Docket No. 10-208*

Dear Ms. Dortch:

On April 21, 2015, Erin Fitzgerald and Tony Veach of Bennet & Bennet, PLLC, along with James Lednicky of Rainbow Telecommunications Association, Inc. (“Rainbow”), Steve Lysne of SRT Communications, Shawn Hanson of Panhandle Telephone Cooperative, Inc. (“PTCI”), Tabitha Gregory and Jason Hoke of Copper Valley Telephone Cooperative, Remi Sun of Nemont Telephone Cooperative, Inc., and John Nettles of Pine Belt Telephone Company, Inc. (“Pine Belt”) (together, “Rural Telcos”) met with representatives of the FCC’s Wireless Telecommunications Bureau (“WTB”) and Incentive Auction Task Force (“IATF”),<sup>1</sup> and had a subsequent meeting with Commissioner Pai, Brendan Carr, and Nicholas Degani.

---

<sup>1</sup> Wireless Telecommunications Bureau and Incentive Auction Task Force Commission Staff in attendance included: Roger Sherman (WTB), Sue McNeil (WTB), Karen Sprung (WTB), Audra Hale-Maddox (WTB), Margaret W. Wiener (WTB), Michael Janson (WTB), Johanna Thomas (WTB), Jean Kiddoo (WTB), Mary Margaret Jackson (IATF), Christiaan Segura (WTB), Jay Schwarz (WTB), Leslie Barnes (WTB), Valerie Barrish (WTB), Audrey Bashkin (WTB), Rita Cookmeyer (WTB), Gary Michaels (WTB), Kelly Quinn (WTB – via telephone), and Jim Schlichting (WTB).

The Rural Telcos, directly and through their subsidiaries, own and operate facilities-based wireless networks that serve some of the most rural and remote areas of the U.S., and all are interested in obtaining low-band spectrum in the forthcoming 600 MHz Broadcast Incentive Auction (“Incentive Auction”). During both meetings, the Rural Telcos discussed their concerns regarding the poor results for rural bidders and consumers in the auction for AWS-3 licenses (“Auction 97”), the need to revise the FCC’s designated entity (“DE”) rules, their support for a Rural Telephone Company Bidding Credit (“Rural Telco Bidding Credit”) in the Incentive Auction, and the need for a robust Mobility Fund Phase II.

### **DE Rules and Rural Telco Bidding Credit**

Despite being a financial success, and significant participation by rural carriers, Auction 97 yielded dismal results for rural bidders and their subscribers. Of the 70 qualified bidders in the auction, over half (38 or 54.3%) were rural telcos or rural telco affiliates (including both Rainbow and Sagebrush Cellular, Inc., a subsidiary of Nemont Telephone Cooperative, Inc.), yet only 28.9% of these rural entities were successful in winning any licenses. Many rural bidders were completely shut out, and those that were successful won only 25 of 1,611 licenses (1.55%). In addition to competing against nationwide carriers with unlimited resources, rural bidders also competed against what have been called “Special Purpose Designated Entities” – shell companies created by giant corporations solely to game the system and secure small business bidding credits at auction. Less than half of the successful rural telco bidders in Auction 97 were able to qualify under the Commission’s designated entity rules as small businesses, and at the close of the auction rural bidders accounted for less than \$1 *million* (\$871,350 or 0.024%) of the total \$3.57 *billion* in bidding credits awarded.

To prevent similar results in the upcoming Incentive Auction and ensure that the Commission meets its statutory obligation to ensure that rural telephone companies have the opportunity to meaningfully participate in the provision of spectrum-based services,<sup>2</sup> the Rural Telcos support the adoption of a Rural Telco Bidding Credit. Specifically, the Rural Telcos support the recent joint proposal made by the Rural Wireless Association, Inc., NTCA – The Rural Broadband Association, and the Blooston Rural Carriers that the Commission offer a 25% bidding credit – equal to the average credit available to small businesses – to all rural telephone company bidders and their subsidiaries/affiliates in future spectrum auctions.<sup>3</sup> This credit would allow a qualified rural telephone company to take a 25% reduction in the gross winning bid for any geographic licenses that overlap the rural carrier’s wireline or wireless service area. The Rural Telco Bidding Credit would be independent of, and cumulative with, any small business bidding credits for which a rural telephone company bidder may be eligible.

---

<sup>2</sup> See 47 U.S.C. 309(j).

<sup>3</sup> See *Ex Parte Letter* from Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association ; Erin Fitzgerald, Assistant Regulatory Counsel, Rural Wireless Association, Inc.; John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP; and Cary Mitchell, Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 14-170 & 05-211, GN Docket No. 12-268, RM-11395 (March 18, 2015).

The Rural Telcos explained that a Rural Telco Bidding Credit is *especially important* for rural wireless carriers that participate in the Incentive Auction because the Partial Economic Areas in use for that auction are larger than the Cellular Market Areas that have traditionally been used for spectrum licenses. Without a Rural Telco Bidding Credit, the large geographic license areas with greater “pops” are likely to be out of reach for many rural carriers. Further, a Rural Telco Bid Credit will ensure that all rural telcos are eligible for DE benefits, as Congress intended. The term “small business” is simply not a surrogate for “rural telephone company.” In Auction 97, 6 of the 11 winning rural bidders did not receive small business bidding credits. Unlike “Special Purpose Designated Entities,” rural telcos are long-standing businesses, with facilities-based networks and historic revenues. It is not feasible for them to restructure their operations and ownership just to qualify for small business bidding credits. Given that the telecommunications industry is very capital intensive and that the nature of the wireless industry has changed significantly since the small business bidding credit was created, the Rural Telcos support increasing the small business bidding credit revenue thresholds. However, the Rural Telcos cautioned Commissioner Pai and staff and the WTB and IATF that simply increasing the revenue thresholds is not a silver bullet. While some rural telephone companies may become eligible for the small business bidding credit, many will remain ineligible under the modest increases proposed in the Part 1 NPRM.<sup>4</sup>

Because “rural telephone company” is a statutory term, and a term defined in the Commission’s rules, the Rural Telco Bidding Credit could be targeted to *bona fide* DEs. The Commission and the wireless industry learned some very important lessons from Auction 97. For example, Rainbow was the provisionally winning bidder for one license that would have allowed it to provide fixed wireless broadband services to underserved areas in parts of Northeast Kansas, but it was outbid by a DISH-controlled entity claiming a small business bidding credit. As a result, it did not win a single license in the auction. Rainbow has gross annual revenues under \$14 million, which are 1,025 times less than DISH’s.<sup>5</sup> The FCC’s DE rules must be revised to prevent this type of abuse, but any revisions should not harm legitimate DEs. The Rural Telcos oppose the imposition of additional buildout/reporting requirements on DEs. The rules should prevent DE program abuse before the licenses are granted, not impose additional regulatory burdens on *bona fide* DEs.

## **Mobility Fund Phase II**

To finish both meetings, the Rural Telcos expressed their strong support for a second phase of the Mobility Fund, and noted their concern over a recent statement questioning whether the Commission intends to implement a Mobility Fund Phase II.<sup>6</sup> In rural and remote areas like those served by the Rural Telcos – Alaska, Montana, North Dakota, Alabama, Kansas, and Oklahoma – there remains a need for ongoing support to sustain existing mobile wireless services. Furthermore, ongoing support is needed help to expand essential wireless coverage in

---

<sup>4</sup> See *Updating Part 1 Competitive Bidding Rules et al.*, WT Docket No. 14-170 et al., Notice of Proposed Rulemaking, FCC 14-146, ¶56 (Oct. 10, 2014) (“Part 1 NPRM”).

<sup>5</sup> See *Statement Of Commissioner Ajit Pai On How Abuse Of The FCC’s Small Business Program Hurts Small Businesses*, News Release (Mar. 16, 2015).

<sup>6</sup> See *USF High-Cost Program: Best and Realistic Timelines*, Michael O’Rielly, FCC Commissioner, Official FCC Blog (Mar. 24, 2015).

rural and remote areas, upgrade existing rural wireless networks to 4G speeds, and keep rural service providers on the path to 5G and next generations of mobile broadband services.

To highlight the importance of providing ongoing support to sustain existing rural wireless networks, PTCI explained how businesses in its rural service area rely heavily on PTCI's wireless network. PTCI provides service in the Oklahoma Panhandle – a major region for oil and natural gas production, agriculture, and livestock production.<sup>7</sup> In one example, PTCI explained how hog production companies rely on PTCI's wireless service for communications between transport vehicles, employees, and storage sites, all of which are located outside of dense population centers. The hog production industry also utilizes wireless M2M technology to remotely monitor the temperature, food, and water levels of its livestock housing facilities. Within PTCI's service area, the only other network is Verizon's CDMA LTE network. Because of the universal service support that PTCI receives, PTCI has been able to deploy nearly three times as many cell sites, which enables it to provide much more robust service to those that live, work, and travel through the area.<sup>8</sup> Without ongoing universal service support, mobile wireless providers that serve high-cost, low population density areas may have to reduce coverage levels or shut down parts of their networks altogether leaving rural customers to languish with feeble coverage, if any at all.

The Rural Telcos cautioned against eliminating universal service support in areas where just one of AT&T or Verizon provides 4G LTE service because such networks continue to be subject to CDMA / GSM incompatibilities. The rollout of VoLTE continues to be slow-going and will not be truly universal until all handsets are fully VoLTE compatible across all networks, so there is a need to ensure the continued availability of both CDMA and GSM networks well into the foreseeable future so Americans have universal access to voice service.<sup>9</sup> Universal access to voice service remains essential, particularly for emergency 911 calls.

Lastly, with respect to using universal service support to increase wireless coverage in rural areas, Pine Belt noted how it is utilizing Mobility Fund Phase I support to bring mobile wireless service to parts of Alabama that previously had been unserved. The Rural Telcos expressed the belief that continued universal service support for mobile wireless services through ongoing Mobility Fund support will produce more success stories like the one described by Pine Belt.

---

<sup>7</sup>See Letter from Robert A. Silverman to Ms. Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 (Dec. 5, 2014) (“PTCI December 2014 Ex Parte”).

<sup>8</sup>The PTCI December 2014 Ex Parte contains a number of maps showing that PTCI's universal service supported wireless network has a much more extensive coverage area in comparison to the coverage provided by Verizon's network. In rural areas where there is no business case for unsubsidized carriers to deploy cell sites, it is not always readily apparent to consumers which carrier's network they are actually using. Through various roaming and other spectrum sharing arrangements, coverage in rural and high-cost areas that appears to be AT&T or Verizon's is often provided by wireless networks that were built and are maintained with the help of high-cost universal service support. Thus, the FCC should be wary of the self-reported coverage data provided by nationwide carriers when considering the overall picture of wireless broadband availability, particularly in rural areas.

<sup>9</sup>See PTCI December 2014 Ex Parte at 2-3.

Pursuant to Section 1.1206 of the FCC's rules, this ex parte presentation is being filed electronically with the Commission using the electronic comment filing system.

Respectfully submitted,

*/s/ Anthony K. Veach*

By:

\_\_\_\_\_  
Anthony K. Veach  
Erin P. Fitzgerald  
Bennet & Bennet, PLLC  
6124 MacArthur Boulevard  
Bethesda, MD 20816  
(202) 371-1500

*Counsel for the Rural Telcos*

cc (via email): Commissioner A. Pai  
Brendan Carr  
Nicholas Degani  
Roger Sherman  
Johanna Thompson