

**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 SPRINT CORPORATION

Sprint Corporation (“Sprint”) submits these comments in response to the Federal Communications Commission’s (“Commission’s” or “FCC’s”) Public Notice seeking additional input on proposed changes to the existing Part 1 competitive bidding rules.¹ The Commission should refine its competitive bidding rules to promote competition and ensure fairness in future auctions. Adherence to these two goals, especially when considering reforms related to joint bidding arrangements, will result in rules that advance the public interest.

Specifically, the Commission should promote competition by rejecting the proposal to prohibit all joint bidding arrangements between nationwide providers. Such a rule is

¹ *Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Part 1 Competitive Bidding Rules*, Public Notice, FCC 15-49, WT Docket No. 14-170 (rel. Apr. 17, 2015) (“*Public Notice*”).

unwarranted and inconsistent with the Commission’s well-developed record on the state of competition in the mobile wireless industry. It would, if anything, only further protect the market dominance of the two largest carriers. Instead, the Commission should permit competitive carriers to pool their resources in joint bidding arrangements as a means of obtaining a critical foundation of low-band spectrum where they are low-band spectrum deficient. The Commission already has supplied the appropriate standard – one-third of the spectrum below 1 GHz – to evaluate whether such arrangements would be in the public interest. Allowing such joint bidding arrangements would promote more robust competition against the nation’s two dominant wireless providers.

In addition, to promote fairness in future auctions, the Commission should prohibit entities that are exclusively controlled by a “single individual or set of individuals” from qualifying to bid on licenses in the same geographic area with more than one short-form application. This prohibition would eliminate the risk of commonly-controlled entities coordinating bids and gaining an unfair advantage over other bidders.

I. THERE IS NO SUPPORT IN THE RECORD FOR THE PROPOSED BLANKET PROHIBITION AGAINST JOINT BIDDING ARRANGEMENTS BETWEEN NATIONWIDE PROVIDERS

No commenter has expressed support for the Commission’s proposal to bar all joint bidding arrangements between nationwide providers.² Rather, those addressing the proposal expressly opposed any such bright-line rule and pointed out that prohibiting all joint bidding arrangements between nationwide providers would impede, rather than enhance, wireless

² See Reply Comments of T-Mobile USA, Inc., WT Docket No. 14-170, at 11 (Mar. 6, 2015) (“T-Mobile Reply Comments”) (“[N]ot a single commenter expresses support for the Commission’s tentative conclusion to prohibit joint bidding arrangements only among the nationwide providers.”).

competition.³

Allowing competitive providers to bid jointly could help them achieve the economies of scale they need to acquire critical low-band spectrum, which they could use to compete more effectively against the two dominant providers. As T-Mobile astutely observed, automatically prohibiting competitive providers from pursuing joint bidding opportunities would “unnecessarily eliminate[] a potentially key tool for advancing wireless offerings to consumers and overall marketplace competition,”⁴ whereas continuing to permit such arrangements would offer companies that lack “the deep pockets of the largest two nationwide service providers” a “potential means of bolstering purchasing power and scale to compete effectively in the wireless marketplace[.]”⁵

The Commission’s proposal also is overly broad. Notably, it would prohibit arrangements that could benefit the public interest, such as spectrum and network sharing arrangements, roaming agreements, and joint initiatives to serve underserved areas – all of which could be facilitated by joint bidding arrangements between nationwide carriers. The proposal also ignores the varied conditions that may exist in different markets. For example, the proposal

³ E.g., Comments of Sprint Corporation, WT Docket No. 14-170, at 8-11 (Feb. 20, 2015) (“Sprint Comments”); Reply Comments of Sprint Corporation, WT Docket No. 14-170, at 2-5 (Mar. 6, 2015) (“Sprint Reply Comments”) (“[T]he Commission’s proposed joint bidding prohibition would only further entrench the Twin Bells’ dominant holdings of low-band, high-utility spectrum.”); T-Mobile Reply Comments at 11-14 (“[T]he record reflects a widely shared view that joint bidding arrangements can have pro-competitive benefits, and, for that reason, a blanket prohibition on such arrangements—no matter how narrow—is inappropriate.”); *see also* Reply Comments of the Competitive Carriers Association, WT Docket No. 14-170, at 11 (Mar. 6, 2015) (“CCA Reply Comments”) (arguing that joint bidding arrangements can “be structured to be pro-competitive”).

⁴ Comments of T-Mobile USA, Inc., WT Docket No. 14-170, at 23 (Feb. 20, 2015) (“T-Mobile Comments”).

⁵ *Id.* at 5.

would prohibit joint bidding even where the carriers involved have little or no low-band spectrum (and, by implication, where a few large entities hold significant amounts). This policy would run directly counter to the Commission’s recent conclusions that, where competitors lack low-band spectrum, they have “an attenuated ability to increase output or service quality in response to price increases” and “may lack the ability quickly to expand coverage or provide new or innovative services, which would have a significant impact on competition in the mobile wireless marketplace.”⁶

As the discussion above – and elsewhere in the record – makes clear, a blanket prohibition against joint bidding arrangements between nationwide providers would not be in the public interest. Instead, Sprint continues to support a more nuanced approach that recognizes the differences between the nationwide wireless providers and the disparity in their respective competitive resources and market positions.⁷ Under Sprint’s proposal, the Commission would continue to require providers to disclose all joint bidding arrangements before each auction. Then, the Commission would evaluate each joint bidding arrangement on its individual merits,⁸ focusing on the joint bidders’ aggregate low-band spectrum holdings in the markets where they

⁶ *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, ¶ 61 (2014) (“*Mobile Spectrum Holdings Order*”). In addition, if adopted, the proposal would increase the likelihood that the upcoming 600 MHz incentive auction will only widen the gap in low-band spectrum holdings between the two largest carriers and everyone else, as the Commission has declined to apply the spectrum screen to the 600 MHz auction, limited the size of the spectrum reserve, and made implementation of the reserve susceptible to foreclosure strategies.

⁷ See Sprint Comments at 11-13; Sprint Reply Comments at 4-5.

⁸ See *id.*; see also, e.g., CCA Reply Comments at 11 (“Joint bidding arrangements . . . should be reviewed on a case-by-case basis.”); T-Mobile Reply Comments at 12 (“[T]he Commission should continue its existing policy of permitting joint bidding arrangements on a case-by-case basis.”).

propose to bid jointly. Ultimately, the Commission would allow joint bidding arrangements in areas in which the parties collectively hold less than 45 MHz of below-1-GHz spectrum on a population-weighted basis, regardless of whether those joint bidders are nationwide providers.

As Sprint previously explained, this approach would give prospective joint bidders clear guidance before each auction regarding which arrangements would be deemed harmful to competition and thus prohibited.⁹ Furthermore, the 45 MHz threshold is consistent with, *inter alia*: (1) the Commission’s long-standing approach to evaluating spectrum concentration in the wireless marketplace;¹⁰ (2) the Commission’s “enhanced review” of transactions in which a carrier would have more than 45 MHz of below-1-GHz spectrum in an affected market;¹¹ and (3) the 45 MHz cut-off for applicant eligibility to bid on the 600 MHz “reserve spectrum” blocks in the incentive auction.¹²

Not only is Sprint’s proposal consistent with Commission precedent, it also is designed to promote effective competition in a way that a blanket prohibition would not. For example, Sprint’s joint bidding proposal would give competitive providers the flexibility they need to craft

⁹ Sprint Reply Comments at 4.

¹⁰ 45 MHz represents one-third of available below-1-GHz spectrum. 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., Mobile Spectrum Holdings Order* ¶¶ 70, 246; *Implementation Of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services; Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission’s Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool*, Third Report and Order, 9 FCC Rcd 7988, ¶¶ 258, 263 (1994).

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

¹² *See id.* ¶¶ 154, 174-78.

creative business arrangements that will enable them to compete for low-band spectrum.¹³

Accordingly, the Commission can advance the public interest by declining to prohibit all joint bidding arrangements between nationwide providers and, instead, adopting Sprint’s plan to permit joint bidding by nationwide carriers in markets where such arrangements would not produce excessive low-band spectrum concentration.

II. THE COMMISSION SHOULD PROHIBIT JOINT BIDDING ARRANGEMENTS BETWEEN CERTAIN COMMONLY-CONTROLLED ENTITIES

Consistent with the goals of promoting competition and ensuring fairness in future auctions, Sprint supports the proposal that the Commission “establish a new rule to prohibit entities that are exclusively controlled by a single individual or set of individuals from qualifying to bid on licenses in the same or overlapping geographic areas in a specific auction based on more than one short-form application.”¹⁴ Allowing such entities to qualify on the basis of more than one short-form application provides them with “unfair advantages” and enables them to “manipulate bidding to the detriment of other participants and the public.”¹⁵ Among other concerns, commonly-controlled firms could “agree to divide up territories [on which they bid] in order to minimize competition.”¹⁶ The firms also could seek to exploit the auction process by bidding on identical licenses, thereby misleading other bidders about the amount of interest in a

¹³ See T-Mobile Reply Comments at 14.

¹⁴ *Public Notice* ¶ 27. Sprint also supports the proposal to “codify the Commission’s longstanding competitive bidding procedure that prohibits the same individual or entity from filing more than one short-form application.” *Id.*

¹⁵ *Id.* (quoting T-Mobile Comments at 3). See also, e.g., Comments of the Competitive Carriers Association, WT Docket No. 14-170, at 12-13 (Feb. 20, 2015); CCA Reply Comments at 11-12.

¹⁶ *Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014; Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures For Auction 97*, Public Notice, 29 FCC Rcd 8386, ¶ 35 (2014) (“*AWS-3 Auction Public Notice*”).

particular license.¹⁷ Similarly, commonly-controlled entities that are permitted to bid separately on the same licenses could coordinate their efforts and manipulate the Commission’s eligibility and activity rules.¹⁸ These tactics all unfairly disadvantage independent auction bidders and distort true competition.¹⁹ Accordingly, Sprint joins other parties in urging the FCC to promote fairness by amending its rules to ban these practices.²⁰

¹⁷ See Sprint Comments at 17 (citing *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, ¶ 105 (2014) (“*Competitive Bidding NPRM*”).

¹⁸ For example, commonly-controlled applicants “would have more activity waivers to use to ensure that the auction remains open,” *Competitive Bidding NPRM* ¶ 104, or could submit multiple bids on the same license in order to satisfy an activity rule, knowing that not all of the bids could be accepted. This kind of bidding also unfairly increases the likelihood of one of the commonly-controlled applicants winning the license in the event of a tie with a rival bidder.

¹⁹ Any prohibitions the Commission puts in place barring coordinated behavior by bidders would supplement those that already exist under the antitrust laws. As the FCC has explained, an applicant that is found to have violated the antitrust laws may be subject to a broad range of sanctions – including forfeitures of its bid amount and exclusion from future auctions – even if the applicant did not expressly violate a specific Commission rule. See, e.g., *AWS-3 Auction Public Notice* ¶ 35.

²⁰ T-Mobile also suggests that these unfair practices could be used by “entities that are not under common control but that nonetheless share cognizable interests.” T-Mobile Comments at 8; see also *Public Notice* ¶ 27. Sprint agrees that such arrangements warrant careful analysis as part of the review process for all joint bidding proposals, but the Commission should build and analyze a more complete record on this issue before adopting the blanket prohibitions proposed by T-Mobile and other parties. See T-Mobile Comments at 9-10. Until such a record is developed, the Commission should continue to review joint bidding arrangements disclosed in short-form applications on a case-by-case basis and take action against any potentially abusive arrangements.

III. CONCLUSION

For the foregoing reasons, the Commission should focus its reforms in this proceeding on promoting competition in the wireless industry. In particular, the Commission should reject the proposal to prohibit all joint bidding arrangements between nationwide providers and instead bar such arrangements only in markets in which the joint bidders collectively hold more than 45 MHz of below-1-GHz spectrum. The Commission also should promote fair bidding practices by prohibiting joint bidding arrangements between commonly-controlled entities.

Respectfully submitted,

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