

**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 KING STREET WIRELESS, L.P.

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SUMMARY

The primary problem with the DE program is that it does not do enough, and not that it does too much, in its efforts to comply with the Congressional mandate to permit protected classes to participate meaningfully in auctions, and for the Commission to disseminate licenses to a wide variety of applicants, including small businesses. The initial NPRM in this proceeding recognized this, and King Street urges the Commission to continue in its efforts to provide more genuine opportunity to DEs. King Street urges the Commission not to stray from this Congressionally mandated goal, and reiterates its prior urging to increase (as the Commission itself proposed) the revenue caps for DE eligibility and the level of bid credits available (from 25% to 35-40%).

The Commission's recent public notice shifts the emphasis towards preventing unjust enrichment – another worthy goal, and one with which King Street agrees. That said, King Street urges the Commission to appreciate that, to the extent much of this concern arose from Auction No. 97, the root problem in that auction was not the DE program, but rather the collusion that was made possible pursuant to a joint bidding agreement. As such, King Street urges the Commission to ban such agreements, and to refrain from adopting the extreme proposed DE program remedies presented by some nationwide carriers. Adoption of them would solve no problem, and would vastly complicate the Commission's already marginal compliance with Congressional DE mandates. Specifically, the nationwide carriers' proposals to: cap DE benefits, extend DE holding periods, vastly increase attributable revenues, and require substantial increases in small business investment should all be rejected.

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Procedures)	

COMMENTS OF KING STREET WIRELESS, L.P.

King Street Wireless, L.P. (“King Street”), by counsel, hereby provides its comments in response to the Public Notice that the Commission issued on April 17, 2015 in this proceeding.¹

I. INTRODUCTION

When Congress initially authorized the Commission to utilize competitive bidding to award licenses it also provided a difficult-to-implement mandate: to provide protected classes with an opportunity to participate meaningfully in auctions, and to disseminate licenses to a wide variety of applicants, including small businesses. 47 U.S.C. § 309(j). Each of these directives is, to an extent, at odds with the fundamental concept of awarding licenses to the highest bidder, which bidder would often otherwise have far greater resources than members of the classes

¹ *Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Part I Competitive Bidding Rules*, FCC 15-19 (Apr. 17, 2015) (“PN”).

sought to be protected by § 309(j) of the Communications Act of 1934, as amended (“Act”).² Over the last two decades, the Commission has strived admirably to comply with its somewhat conflicting statutory mandates. Its success has been only marginal, however, due primarily to the innate difficulty associated with the tasks.

II. KING STREET’S INTEREST AND UNIQUELY QUALIFIED PERSPECTIVE

As the Commission’s records reflect, King Street, and its present and prior affiliates, have a long and rich history of participating successfully as a designated entity (“DE”) in multiple wireless auctions. Collectively, they acquired nearly 200 licenses;³ paid the U.S. government (on time and in full) nearly \$500,000,000.00; built and operate more than 150 systems; and continue to hold more than 150 licenses. No other DE can match this history of successful auction participation.

Yet, King Street’s contributions do not end there. King Street played a key role in initiating the Commission’s efforts to provide for interoperability relief for 700 MHz Block A licensees, and was a primary contributor throughout the proceeding that culminated with the Commission mandating interoperability relief.⁴

Notably, King Street is one of very few Commission licensees that is controlled by a female.

These experiences combine to make King Street uniquely qualified to comment on the reform and expansion of the Commission’s DE program.

² 47 U.S.C. § 309(j).

³ Carroll Wireless, LP acquired 16 licenses in Auction No. 58; Barat Wireless, L.P. obtained 17 licenses in Auction No. 66; Aquinas Wireless, L.P. won five licenses in Auction No. 78; and King Street acquired 152 licenses in Auction No. 73.

⁴ See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, 28 FCC Rcd 15122 (2013).

III. THE CURRENT DE PROCEEDING

Prior to the conduct of Auction No. 97 (the “Auction”), the focus on improving the designated entity (“DE”) program was on how best to increase DE’s successful winning of licenses.⁵ Then came the Auction itself, and the mountain of controversy involving Dish Network and its two associated DE entities, North Star Wireless and SNR Wireless. After the close of the Auction, much of the focus in this proceeding swung around to attempting to assure that bid credits are not wrongfully provided to unqualified DE’s. That change in focus is evident from a reading of the *PN*.

King Street commends the Commission for focusing on preventing abuse. Nevertheless, King Street urges the Commission to keep in mind three over-arching considerations as it does so. First, the Commission is statutorily obliged to: (a) promote “economic opportunity for a wide variety of applicants, including small businesses,” 47 U.S.C. § 309(j)(4)(C); (b) ensure that small businesses are “given the opportunity to participate in the provision of spectrum-based services,” *id.* § 309(j)(4)(D); and (c) disseminate “licenses among a wide variety of applicants, including small businesses.” *Id.* § 309(j)(3)(B). These are mandates in the truest sense of the word. They constitute the *sine qua non* for the Commission being able to conduct auctions, and require accomplishment, not just effort. Second, many of the purported ways to improve the program that have been put forward by nationwide carriers are, in effect, efforts to undermine the program rather than to correct anything. Third, the issue in the Auction that caused so much controversy was not the DE structure, but rather the collusive bidding resulting from three closely-related parties bidding in the same auction.

⁵ See *Updating Part 1 Competitive Bidding Rules*, 29 FCC Rcd 12426 (2014) (“*Updating NPRM*”).

IV. THE COMMISSION'S STATUTORY OBLIGATIONS

As King Street explained in its Reply Comments in this proceeding, there are two over-arching mandates that are particularly applicable here. The first, set forth in § 309(j)(4)(C) of the Act, provides that the Commission shall:

consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services.⁶

The second over-arching mandate is set forth in § 309(j)(4)(D) of the Act, and provides that the Commission shall:

ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service.⁷

As noted above, these are mandates in the truest sense of the word, as Congress carefully prescribed these as things that the Commission “shall” (not “should”, or “may” or “should try to”) do. So, the question before the Commission is how to provide the congressionally mandated opportunity to small businesses, not whether to do so.

V. THE EVOLUTION OF THE COMMISSION'S WELL-DESIGNED STRATEGY TO COMPLY WITH ITS STATUTORY MANDATES

Since receiving statutory authority to license via competitive bidding, the Commission has tried to carry out the Congressional directives to promote economic opportunity and competition by disseminating licenses to small businesses, rural telephone companies and

⁶ 47 U.S.C. § 309(j)(4)(C).

⁷ *Id.* § 309(j)(4)(D).

businesses owned by minority groups and women (“designated entities” or “DEs”), *see* 47 U.S.C. § 309(j)(3)(B), and to adopt auction rules to ensure that designated entities have the opportunity to participate in the provision of spectrum-based services. *See id.* § 309(j)(4)(D). Shortly before, then after, the scheduled start of the Commission’s Auction program, the Supreme Court rendered decisions that race- and gender-based programs are subject to heightened judicial scrutiny.⁸ In response, the Commission searched for an appropriate way in which to assure that its DE program was not effectively limited by those decisions to rural telephone companies and small businesses.⁹ The Commission’s primary method of promoting the participation of DEs in spectrum auctions has been to award bidding credits to qualified DEs, with the focus being upon those who control applicants and licensees.¹⁰

The Commission’s administration of its auctions program has also been subject to the statutory mandate that it adopt rules to “prevent unjust enrichment.” 47 U.S.C. § 309(j)(4)(E). That mandate has presented the Commission with the challenging task of balancing the competing goals of (1) affording DEs “reasonable flexibility” in obtaining the capital necessary to participate in the provision of spectrum-based services and (2) preventing the “unjust enrichment of ineligible entities.” *Updating NPRM*, 29 FCC Rcd at 12428-29. Over the 21-year

⁸ *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 235 (1995) (“Federal racial classifications ... must serve a compelling governmental interest, and must be narrowly tailored to further that interest”); *United States v. Virginia*, 518 U.S. 515, 533 (1996) (State gender classifications must “serve important governmental objectives” and the discriminatory means employed must be “substantially related to the achievement of those objectives”).

⁹ In light of the *Adarand* and *Virginia* decisions, the Commission declined to adopt special rules for minority- and women-owned businesses. *See Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, 15 FCC Rcd 15293, 15318-19 (2000) (“*Fifth Part 1 Order*”). However, the Commission explained that because minority- and women-owned businesses often qualify as small businesses, the auction rules it adopted to benefit small businesses would also benefit women and minorities. *See id.* at 15319.

¹⁰ *See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Rules and Procedures*, 21 FCC Rcd 4753, 4756 (“*Second DE Order*”), *clarified*, 21 FCC Rcd 6703 (2006), *reconsideration denied*, 23 FCC Rcd 5425 (2008), *remanded*, *Council Tree Communications, Inc. v. FCC*, 619 F.3d 235 (3d Cir. 2010).

span of the DE program, the Commission has artfully modified its eligibility rules to achieve the right balance between the two competing goals. *See Updating NPRM*, 29 FCC Rcd at 12429.

In order to qualify for DE benefits, applicants have had to demonstrate that their gross revenues (and, in some cases, their total assets), in combination with those of their “attributable” interest holders, fall below certain service-specific caps. Hence, in determining eligibility for size-based benefits, it is critical to decide which investors’ gross revenues must be attributed.

During the early years of the DE program, the Commission adopted often complicated attribution rules on a service-specific basis. *See Second DE Order*, 21 FCC Rcd at 4757. For broadband PCS attribution, the Commission had a general rule— the financial caps set forth in § 24.709(a) of the Rules— and four exceptions to the rule. *See* 47 C.F.R. § 24.709(b)(i)-(iv). Two of the exceptions were widely used and came to be known as the “control group exceptions”— a 25 percent equity exception and a 49 percent equity exception. *See id.* § 24.709(b)(1)(iii), (iv). Both exceptions basically required the applicant to form a “control group” within which “qualifying investors” owned at least 50.1 percent of the applicant’s voting interests. *See id.* § 24.709(b)(1)(v)(A)(2), (b)(1)(vi)(A)(2). If the requirements of the control group exceptions were met, the gross revenues and total assets of the non-controlling investors were not attributed to the applicant. *See id.* § 24.709(b)(1)(iii)-(iv).

A variation of the control group approach was employed for narrowband PCS. *See Second DE Order*, 21 FCC Rcd at 4758. More recently, for virtually all other services, the Commission has employed a “controlling interest” or “controlling principal” standard, under which the Commission attributed the gross revenues of the applicant’s controlling interests and their affiliates.¹¹

¹¹ *See Second DE Order*, 21 FCC Rcd at 4758. In determining whether a 900 MHz SMR applicant qualified as a small business, the Commission attributed the revenues of parties holding 20 percent or more of the equity of the

In 2000, the Commission adopted the “controlling interest” standard as the general attribution rule for determining eligibility as a small business in all services. *See Fifth Part 1 Order*, 15 FCC Rcd at 15296. When it adopted the controlling interest standard, the Commission did so because it understood that the standard would be “simpler” and “more flexible” than the control group approach. *Id.* at 15323. Also, it appreciated that the standard would allow legitimate small businesses to attract passive financing, while ensuring that only such businesses qualify as DEs. *See Second DE Order*, 21 FCC Rcd at 4759. The reason that the Commission focused on the need to attract financing was simple: the Commission recognized that it was the key ingredient needed to make the DE program work.¹²

Under this standard, the Commission attributes to an applicant the gross revenues of its affiliates, its controlling interests, and the affiliates of its controlling interests. *See Fifth Part 1 Order*, 15 FCC Rcd at 15323. A “controlling interest” includes individuals or entities, or groups of individuals, or entities, that have control of the applicant under the principles of either *de jure* or *de facto* control. *See id.* at 15324. *De jure* control is typically evidenced by the holding of 50.1 percent or more of the voting stock of a corporation or, in the case of a partnership, general partnership interests. *See id.* *De facto* control is determined on a case-by-case basis and includes the six criteria identified in *Ellis Thompson*, 9 FCC Rcd 7138, 7138-39 (1994). *See Fifth Part 1 Order*, 15 FCC Rcd at 15324 & n.195.

The Commission has already considered, and declined, to adopt a minimum equity requirement for controlling interests. *See id.* at 15325. It understood that such a requirement

applicant. *See Amendment of Part 1 of the Commission’s Rules– Competitive Bidding Procedures* , 12 FCC Rcd 5686, 5703 (1997).

¹² *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 9 FCC Rcd 5532, 5537 (1994) (“The record clearly demonstrates that the primary impediment to participation by designated entities is lack of access to capital. This impediment arises for small businesses from the higher costs they face in raising capital.... In this regard, it should be noted that although auctions have many beneficial aspects, they threaten to erect another barrier to participation by small businesses ... by raising the cost of entry into spectrum-based services”).

would require any person or entity identified as a controlling interest to retain some level of equity in the applicant, thereby reducing the amount of equity the applicant could offer to non-controlling interests in exchange for financing and making it more difficult for the applicant to raise capital. *See Fifth Part 1 Order*, 15 FCC Rcd at 15326.

VI. **THE PROBLEMS THAT AROSE IN THE AUCTION AND THAT HAVE LED TO OUTCRIES FOR REFORM OF THE DE RULES WERE THE RESULT OF COLLUSIVE BIDDING, NOT OF ANY DEFECT IN THE COMMISSION’S DE PROGRAM**

Much has been made of the problems associated with the Auction. That said, the most important step in assuring that the problem does not repeat itself in future auctions is to focus on what the problem actually is, then cure it. As set forth below, in considerable detail, the problem with the Auction was that certain related parties were apparently able to collude during the course of the Auction. The DE status of two entities in which DISH is an investor, while making possible good sound bites about subsidies going indirectly to large companies, had nothing to do with the manipulations that likely increased (not decreased) over all Auction prices considerably.

The primary targets of attack in the Auction were Dish and its two related DEs.¹³ To hear AT&T explain it right after the Auction: “to prevent the sort of gamesmanship that DISH and its DEs were able to employ to get around the Commission’s bidding eligibility and activity rules, joint-bidding agreements should be prohibited.”¹⁴

King Street agrees with that urging. Verizon was perhaps even more vocal, alleging:

- Suppression of rivalry. DISH and the DEs frequently bid on the same licenses in the same rounds while other bidders were active, which created the false perception that multiple other parties were interested in those licenses (though did so generally without bidding each other up). After competing bidders dropped out, DISH and the DEs avoided bidding against one another. This conduct is indicative of a bidding

¹³ King Street relies on what other bidders have reported to the Commission. It makes no independent assessment or comment on the bidding patterns in the Auction.

¹⁴ Comments of AT&T, WT Docket No. 14-170, at 3 (Feb. 20, 2015) (“AT&T Comments”).

ring, intended to drive out competitors and then suppress rivalry among the ring members.

- Distortion of information available to other bidders. As noted above, by placing double and triple bids, DISH and the DEs sent the false signal to other bidders of more robust demand, which may have deterred other bidders or caused them to drop out of the auction. Northstar and SNR also placed double bids on 80 licenses that had been inactive for at least 51 rounds, some for more than 200 rounds. These joint bids on inactive licenses raised the costs to the longstanding high bidder to remain in the auction and may have deterred bidders from continuing to participate.
- Allocation of markets. Northstar and SNR allocated certain markets between them, while still ensuring that their combined holdings covered all of the population nationwide. This result is virtually impossible to explain in the absence of coordination and collusion.
- Acceptance of random assignments. For 27 percent of the licenses they won at auction (190 licenses), Northstar and SNR “accepted” the FCC’s random assignment of one of them as the randomly picked provisionally winner after they each bid the same amount, rather than compete against one another for the licenses. This occurred only five other times in the AWS-3 auction for all other bidders. This behavior suggests that the DEs anticipated that they would coordinate and allocate licenses between them post-auction.
- DISH’s handoff of licenses to its DEs. The auction data show that DISH colluded with the DEs to exit the auction early, without risk and without penalty. It did this by ensuring that, when DISH exited the auction following round 20 when it was the high bidder on several hundred licenses, the DEs topped its previous high bids on virtually all those licenses. Dr. Marx explained that when DISH suddenly exited the auction in rounds 20-22, the DEs replaced DISH on 91% of the licenses in these rounds which DISH had provisionally won. Dr. Marx also noted that by handing off licenses to the DEs, DISH avoided the risk of having to pay for any of them – and the DEs became high bidders at a 25 percent lower price.

The evidence relating to the way DISH engineered its exit from Auction 97, apart from providing additional evidence of collusive bidding, also strongly suggests that the DEs were not acting independently during the auction as required by the Commission’s DE rules. To the contrary, the evidence indicates that DISH was directing the DEs’ activities, which it cannot do under those rules.¹⁵

Given the above explanation of the basis for the problem involved in the Auction, the Commission should be better positioned to prevent a repeat of it. But it is critical that the real

¹⁵ Letter from Kathleen Grillo to Marlene H. Dortch, WT Docket No. 14-170, at 1-2 (Apr. 24, 2015).

problem (collusion) be attacked, and that attention not be misdirected to the straw man that is the Commission's existing DE rules.

Several parties have urged a common sense prohibition on (a) substantial equity ownership in multiple auction applicants and (b) joint bidding agreements that can be read to permit applicants to collude, arguably without violating the Commission's anti-collusion rule, 47 CFR §1.2105(c).¹⁶ If the Commission genuinely wants to avoid a repeat of the problems that arose in the Auction, King Street urges that it attack the root cause (collusion) and not an only tangentially-related one (the DE program).

VII. THE PROPOSED CHANGES TO THE DE PROGRAM ADVANCED BY CERTAIN NATIONWIDE CARRIERS WOULD UNDERCUT THE UTILITY OF THE COMMISSION'S CURRENT PROGRAM WITHOUT PROVIDING ANY COUNTERBALANCING BENEFITS

A. Restructuring the DE Program

Two nationwide carriers were particularly critical of the Commission's DE program, even while they recognized tacitly that the overarching problem with the Auction was collusion. For example, T-Mobile in its earlier comments in this proceeding urged the Commission, to *inter alia* (a) require DEs to "evidence build-out activity" (without making clear what that means) within a year of being licensed or clearing incumbents; (b) adopt a rebuttable presumption that equity investment of more than 50% constitutes *de facto* control; (c) require a minimum 25% equity threshold for eligible DEs; and (d) establish a ten-year holding period for DEs.

Each of these suggestions is both unnecessary, and harmful to the DE program. There is no need to establish any "presumption" of *de facto* control whenever large carriers are willing to assist the Commission in complying with its statutory mandates and are willing to invest more

¹⁶ See Reply Comments of King Street Wireless, L.P., WT Docket No. 14-170, at 4-9 (Mar. 6, 2015); AT&T Comments at 3.

than 50% equity. More importantly, it would undercut the DE program by impeding the very funding that the Commission understands to be vital to the success of the program. Moreover were such a proposal adopted, it would create a logistical nightmare in that applicants would not bid aggressively unless they were sure to be entitled to bid credits, and the staff would be overburdened if required to make decisions on such applicants, even before knowing whether the applicant would prevail at the Auction.

Requiring DEs to hold at least 25% equity makes no more sense. It would cause the DE program to be dead on arrival. After all, very few entities have 25% or more equity held by a single entity, and virtually by definition small businesses are the least likely to be able to do this. The result would be less DE funding, and far fewer and much smaller DEs. That would contravene congressional mandates and do nothing to solve the core problem with the Auction – collusion.

As King Street has previously advised the Commission, it would make absolutely no sense to lengthen the DE holding period to ten years. Large companies would be most reluctant to lock up funds for such a long period of time. This is especially true in the wireless industry where ten years is virtually a lifetime.¹⁷

Lastly, and as King Street has previously advised the Commission, it would be absolutely counter-productive to require enhanced build-out showings from those who are least equipped to do so. If any licensee fails to meet its build-out obligations, the Commission should have the right to sanction it. There is no reason to apply a heightened standard to DEs.

¹⁷ King Street observes that it is more than ironic that certain parties who advocate this radical change also claim to want the Incentive Auction to commence without delay. Apparently, they overlook the fact that it was a change in holding period that led the Third Circuit to invalidate Commission rules in the past, based upon lack of notice. *See Council Tree*, 619 F 3rd at 255-56. Here there has been no particularized notice and opportunity to comment on many of the “reform” proposals presented by various nationwide carriers.

B. The Proposed Cap on Bid Credits

There is one other troubling proposal that the nation's largest carriers are presenting (under the guise of a newly found coalition): limiting total bid credits for any entity to \$10 million.¹⁸ The problems with this proposal are numerous. First, let's look at what this really does: It caps the total value of licenses that a DE can acquire and still receive full DE credit to somewhere between \$30 - \$40 million (depending on if, and how, the Commission revises its current level of DE credits). To put this into perspective, individual licenses selling in that range include Birmingham, AL; El Paso, T-NM; and Grand Rapids, MI. That is to say, under this AT&T proposal, no DE would be able to acquire more than one market in this range. While that makes absolute sense to large nationwide carriers seeking protection from DE bidding competition, it does nothing to advance the statutory mandate at issue here. Most certainly it does not permit DEs to bid, then operate, on a sustainable scale. That scale is critical for DE survival, for all of the reasons set forth in Section VIII below.

VIII. THE COMMISSION'S EXISTING DE RULES HAVE LONG BEEN CRITICAL TO THE COMMISSION COMPLYING WITH ITS STATUTORY MANDATES WITHOUT PROVIDING UNWARRANTED BENEFIT TO LARGE ENTITIES

There are a very limited number of ways by which small companies can compete meaningfully in auctions, and perhaps fewer ways in which they can compete in the marketplace afterwards. The only known strategy to accomplish this is to facilitate the provision of funding to DEs and, at the heart of that strategy is the need to limit attribution of revenues. Under the Commission's current rules, attribution is limited to those who control an entity and their affiliates. Only in this way can larger entities provide the financial assistance necessary to permit DEs to participate in auctions without disqualifying applicants entirely.

¹⁸ See an AT&T blog released on May 11, 2015, where this proposal is floated.

By limiting attribution to those that control applicants, and their affiliates, the Commission accomplishes several things. First and foremost, it permits small businesses that otherwise could not participate in today's big-money auctions to do so successfully. Second, it ensures their participation as a controlling entity, not as a mere investor. Third, it permits them not only to participate in the auction, but in business.

It is the last of these three benefits that is the most under-appreciated, particularly by those who would effectively dismantle the DE program through thinly-veiled proposals that are only superficially intended to reform it.

Scale matters for several reasons. First and foremost, it must be appreciated that the most likely potential financial supporters for DEs are existing carriers. This is demonstrated by the fact that, in the two decades in which the Commission has licensed DEs, funding by those not already in the telecom industry in one way or another has been virtually non-existent. Moreover, while history teaches us that it is very difficult to coax any large carrier to work with a DE with respect to any auction, it is even more difficult to coax a large carrier to work with a DE for part of an auction, but not for another, as would be necessary if the limits in bidding credits proposed by some commenters were to be adopted.¹⁹

There is another reason that scale matters: in an industry that has experienced ever-increasing concentration, scale and access to capital are absolutely necessary to survive as an operating entity. The Commission's seventeenth (and most recent) wireless competition report shows that the top two carriers account for 69% of all subscribers and 69% of all revenues. Another two hold an additional 29.4% of subscribers and 26.4% of revenues. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 29 FCC

¹⁹ Both Verizon and AT&T have used DEs in the past, which included entities that were structured similarly to King Street. But they did so only when certain licenses in the auction were available only to DEs.

Rcd 15311, 15321, 15325-26 (2014). That leaves only 4 - 6% of subscribers and 4.6% of revenues for the rest of the industry. The remainder includes a number of rural wireless carriers' telecom, which serve only rural areas which for the most part are the home markets for their wireline telecom affiliates.

Without scale, newcomers to the industry simply cannot compete. They often cannot get access to state of the art equipment. They often cannot get reasonable roaming.²⁰ They are unable to take advantage of economies of scale. And their access to capital under competitive terms is generally quite limited.²¹ King Street has been able to remain an active DE participant in the industry for over seven years primarily due to its relationship with U.S. Cellular, which has provided that essential capital.

Given the above, it should come as no surprise that most of the four national carriers want, in one way or another, to restrict DE access to spectrum – and that is unquestionably the result of their proposals. By so doing, they just happen to virtually guarantee the elimination of DE competition, first in the auction itself, then in the industry.

IX. CONCLUSION

The need for a viable DE program could not be clearer: It is the law of the land! The need to prevent a repeat of what happened in the Auction is equally clear. In solving the problem that plagued the Auction, the Commission should first face what it was: collusion among related, party bidders that increased prices. The way to solve that is straightforward: remove from the Commission's anti-collusion rules the exception that permits joint bidding

²⁰ See, e.g., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 26 FCC Rcd 5411 (2011), *aff'd sub nom. Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 29 FCC Rcd 15483 (WTB 2014), *app. for rev. pending*.

²¹ King Street is a case in point. Its prior efforts to obtain financing from sources other than telecom providers proved to be singularly unsuccessful.

agreements. Such agreements, if ever really necessary, have now been shown to present a far greater opportunity for mischief than for public interest benefit.

The second change that the Commission needs to make is to increase bidding credit eligibility revenues, as the Commission itself proposed, and increase the level of bidding credits, from 25% to 35-40%, as King Street and multiple other commenters have proposed.

All of these changes can be made without delaying the Incentive Auction.

Respectfully submitted,

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