

**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 COMPETITIVE CARRIERS ASSOCIATION

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COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) hereby submits the following comments in response to the Commission’s *Public Notice* seeking further comment on certain issues raised in the above-captioned proceedings regarding changes to the competitive bidding rules in Part 1 of the Commission’s Rules.¹

I. INTRODUCTION AND SUMMARY

CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes more than 100 competitive

¹ *Request for Further Comment on Issues Related to Competitive Bidding Proceeding, Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170; GN Docket No. 12-268; RM-11395; WT Docket No. 05-211, Public Notice, FCC 15-49 (rel. Apr. 17, 2015) (“*Public Notice*”); *see also Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, Notice of Proposed Rulemaking, 29 FCC Rcd 12426 (2014) (“*NPRM*”).

wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members consisting of small businesses, vendors, and suppliers that serve carriers of all sizes.

Representing hundreds of small businesses, CCA has a keen interest in ensuring that any reforms to the Commission’s small business rules and policies adopted in this proceeding preserve and expand opportunities for designated entities (“DEs”) to participate in the provision of spectrum-based services as Congress intended. At the same time, CCA is also sensitive to the need to preserve the integrity of spectrum auctions and to ensure that DE benefits are used as Congress and the FCC intended. In the *Public Notice*, the Commission astutely asks what roles small businesses are able to and should play in the provision of spectrum-based services in today’s telecommunications industry.² CCA believes emphatically that smaller carriers are critical to maintaining a competitive wireless landscape in the United States. It is well established that smaller providers can bring more innovation, more choices and lower costs to consumers—including subscribers that reside outside of dense urban markets—than many of their larger rivals.

In these comments, CCA reiterates its support for the repeal of the attributable material relationship (“AMR”) rules and the adoption of a two-pronged approach for determining eligibility for small business benefits, along with fortified protections against abuse of the DE program. The use of *de jure* and *de facto* control standards to evaluate DE eligibility would afford flexibility for greater innovation and pro-competitive business models. However, this flexibility also requires targeted and appropriate oversight to ensure that DE benefits are used to

² *Public Notice* ¶ 24.

achieve their intended purposes. Improving the Commission’s rules for determining *eligibility* for bidding credits is a necessary precursor to any reforms to the size or type of bidding credits, as well as any changes to the Commission’s rules concerning joint bidding arrangements.

CCA is in favor of continuing the availability of small business bidding credits, and urges the Commission to preserve the administrative simplicity of awarding bidding credits based on the proposed small business definitions. The Commission should not adopt other, more complex schemes that would be complicated to administer and that could be easily gamed. And it must be mindful that any rules it adopts must be generally applicable. CCA also urges swift adoption of the proposed exclusions from the “former defaulter” rules. Finally, CCA urges the Commission to refrain from categorically prohibiting joint bidding arrangements between and among nationwide carriers and non-nationwide carriers, or between DEs and non-DEs, and instead employ a more flexible, case-by-case review of joint bidding proposals. Concerns regarding strategic bidding behavior can be addressed more directly through targeted prohibitions on certain bidding activities.

II. THE DESIGNATED ENTITY PROGRAM’S HISTORY OF SUCCESS

In reviewing its DE program, the Commission must first stay faithful to the directive given to it by Congress in Section 309(j) of the Communications Act of 1934, as amended (the “Act”), which provides that, in prescribing regulations for competitive bidding for spectrum licenses, the Commission shall follow certain objectives, including to promote competition and availability of new and innovative technologies “by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants”³ Congress further instructs the Commission to consider the use of tax certificates, bidding preferences, and other

³ 47 U.S.C. § 309(j)(3).

procedures for fulfilling this purpose.⁴ Most recently, in the Middle Class Tax Relief and Job Creation Act of 2012 (the “Spectrum Act”), Congress reaffirmed the Commission’s authority to adopt rules of general applicability for participation in the Incentive Auction.⁵

The DE program is essential to promoting competition and the participation of smaller entities in the provision of wireless services—in particular, by providing access to spectrum at auction. Indeed, greater participation by DEs through innovative and pro-competitive business arrangements is necessitated in part due to the rising cost of spectrum, both at auction and on the secondary market.⁶ For example, some estimated low-band spectrum values at around \$1.50 MHz/pop prior to Auction 97.⁷ Post Auction 97, paired low-band spectrum values have been estimated at \$3.25 MHz/pop.⁸ And in light of the trend toward consolidation in the industry, promoting participation by competitive carriers is even more essential today, as competition in the wireless industry is based in significant part on achieving sufficient scope and scale within a market to effectively compete against the two largest incumbents. Thus, CCA urges the Commission to modify the DE rules to promote competition, help to avoid excessive concentration of licenses, expand opportunities for smaller carriers to participate in spectrum auctions, and adopt measures that protect the integrity of the program but do not inhibit investment in small businesses.

⁴ *Id.* § 309(j)(4).

⁵ *See* Middle Class Tax Relief and Job Creation Act of 2012 § 6404 (codified at 47 U.S.C. § 309(j)(17)).

⁶ *See Public Notice* ¶ 11 (asking how to factor in the rising cost of acquiring spectrum licenses into any rule amendments considered in this proceeding).

⁷ Kagan Media Appraisals, *CAN THE FCC ATTRACT A FULL HOUSE FOR THE 2016 BROADCAST INCENTIVE AUCTION?* at 7 (Feb. 11, 2015).

⁸ Coleman Bazelon & Giulia McHenry, The Brattle Group, *MOBILE BROADBAND SPECTRUM: A VITAL RESOURCE FOR THE AMERICAN ECONOMY* at 15 (May 11, 2015).

The success of the DE program, and particularly the use of bidding credits to enable smaller providers to participate in the competitive bidding process, is evident in the broad participation by small businesses in prior spectrum auctions. CCA's smaller members have been active bidders in almost every spectrum auction to date. For example, smaller carriers paid nearly \$2 billion for licenses in Auction No. 73, and also bid a combined \$1.2 billion on licenses in that auction, which winning bidders paid \$1.6 billion to obtain, delivering an additional \$400 million in revenue that would not have materialized but for their participation.⁹ In Auction No. 97, smaller bidders¹⁰ paid almost \$11 billion for licenses, and entities that qualified for small business or very small business bidding credits bid almost \$10.5 billion in the aggregate.¹¹ Based on this historical trend, small bidders have the potential to promote greater competition in the upcoming Incentive Auction.

III. REPEAL OF ATTRIBUTABLE MATERIAL RELATIONSHIP (“AMR”) RULES

A. CCA Supports the Repeal of the Strict Requirements of the AMR Rules and the Onerous Prohibitions on Spectrum Leasing by DEs.

In this proceeding, CCA has supported the repeal of the AMR rules in favor of *de jure* and *de facto* control standards, coupled with small business gross-revenue thresholds, to determine an entity's eligibility to receive small business benefits.¹² Still, eliminating the rigid AMR requirements must be balanced carefully with measures to safeguard against abuse of the

⁹ See Public Notice, *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73*, DA 08-595 (rel. Mar. 20, 2008).

¹⁰ “Smaller bidders” here refers to auction participants other than AT&T, Verizon and T-Mobile.

¹¹ See Public Notice, *Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97*, DA 15-131 (rel. Jan. 30, 2015).

¹² Comments of Competitive Carriers Association, WT Docket No. 14-170, *et al.* at 9 (filed Feb. 20, 2015) (“CCA Comments”); Reply Comments of Competitive Carriers Association, WT Docket No. 14-170, *et al.* at 7 (filed Mar. 6, 2015) (“CCA Reply Comments”).

DE program and to encourage facilities-based competition.¹³ With appropriate oversight to prevent warehousing of spectrum and unjust enrichment of entities that are not intended to qualify for small business benefits, the application of *de jure* and *de facto* control standards to evaluate DE eligibility would provide a greater number of competitors the opportunity to access needed spectrum resources and the flexibility to explore innovative and pro-competitive DE service offerings and business models.¹⁴ In applying *de jure* and *de facto* control standards to evaluate DE eligibility, the Commission must ensure that its attribution rules effectively identify and account for the individuals and/or entities that will utilize the licensed spectrum purchased with DE benefits.

Loosening the strict prohibitions on third party access to spectrum acquired using bidding credits and enabling a DE to operate under wholesale capacity service models or enter into other beneficial spectrum sharing arrangements is one way to promote DE participation. Such arrangements, if properly structured to ensure that DEs are *bona fide* small businesses genuinely interested in providing wireless service to the public, could help to provide cost-effective alternatives to competitive carriers accessing spectrum at auction.¹⁵

The current restrictions on spectrum leasing and other type of capacity agreements incorporated into the AMR rules are far too limiting, however, and likely preclude many of these arrangements.¹⁶ While this prohibition is too strict, CCA would support a targeted rule

¹³ CCA Reply Comments at 8–9.

¹⁴ See *Public Notice* ¶¶ 4–11.

¹⁵ See *id.* ¶ 5.

¹⁶ Under the current rules, the Commission applies a bright-line test that requires a small business applicant or licensee to automatically attribute to itself the gross revenues of any entity with which it has an “attributable material relationship.” See *NPRM* ¶ 15. An applicant or licensee has an AMR when it has one or more agreements with any

prohibiting a DE from leasing all or substantially all of such spectrum,¹⁷ since such a prohibition is supported by Commission case law¹⁸ and could be effective in deterring auction participation by DEs that are seeking access to discounted spectrum but don't plan to provide service to consumers. In general, the Commission and smaller providers will be better served by eliminating the AMR rule's stringent *per se* limits and instead adopting a case-by-case approach to evaluate third-party access arrangements using the well-established and broadly-understood *de jure* and *de facto* control precedents that have been developed in the context of secondary market transactions.

B. Application of the Control Standard for Determining DE Eligibility Should Be Balanced With More Effective Measures to Prevent Abuse of DE Benefits.

Notwithstanding CCA's support for the repeal of the AMR rule, CCA recognizes that it is critical for the Commission to deter abuse of DE benefits and to maintain the integrity of both the program and the auction process generally. CCA agrees that certain measures or policies to prevent warehousing of spectrum and unjust enrichment would be effective supplements to the proposed two-pronged standard for evaluating small business eligibility. For example, while the Commission need not insist that a DE provide facilities-based service directly to consumers

individual entity for the lease or resale of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. *Id.*

¹⁷ See *Public Notice* ¶ 6; see also Comments of T-Mobile USA, Inc., WT Docket No. 14-170 at 13 (filed Feb. 20, 2015) ("T-Mobile Comments").

¹⁸ See, e.g., *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, 19 FCC Rcd 17503 ¶ 77 (2004) (concluding that spectrum manager lease between a DE and a non-DE where substantially all of the spectrum capacity of the licensee is to be leased would cause the spectrum lessee to become an attributable affiliate of the licensee, rendering the licensee ineligible for DE benefits).

(which could preclude the use of innovative wholesale arrangements),¹⁹ it should consider minimally invasive requirements for DEs, such as demonstrations that they are utilizing spectrum won at auction within a set timeframe.²⁰ T-Mobile has proposed to require DEs to show some evidence of buildout activity within one year of acquiring the license or upon clearing spectrum incumbents.²¹ While CCA supports such a proposal in concept, the devil is in the details. We caution the Commission not to impose overly burdensome obligations that would hamstring smaller carriers' ability to compete or raise capital for the auction. As such, CCA urges the Commission to avoid impairing smaller competitors through accelerated buildout schedules or expansive coverage requirements that are disproportionately onerous for smaller entities.²² For instance, the Commission must account for circumstances beyond smaller carriers' control (such as the bifurcation of the Lower 700 MHz Band following Auction 73).²³ If buildout requirements are adopted, they should be implemented in a manner that balances the interests of preventing warehousing with ensuring that smaller carriers have expanded opportunities to acquire and deploy scarce spectrum resources.

¹⁹ Section 309(j) and the Conference Report accompanying drafts of the Act reasonably could be interpreted in a manner that does not require a DE to directly provide facilities-based service. *See Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, *et al.*, Notice of Proposed Rulemaking, 29 FCC Rcd 12426, Statement of Commissioner Mignon L. Clyburn, at 3 (2014).

²⁰ As Commissioner Pai has noted, “[t]he legislative history shows that Congress passed the relevant portions of Section 309(j) ‘to deter speculation and participation in the licensing process by those who have no intention of offering service to the public.’” *Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, *et al.*, Notice of Proposed Rulemaking, 29 FCC Rcd 12426, Statement of Commissioner Ajit Pai, at 4 (2014) (*quoting* H.R. Rep. No. 103-111, at 257-58 (1993)).

²¹ T-Mobile Comments at 14; Reply Comments of T-Mobile USA, Inc., WT Docket No. 14-170 at 9 (filed Mar. 6, 2015) (“T-Mobile Reply Comments”).

²² *See Public Notice* ¶¶ 9, 14–16.

²³ *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15,122 (2013).

Another related way to achieve this balance may be to create parity in the unjust enrichment provisions and build-out requirements. In connection with the upcoming 600 MHz incentive auction, the Commission has established an interim build-out requirement of six years.²⁴ The Commission should consider extending the period during which a DE would need to pay unjust enrichment penalties attending a sale of licenses acquired at auction with bidding credits from five years to six years, to coincide with the initial construction milestone, while proportionately maintaining the traditional descending repayment schedule as the license term progresses. Extending the unjust enrichment period beyond five years would increase the deterrent against DE discounts being used by ineligible entities to acquire spectrum licenses at below-market rates.²⁵ This modest extension of the unjust enrichment period would not be likely to reduce the incentives for investment in DEs.²⁶ If, however, the time-horizon for recouping the costs of the investment is extended for the full license term, DEs may experience difficulties in attracting and obtaining outside investment, which would constrain small business participation in auctions.²⁷ In contrast, a six-year unjust enrichment period would foster greater facilities-based deployment by requiring a threshold level of buildout, while not unduly hindering the ability of carriers and small businesses to attract investment and access capital.

To improve auction process and integrity, the Commission should also prohibit investment in multiple DE structures by non-qualified entities. CCA believes that restricting

²⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 ¶ 770 (2014).

²⁵ *See, e.g.*, T-Mobile Reply Comments at 8–10.

²⁶ *See Public Notice* ¶¶ 14–16.

²⁷ *See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Order, 27 FCC Rcd 908 (2012) (amending the unjust enrichment payment period by removing the 10-year period and reinstating the five-year period).

bidding activity among non-commonly controlled applicants would prevent the ability to game-play and effectively target this type of abuse of DE benefits by ineligible entities.²⁸ To enforce this recommendation, T-Mobile suggests a certification requirement that would require individuals or entities listed as disclosable interest holders on more than one short-form application to certify that they are not, and will not be, privy to or involved in the bidding strategy of more than one auction participant.²⁹ CCA endorses this proposal as a first line of defense in preventing abuse of the DE program by joint venture participation, prejudice to other bidders and harm to the integrity of the auction process generally.

IV. BIDDING CREDITS

A. Small Business Bidding Credits Have Proven Effective in Achieving the Goals of the Act.

From the inception of the use of competitive bidding procedures to assign spectrum licenses, the Commission has experimented with various incentives to facilitate participation in auctions by a wide variety of applicants, as directed by Congress.³⁰ As a recent example, the FCC will license the 600 MHz spectrum in smaller geographic license sizes, Partial Economic Areas (“PEAs”), and reserve spectrum for carriers that have less than one-third of the suitable and available low-band spectrum in a market and non-nationwide providers. In addition to smaller geographic license sizes, the use of bidding credits for small businesses has proven particularly successful as an administratively efficient means of promoting provider diversity and competition in spectrum auctions. Thus, CCA continues to support the implementation of bidding credits for qualified small businesses.

²⁸ See *Public Notice* ¶ 27.

²⁹ T-Mobile Comments at 9–10; T-Mobile Reply Comments at 5.

³⁰ See 47 U.S.C. § 309(j)(3)(B).

In the *Public Notice*, the Commission asks for comment on whether DE bidding credits affect auction revenues and the extent to which the Commission is authorized to consider such effects.³¹ Section 309(j)(7) of the Act expressly precludes the Commission from relying on an expectation of auction revenues when promulgating rules that will promote an equitable distribution of licenses and services and economic opportunity for a wide variety of applicants (including small businesses), as well as the investment in and rapid deployment of new technologies and services.³² That said, bidding credits have not impeded the success of spectrum auctions from a revenue raising standpoint. In fact, the opposite is true—they have increased auction participation.³³ As noted above, smaller carriers—many of whom participated in prior auctions with small business bidding credits—have fostered bidding activity in past auctions, generating greater auction revenue than would have resulted without their participation.

B. CCA Supports Small Business Bidding Credits Awarded Based on the Proposed Increased Revenue Thresholds.

CCA supports the Commission’s proposed small entity bidding credit revenue thresholds that account for increases in the GDP price index.³⁴ Updating the thresholds for inflation maintains the practical approach that has worked well since the inception of the bidding credit regime, while capturing a greater number of entities that need the auction assistance that bidding credits offer.³⁵

³¹ *Public Notice* ¶ 8.

³² 47 U.S.C. § 309(j)(7)(B) (“in prescribing regulations [for competitive bidding], the Commission may not base a finding of public interest, convenience, and necessity solely or predominately on the expectation of Federal revenues from the use of a system of competitive bidding . . .”).

³³ *See supra* p. 6–7.

³⁴ *See Public Notice* ¶ 17

³⁵ *Id.*

In addition, CCA encourages the Commission to consider other proposals to determine a bidder's eligibility as a small business, including the Small Business Administration ("SBA") definition of a small business. As noted in CCA's opening comments in response to the NPRM, defining a small business based on the SBA's employee-based size standard would make a significantly greater number of wireless operators eligible for bidding credits. Expanding eligibility, rather than shrinking it, may be warranted given the increasing disparity between the largest carriers, on one hand, and all other carriers on the other.³⁶

When examining qualifications, the amount of, or eligibility for, small business bidding credits should not be affected by a bidder's receipt or eligibility for USF support. Thus, CCA opposes proposals to deny eligibility for small business bidding credits for bidders receiving Connect America Fund ("CAF") support.³⁷ CAF funding and other USF support amounts reflect the higher costs associated with serving rural and remote areas, and not a carrier's size or ability to compete for spectrum at auction.³⁸ Therefore, such funding should not impact the bidding credit eligibility of small businesses that receive such funding.

As a general matter, CCA encourages the Commission to maintain the simplicity of the small business bidding credit mechanism. CCA does not support proposals for an adjustment in the bidding credit amounts based on increases in the cost of spectrum acquisition, as suggested

³⁶ CCA Comments at 7.

³⁷ See *Public Notice* ¶ 22.

³⁸ A recent report found that "[t]he revenue potential for a wireless carrier in a major urban center is **\$248,000** per square mile of service. By contrast, in the least densely populated areas, the potential revenue per square mile drops as low as **\$262** per square mile." See Diane Smith, Mobile Future, THE TRUTH ABOUT SPECTRUM DEPLOYMENT IN RURAL AMERICA at 3 (Mar. 2015) (emphases added); see also Posting of Steven K. Berry and Rebecca Murphy Thompson to CCA Blog, *The Earth is Flat?*, <http://competitivecarriers.org/rca-blog/the-earth-is-flat/9117571> (Apr. 20, 2015).

by the Auction Reform Coalition.³⁹ Introducing this variable would create uncertainty for DEs and the Commission, as the value of spectrum varies by spectrum band and fluctuates based on market conditions at the time of the auction in question.

Further, after consideration of the various other proposed bidding preferences under consideration in this docket, CCA believes that the existing small business bidding credits are preferable to the proposed bidding preferences based on criteria other than business size.⁴⁰ Although CCA in its opening comments supported proposals to adopt bidding credits specifically for deployments to unserved and/or underserved areas,⁴¹ the nuances of determining which areas should qualify for such credits would introduce undue complexity into already-complex auction processes. Generally speaking, proposals for new or different bidding credits that serve only a small group of applicants would inject a level of complexity that likely outweighs the benefits of assigning additional credits for rural deployment and are not likely consistent with the Spectrum Act's general applicability requirement.⁴² Moreover, these types of preferences are ripe for manipulation. Thus, the Commission should consider any such proposals carefully.

Proposals to cap the discounts a DE can receive through bidding credits could help to ensure that the amounts DEs are bidding are consistent with the smaller size and revenues of a small business. Any cap should be set at a level that does not unnecessarily restrict DEs from competing with other bidders or having a meaningful opportunity to participate in auctions; after all, the overarching purpose of Section 309(j) is to promote economic activity and competition.

In today's spectrum marketplace, where AT&T and Verizon control 73% of all low-band

³⁹ See *id.* ¶ 18; see also Comments of Auction Reform Coalition, WT Docket No. 14-170 at 22 (filed Feb. 20, 2015).

⁴⁰ *Public Notice* ¶¶ 20–24.

⁴¹ See CCA Comments at 8–9; CCA Reply Comments at 5–6.

⁴² See Spectrum Act at § 6404 (codified at 47 U.S.C. § 309(j)(17)(B)).

spectrum, and nearly 80% in the top 25 markets, competition is the best medicine to prevent AT&T and Verizon's foreclosure ability that plagues spectrum auctions and the secondary market. Proposals to set the DE discount cap at \$32.5 million or less is far too limiting and fails to recognize that competition in the wireless industry is based in part on achieving sufficient scope and scale within a market to be effective competitor against the nation's two largest carriers.⁴³

Alternatively, the Commission could limit eligibility for or decrease the amount of DE benefits to markets smaller than the 40 largest PEAs, which would ensure that discounts are more consistent with the typical business plan of a small carrier.⁴⁴ In addition, the amount of the bidding credit for these smaller markets could be capped at a limit that is proportionately lower for markets with higher populations, and graduated higher for smaller markets with lower populations and less density. Adjusting bidding caps in this manner would reduce incentives for speculative acquisitions in PEAs with greater revenue potential, while ensuring that smaller carriers competing for licenses in their own service territories have a fair opportunity against larger carriers.

Finally, as a supplement to the improvements to the small business bidding credit mechanism that are being evaluated here, the Commission should also consider other alternatives to help facilitate small business access to spectrum in the secondary market.⁴⁵ The challenges that smaller carriers face in obtaining spectrum through auctions are also present in the

⁴³ *Public Notice* ¶ 10; see Comments of AT&T Comments, WT Docket No. 14-170 at 4, 17 (Feb. 20, 2015) ("AT&T Comments"). AT&T's most recent proposal would further limit the size of any DE discount to \$10 million. See Letter from Joan Marsh, VP – Federal Regulatory, AT&T, *et al.* to Roger Sherman, Chief, Wireless Telecommunications Bureau, FCC, WT Docket No. 14-170, GN Docket No. 12-268 (filed May 11, 2015).

⁴⁴ See *Public Notice* ¶ 10.

⁴⁵ See *id.* ¶ 23.

secondary market for spectrum. To address this problem, CCA would support incentives such as offering carriers an extension of their license term in exchange for partitioning or disaggregating unused portions of their spectrum to small carriers or to serve rural areas.⁴⁶ This type of incentive is another measure that could benefit smaller carriers struggling to obtain access to spectrum.

V. FORMER DEFAULTER RULE

The *NPRM* proposed to adopt narrow exclusions from the “former defaulter” policies in Sections 1.2105(a)(2)(xi) and 1.2106(a), consistent with the terms of the general waiver the Commission granted in Auction 97. As the Commission acknowledges in the *Public Notice*, there is wide ranging support for adopting the proposed limited exclusions to the former defaulter rule.⁴⁷ Participants in this proceeding broadly agree that the proposed exclusions would balance ensuring that bidders are capable of meeting their financial obligations with avoiding burdensome costs and overbroad application of the rule. Thus, based on the exhaustive record, there is no need for further deliberation, and CCA urges the Commission to adopt this proposal.

VI. JOINT BIDDING ARRANGEMENTS

As CCA has advocated in this proceeding, allowing bidders flexibility for joint bidding would facilitate a wide range of pro-competitive arrangements when balanced with mechanisms to safeguard against strategic behavior in auctions.⁴⁸ Joint bidding arrangements allow applicants to combine resources and to share risk, which can cultivate efficiencies and lower costs, thereby benefiting consumers through lower prices and expanded services. For DEs in

⁴⁶ See, e.g., Rural Spectrum Accessibility Act, S. 417, 114th Cong. § 2 (2015).

⁴⁷ See *Public Notice* ¶ 26.

⁴⁸ CCA Comments at 13–15; CCA Reply Comments at 10–12.

particular, joint bidding arrangements can provide sources of capital and partnerships with entities with greater financial economies of scale.

CCA therefore urges the Commission to refrain from preemptively prohibiting joint bidding arrangements between and among nationwide carriers and non-nationwide carriers.⁴⁹ Such arrangements can have pro-competitive benefits, and thus should be reviewed on a case-by-case basis, rather than prohibited outright. Similarly, the Commission should refrain from barring joint bidding arrangements between DEs and non-DEs.⁵⁰ Broadly prohibiting such arrangements would unnecessarily hinder investment in DEs and could inhibit pro-competitive arrangements that seek to enable deployment in rural areas. Furthermore, defining “joint bidding and other arrangements” to broadly include any agreement relating to post-auction market structure has the potential to sweep in certain arrangements that should not be considered in determining the propriety of a joint bidding arrangement. For instance, the rules should not preclude bidders that are parties to CCA’s Rural Roaming Preferred Provider (“R2P2”) program, which partners rural carriers with Sprint, from participating independently in an auction.

Thus, CCA urges the Commission to review joint bidding arrangements on a case-by-case basis, and refrain from adopting overbroad restrictions. Categorically restricting joint bidding arrangements or imposing strict structural requirements, such as the formation of formal joint ventures or bidding consortia,⁵¹ before joint bidding can occur would unduly limit flexibility without preventing anti-competitive harms that could as easily be avoided *via* a case-by-case review of particular agreements or arrangements.

⁴⁹ See *id.* ¶ 30.

⁵⁰ See *id.*

⁵¹ See *id.*

The Commission should balance this flexible approach to joint bidding structures with the need for restrictions or limitations that target collusive or strategic bidding behavior which threatens the integrity of the FCC auction structure. CCA has endorsed proposals to require individuals or entities that are disclosable interest holders for more than one bidder to certify that they are not involved in, and will not be privy to, the bidding strategy of more than one auction participant, and require that authorized bidders on a short-form application be unique to that applicant.⁵² In addition, to prevent anti-competitive coordinated behavior in auctions, the Commission should consider adopting the proposal to prohibit bidders that are party to a joint bidding arrangement from bidding separately on licenses in the same geographic market.⁵³ However, such arrangements should not prevent the parties from bidding on licenses for different geographic markets. The Commission must conduct a thorough review of all applications for spectrum licenses, but should not permit this review process to delay making spectrum—especially low-band spectrum—available to competitive carriers. Establishing tailored, bright-line review procedures prior to the start of an auction, while also affording the Commission flexibility to conduct a more thorough review following the close of the auction, is another possible way of helping to speed the application review process. In general, prohibiting problematic auction behavior would more effectively preserve auction integrity than broadly eliminating a wide range of joint bidding arrangements.

VII. CONCLUSION

For the foregoing reasons, CCA respectfully requests that the Commission update and modify its competitive bidding rules consistent with the principals and proposals described in these further comments, as well as those in CCA’s opening comments and reply comments in

⁵² CCA Reply Comments at 12.

⁵³ *See Public Notice* ¶ 31.

this proceeding. CCA urges the Commission to take action that will encourage participation in spectrum auctions by a wide range of carriers and to promote opportunities for competitive carriers to access critical spectrum resources, while strengthening safeguards against anti-competitive behavior and abuse of DE benefits.

Respectfully submitted,

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