

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Updating Part 1 Competitive Bidding Rules)	WT Docket No. 14-170
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	
Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver)	RM-11395
)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures)	WT Docket No. 05-211
)	

REPLY COMMENTS OF TRISTAR LICENSE GROUP, LLC

Tristar License Group, LLC (“Tristar”) hereby submits these reply comments in response to the Federal Communications Commission (“Commission”) *Public Notice* seeking further comment in the above referenced proceedings.¹

In review of the comments filed in this proceeding, several commenters correctly note that in using the word “including” in Sections 309(j)(3)(B) and 309(j)(4)(C)(ii), Congress did not intend to limit the Commission’s ability to promote “economic opportunity and competition” and meet the other objectives of those Sections in its design of competitive bidding methodologies to only “small businesses, rural telephone companies, and businesses owned by members of

¹ See Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Part 1 Competitive Bidding Rules, *Public Notice*, FCC 15-49 (rel. April 17, 2015), 80 FR 22690 (April 23, 2015).

minority groups and women” (collectively, “Designated Entities” or “DEs”).² However, the word “including” does not appear in Section 309(j)(4)(D). This distinction is significant, and should be recognized by the FCC in its interpretation of the statute. The clear Congressional directive to the Commission to “consider the use of tax certificates, bidding preferences, *and other procedures*” in its design of competitive bidding auctions to “ensure that [DEs] are given the opportunity to participate in the provision of spectrum based services” is in fact limited to just those entities. That should not be interpreted to mean that the Commission cannot consider offering “benefits” or enticements to entities which are not DEs in order to promote competition and to promote economic opportunity, but that DEs are a special class of auction participants to which the Commission is directed to give special attention.

Since Congress specifically listed DEs in three places in Section 309(j)[2] it is certainly reasonable to infer that it intended to limit DE status to only those entities which in fact are DEs, not “Special Purpose DEs” or DE “fronts” or, in today’s common vernacular, DEs “in name only” (“DINOs”). Alternatively stated, it is unreasonable to believe that Congress intended for large companies and entrenched incumbents to receive DE benefits indirectly through carefully structured DINOs.

As a DE which has no affiliation with an incumbent carrier or other large entity, Tristar supports the Commission’s proposal to increase the small business gross revenue thresholds and bidding discounts available for DEs. But as Tristar noted in its comments,³ true DEs need much more than a bidding credit to have a legitimate shot at participating in today’s wireless services market. DEs need broad operational flexibility to engage in any wireless services, directly or

² Council Tree Comments at 7-8; May 18, 2015 Ex Parte Presentation of Public Knowledge.

³ Comments of Tristar License Group, LLC at p. 2.

indirectly through leases, joint ventures or other business arrangements. DEs need the ability to use their licenses the same as any other non-DE, including the ability to sell, transfer, contribute or exchange licenses with any other entity and without having to repay the bidding discount, unless the transaction is part of a pre-conceived arrangement to funnel the licenses to an entity which does not qualify as a DE. DEs, or at least those DEs which are not rural telephone companies, should not be held to the same build-out standards as non-DEs. Instead, they should have a much longer build-out timeframe and the ability to “save” all licenses through build-outs over some portion of the aggregate population of all of its licenses. That would give true DEs the ability to grow into their business by focusing on high population areas then expanding into the less populated areas on a more reasoned timetable, just like today’s incumbents did earlier. In short, DEs need “special” treatment in both the auction process as well as in their operations. And in exchange for these “special” benefits, it would not be unreasonable to limit a DE’s aggregate bidding discount to a reasonable amount, which Tristar proposes is \$35 million.

Many comments and ex parte presentations in these proceedings note the obvious – today’s wireless telecommunications market is far different than it was 22 years ago when Section 309(j) was enacted. Excellent arguments have been made that regional wireless carriers such as US Cellular and C Spire, rural telephone carriers which do not qualify as a “small business”, and well financed potential new entrants should be entitled to some benefits or preferences in the upcoming BIA. But that does not mean that they should be entitled to the same benefits offered to DEs. In fact, by not designing “benefits” for these other entities, the Commission has indirectly forced them into setting up DINO’s carefully structured to circumvent the clear intent of Section 309(j)(4)(D). That problem needs to be fixed in these proceedings.

Tristar submits that by carefully designing separate sets of incentives or benefits to entities which do not qualify as a DE, such as separate classifications for “new entrants” or “regional carriers,” the Commission can fulfill the somewhat conflicting objectives of Section 309(j) while protecting the sanctity of the auction process. In that way, for example, should a new entrant seek to qualify as a DE, then it can limit the amount of financial support it takes from another bidder or incumbent to less than 10%, and be ready to rebut the presumption that a provider of 25% or more of its financial support is not and never will be a “controlling interest”, as proposed by Tristar in our comments. If that entity does not want to be held to those limitations, then it has an option. It can elect to qualify as a new entrant and thereby be limited to the benefits established for new entrants.

Establishing new classifications and designing separate sets of appropriate incentives will take time. These proceedings should not be rushed merely to meet an arbitrary goal of initiating the BIA in 2016. There is no statutory mandate to hold the BIA in 2016. There is a statutory mandate to design a competitive bidding methodology for the BIA that meets the objectives set forth in Section 309(j), including, without limitation, the mandates of Section 309(j)(3)(E)(ii). The BIA may be the last chance for the foreseeable future for the Commission to promote competition and economic opportunity to new entrants, DEs and other entities through the auction process, and likely the last time ever for low band spectrum.

Tristar also submits coordinated bidding and collusive bidding are one and the same and should be allowed only in very limited circumstances. The adverse impact coordinated bidding had on DEs and other potential new entrants was clearly demonstrated in the AWS 3 auction and history should not be allowed to repeat itself in the BIA. If two or more bidders wish to coordinate bids, then they should only be allowed to do so through a single entity.

CONCLUSION

The Commission has full statutory power and authority to revise its small business policies and other applicable rules and interpretations as suggested herein and in the initial comments of Tristar. The overall purpose of Section 309(j) was to grant the Commission authority to develop a “competitive bidding methodology” to auction spectrum licenses⁴. This grant of authority is broad and does not anticipate the design of one particular “competitive bidding methodology” that must be used in all auctions. Instead, the Commission is directed to “design and test multiple alternative methodologies under appropriate circumstances.”⁵ Just as the Commission is not limited to a single auction design methodology, it is not bound to any earlier interpretations of ambiguous statutory language.

Respectfully submitted,

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⁴ 47 U.S.C. Section 309(j)(3).

⁵ *Id.*