

**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 Innovation Opportunities 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 THE RURAL-26 DE COALITION

The "Rural-26 DE Coalition" (the "Rural Coalition"),¹ an ad-hoc group of rural telecommunications providers adversely affected by the manipulation of the FCC's Designated Entity ("DE") rules in the AWS-3 band auction ("Auction 97") and concerned about future misuse of the DE rules in the upcoming Incentive Auction, by counsel, hereby submits the following reply comments in the above-captioned proceedings in response to comments and related filings in the Federal Communications Commission's ("FCC" or "Commission") Request for Further Comment regarding the revision of the competitive bidding rules in Part 1 of the

¹ Company members of the Rural Coalition are listed in Attachment A attached hereto.

Commission's rules.² In this proceeding, the Rural Coalition proposed new DE rules to award bidding credits to existing communications providers with fewer than 250,000 subscribers and to other small businesses and new entrants based on a gross revenue calculation. Further, in order to deter abuse and gaming of the DE rules moving forward, the Rural Coalition suggested capping all bidding credits awarded to qualified DEs at \$10 million per bidder.³ The Rural Coalition's reply comments focus on its proposed bidding credit cap as the most effective tool to put a stop to the demonstrated abuse of the Commission's DE program.

In *theory*, the FCC's DE program is a wonderful thing. Supporters of the status quo in this proceeding go to great pains to point out what *could* happen if only the Commission would keep the current program in place for the Incentive Auction.⁴ Under this scenario, keeping the DE program as is will level the 600 MHz playing field, allow small entities and new entrants access to capital, and result in

² Public Notice, *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, FCC 15-49 (rel. Apr. 17, 2015).

³ See AT&T; FTC Management Group, Inc., *et al.*, Letter to Roger Sherman, Chief, Wireless Telecomm. Bureau, *Reforming the FCC's Designated Entity Program*, WT Docket No. 14-170, GN Docket No. 12-268 (filed May 11, 2015) ("Rural Coalition Letter").

⁴ See, e.g., Comments of Council Tree Investors, Inc., WT Docket No. 14-170, *et al.* (filed May 15, 2015); Comments of King Street Wireless, L.P. WT Docket No. 14-170, *et al.* (filed May 15, 2015) ("King Street Comments"); and Comments of United States Cellular Corporation, WT Docket No. 14-170, *et al.* (filed May 15, 2015) ("U.S. Cellular Comments").

the dream of a new nationwide competitor in the wireless arena. This dream ignores the unsavory realities of Auction 97.

In Auction 97, DISH, supported by its cleverly-crafted small business and minority-owned DEs, along with mammoth amounts of Wall Street capital, was able to “park” bids and retain eligibility, waiting out its smaller competitors and, at the end of the day, grabbing a deep discount and paying less to the American taxpayers than their smaller, and often rural, competitors were able to pay for the valuable and scarce public resource of spectrum. If the Commission should let this happen again, the result would be not only embarrassing, but could also likely end any chance of legitimate small businesses acquiring spectrum in markets in which they currently serve. As the Rural Coalition stated in its comments in this proceeding, instituting a \$10 million cap is the only way to significantly prevent further abuse of the DE program.⁵ AT&T, co-author of the Rural Coalition’s DE revisions, puts it even more succinctly in stating that, “[t]he cap is essential to AT&T’s support of the framework as it provides policymakers and auction participants alike with strong assurances that the program will not be abused for unfair auction advantage.”⁶

Public Knowledge, a tireless watch dog of the public interest, calls the Rural Coalition’s joint proposal with AT&T “a reasonable framework for moving forward

⁵ See Rural Coalition Letter at 10.

⁶ Comments of AT&T, WT Docket No. 14-170, *et al.* at 10 (filed May 14, 2015).

to a workable solution...”⁷ However, Public Knowledge believes that capping bidding credits would make any credits “essentially useless” for a new entrant with “innovative technologies” (using the example of Apple) seeking to capture a license costing billions for a major market.⁸ The Rural Coalition submits that making credits “essentially useless” to a new entrant such as Apple or, say, Google, that has access to enough capital to bid on a major metropolitan market such as Los Angeles or New York City is exactly the point. Large, well-financed companies do not need a helping hand from the American taxpayer.

The Multicultural Media, Telecom and Internet Council (“MMTC”) asks the Commission to reject caps on bidding credits, arguing that such caps “are designed to keep DEs small.”⁹ Instead, MMTC prefers the status quo with no caps whatsoever.¹⁰ The Rural Coalition points out that if MMTC gets its wish, “medium-scale or large-scale minority-owned”¹¹ entities will likely end up bidding against DISH or similarly well-financed entities bent on exploiting an uncapped discount. As a result, MMTC’s status quo-based proposal will not benefit minority-owned businesses and, more importantly, does nothing to fix the DISH problem that spurred this additional round of comments.

⁷ Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, FCC, WT Docket No. 14-170, *et al.* at 1 (filed May 18, 2015).

⁸ *Id.* at 3.

⁹ Comments of MMTC, WT Docket No. 14-170, *et al.* at 16 (filed May 18, 2015).

¹⁰ *Id.* at 17.

¹¹ *Id.*

The United States Cellular Corporation (“U.S. Cellular”) also opposes any type of cap “on the amount of bidding credits a DE may claim during an auction.”¹² U.S. Cellular argues that the continuation of the status quo regarding bidding credits will promote “economic opportunity and competition.”¹³ This conclusion is false. U.S. Cellular’s use of its DE, Advantage Spectrum, L.P., gave it a distinct economic advantage over its smaller competitors who were bidding without the aid of a discount in Auction 97. Uncapped bidding credits in Auction 97 ended up, in reality, squashing economic opportunity and competition for small and oftentimes rural competitors.

U.S. Cellular argues that collusive bidding, in and of itself, was the problem with Auction 97 and, with the exception of fixing its bidding agreement rules,¹⁴ the “basic structure” of the DE rules should remain in place.¹⁵ Once again, this reliance on the status quo will not fix the intrinsic problem with the Commission’s DE rules as evidenced by DISH and U.S. Cellular’s bidding credits.¹⁶ If the Commission leaves the basic structure of the DE rules in place, it can expect even more DISH-like episodes. Collusive bidding, *per se*, did not result in DISH’s colossal spectrum savings in Auction 97. Simply tightening up the bidding arrangement rules as U.S. Cellular proposes will not deter a likely flood of Wall Street backed entities from

¹² U.S. Cellular Comments at 19.

¹³ *Id.* at 19 (citing 47 U.S.C. § 309(j)(3)(B)).

¹⁴ *Id.* at 9 – 11.

¹⁵ *Id.* at 7.

¹⁶ *See* Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97, DA 15-131, Att. A (rel. Jan. 30, 2014).

exploiting the DE rules in the Incentive Auction now that DISH has demonstrated how it is done.

For the foregoing reasons, the Rural Coalition respectfully requests that the Commission cap all bidding credits at \$10 million per eligible bidder. Such a cap will provide a concrete safeguard to curb further gaming of the DE program.

Respectfully submitted,

Rural-26 DE Coalition

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May 21, 2015

ATTACHMENT A

Rural-26 DE Coalition

FTC Management Group, Inc.	Northwest Missouri Cellular Limited Partnership
Arctic Slope Telephone Association Cooperative, Inc.	Palmetto Rural Telephone Cooperative, Inc.
Atlantic Seawinds Communications, LLC	Paul Bunyan Rural Telephone Cooperative
Bug Tussel Wireless, LLC	Piedmont Rural Telephone Cooperative, Inc.
Chariton Valley Communications Corporation, Inc.	Plateau Telecommunications, Inc.
Chester Telephone Company	RSA 1 Limited Partnership d/b/a Chat Mobility Iowa RSA 2 Limited Partnership d/b/a Chat Mobility
Comporium Wireless, LLC	Sandhill Communications, LLC
Cordova Wireless Communications, Inc.	Totelcom Networks LLC
Horry Telephone Cooperative, Inc.	Texas RSA 7B3, L.P. d/b/a Peoples Wireless Services
KanOkla Telephone Association, Inc.	Public Service Wireless, Inc.
Leaco Rural Telephone Cooperative, Inc.	VTel Wireless, Inc.
MobiNet LLC	West Carolina Rural Telephone Cooperative, Inc.
Northeastern Iowa Telephone Company	XIT Telecommunication & Technology, LTD