

**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 THE BLOOSTON RURAL CARRIERS

The law firm of Blooston Mordkofsky Dickens Duffy & Prendergast, LLP (“Blooston”), on behalf of its rural telephone and rural wireless clients (the “Blooston Rural Carriers”), respectfully submits these reply comments on the Commission’s April 17, 2015, *Public Notice* seeking further input on issues relating to updating the Part 1 Competitive Bidding rules (“*Further Comment Notice*”).¹ On review of the comments and after further discussion, NTCA, RWA and the Blooston Rural Carriers have reached a consensus on a set of proposed DE rule revisions that are designed to promote auction participation and real opportunity for small businesses and rural telephone companies alike. Details of this consensus position are described

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).

below and in Attachment A. The Blooston Rural Carriers also agree with certain aspects of a joint proposal for a revised DE framework that was entered into the docket by AT&T and a separate group of small businesses and rural communications providers, but believe that the consensus described below will be a more effective approach for most rural telcos. Finally, the Blooston Rural Carriers express their continued support for an exception in the affiliation rules designed to prevent rural telephone companies from losing their small business DE status because they may hold a fractional interest in a cellular partnership that was established long before the FCC's auction rules and DE program were put in place.

Rural Telco Bidding Credit Structure

Groups representing the vast majority of rural telephone companies nationwide have come together in support of a consensus plan (the "Rural Consensus") to revise the Commission's DE program. The Rural Consensus has been embraced by a diverse group that includes rural carriers of varying sizes, as well as carriers that have interests in incumbent wireless operations. Public interest advocacy groups have also recognized that rural wireless operations in particular need an expanded bidding credit.² Significantly, no commenters indicated they were opposed to the idea that the Commission should adopt a rural telephone company bidding credit.

At the heart of the Rural Consensus proposal is a 25% bidding credit targeted to bidders that (1) qualify under the Act or Commission's rules as a rural telephone company or that are a subsidiary/affiliate of a rural telephone company; and (2) have no more than 250,000 domestic

² May 18, 2015 *Ex Parte* Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission (*Public Knowledge Ex Parte Comments*) at p. 2.

retail subscriber lines, counting all fixed business and residential subscriber lines, aggregated over all affiliates. These eligibility criteria have a solid basis in Section 309(j) of the Communications Act and existing Part 1 auction rules, and they have been modified/expanded since the initial comments were filed in effort to seek a broader consensus among rural carrier groups, and so that the credit would also be available to rural telcos that may have investments in businesses that take them somewhat beyond the originally proposed limit of 100,000 subscriber lines, including all affiliates. The Rural Consensus proposal would promote the formation of partnerships and/or LLCs among rural carriers – so that groups of rural telcos can raise capital needed bid for larger PEA geographic area licenses - by not requiring these entities to “aggregate” access lines among non-affiliated rural telco participants. So long as qualified rural telephone companies or their affiliates have control of the bidding entity, the bidder should be eligible to use the credit in any PEA markets where a member has been granted ETC status.

An important characteristic of the proposed Rural Consensus bid credit, which recognizes the broad diversity in size (and relative need) of rural carriers is the idea that the rural telco credit would exist separate from, and in addition to, any small business bidding credit for which an applicant would otherwise qualify. Thus, a small business rural telco that qualifies for a 15% bid credit in all license areas would be able to use an additional 25% credit (or 40% total credit) in the PEA license area(s) where it or one of its members has ETC status. A very small business rural that qualifies for a 25% bid credit in all license areas would be eligible for a 50% total credit in these limited areas. Rural telephone companies need this larger and more focused credit in order to have a meaningful chance at bidding against nationwide or large regional competitors, which in many cases are publicly traded entities that are orders of magnitude larger than the rural telco and that have much greater bidding flexibility and access to capital. Granting rural

telephone company bidders a cumulative credit is much more beneficial to rural carriers than AT&T's proposal for a flat 25% credit to all applicants that have fewer than 250,000 combined wireless/wireline consumers (styled a "Small Business/Rural Telco Bidding Credit")³ because it recognizes the significant disparity between well-established rural incumbents *whose attributable revenues may exceed the caps for small business eligibility* and the vast majority of rural carriers whose gross revenues are only a fraction of that. An additional credit will encourage a greater number of rural telephone companies to participate in the Broadcast Incentive Auction, and it will give many more entities the ability to place bids for the substantially larger PEA licenses.

Monetary Cap on Rural Telco Bidding Credit

In addition to limiting the availability of the rural telephone bidding credit to areas where the bidder or one of its members has established ETC status, and to highlight another point of agreement between the DE proposals of the Rural Consensus Parties and alternative rural proposal supported by AT&T, the Blooston Rural Carriers support the imposition of a \$10 million cap on the total value of rural telephone company credit that any one bidder would be able to claim, and limiting the credit to \$10 million for a bidding consortium. There are some important distinctions between how the cap would work when comparing the proposals. AT&T's proposal would have the Small Business/Rural Telco Bidding Credit capped at \$10 million, but bidders could use the credit for bidding on any license, not just those licenses that include areas where members have ETC status. It is unclear under the AT&T proposal how their \$10 million cap would apply if independent operating companies that are managed by AT&T

³ See Comments of AT&T at p. 3; Comments of the Rural 26-DE Coalition at pp. 5-9.

(and possible having AT&T as an owner/partner) choose to participate in the auction separately. Would each have access to bidding credits up to a \$10 million cap? Would this give AT&T the benefit of bidding credits in excess of the \$10 million cap? The Blooston Rural Carriers would be opposed to such outcome.

Unjust Enrichment and the Rural Telco Bidding Credit

To guard against unjust enrichment in connection with the rural telephone bid credit, the Rural Consensus Parties agree the credit should be subject to the same unjust enrichment criteria that the Commission ultimately adopts for the small business bid credit, unless the license is assigned or partitioned to another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area. Previous comments by RWA and NTCA also proposed there should be no unjust enrichment obligation if a license is assigned or partitioned to an independent wireless ETC certificated in the original license area with fewer than 100,000 subscribers.⁴ The Blooston Rural Carriers do not object this further exception because it would promote cooperative arrangements between smaller wireless ETCs and rural telephone companies in extending service to rural communities.

Assignment and Leasing of Licenses Won with the Rural Telco Bidding Credit

Limitations on assigning licenses won with a Rural Telco Bidding Credit back to an investor or leasing spectrum with a Rural Telco Bidding Credit to an investor would be further protections that the Blooston Rural Carriers and Rural Consensus Parties further support. To facilitate partitioning of PEA licenses and to provide greater flexibility in rural business and

⁴ See May 14 Comments of the Rural Wireless Association and NTCA – The Rural Broadband Association (NTCA/RWA Comments) at p. 9.

operating arrangements, these limitations would not apply to the extent that the license assignment, partitioning or lease is to another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area (as established by its existing ETC designation), or to an independent wireless ETC that is certificated in the original license area and that has fewer than 100,000 subscribers. These latter arrangements will promote cooperative arrangements to extend service to rural communities and help ensure that rural spectrum is put to use both quickly and robustly.

The Commission Should Adopt Rural Telco Partitioning Incentives

The Rural Consensus Parties also agree that the Commission should create an auction mechanism that would encourage larger carriers to enter into partitioning arrangements with rural telephone companies and/or rural telco subsidiary companies.⁵ The mechanism would provide smaller rural carriers with an alternative way to secure access to 600 MHz spectrum in their service territory if they are unable to participate in bidding on larger PEAs on their own or as part of a rural partnership. As NTCA and RWA have noted, this mechanism would encourage large carriers to carve out spectrum to rural carriers and thereby expedite rural network construction, and it would not result in a windfall to large carriers or significantly diminish auction revenue because the partitioned areas are most likely to be sparsely populated and of small monetary value.⁶

⁵ See May 14 Comments of the Blooston Rural Carriers at pps. 14-16; NTCA/RWA Comments at pp. 14-15.

⁶ NTCA/RWA Comments at p. 15.

CONCLUSION

The Blooston Rural Carriers respectfully request that the Part I competitive bidding rules be modified as described above, in order to provide rural telephone carriers with a meaningful opportunity to participate in spectrum auctions and the provision of important wireless services to their rural subscribers.

Respectfully submitted,

THE BLOOSTON RURAL CARRIERS



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Rural Consensus Positions

Rural Telco Bidding Credit Structure

- A 25% credit available to an entity that:
 - (1) qualifies under the Act or Commission's rules as a rural telephone company or is a subsidiary/affiliate of a rural telephone company; and
 - (2) has no more than 250,000 domestic retail subscriber lines, counting all fixed business and residential subscriber lines, aggregated over all affiliates.
- The Commission should not aggregate access lines served by non-affiliated rural telephone companies. As long as qualified rural telephone companies or their affiliates have control of the bidding entity, the bidder should be eligible for the Rural Telco Bidding Credit in areas where one of its members operates and has ETC status.
- Rural Telco Bidding Credit would be separate from, and in addition to, any small business bidding credit for which an applicant would qualify.
- Discount would be available on an eligible entity's gross winning bid(s) for any geographic area license(s) that overlap, in whole or in part, the qualified rural telephone company's wireless or wireline service area defined by its existing ETC designation.
- **Monetary Cap:** No one rural telephone company could receive more than \$10 million in Rural Telco Bidding Credits.
 - The \$10 million cap would not accumulate, and would apply to individual companies or consortia.
 - A consortium of three rural telephone companies would be eligible for \$10 million – not \$30 million.
- **Assignment:** The Rural Telco Bidding Credit should be subject to the same unjust enrichment criteria that the Commission ultimately adopts for the small business bid credit, unless the license is assigned or partitioned to:
 - (1) another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area; or
 - (2) an independent wireless ETC certificated in the original license area with fewer than domestic 100,000 subscribers.
- **Leasing:** Subject to certain restrictions, entities that win licenses with the Rural Telco Bidding Credit should be able enter into lease or wholesale agreements regarding the capacity of that spectrum with companies that have not invested in the license winner.
 - The Commission should restrict lease or wholesale agreements with nationwide wireless carriers in a fashion similar to the way that the Attributable Material Relationship rule limits such agreements regarding spectrum won with the Small Business Bidding Credit.

- The Commission should recognize that relationships between rural carriers aimed at obtaining access to spectrum for rural service benefit the public interest. The Commission should allow lease or wholesale agreements between a winning bidder and:
 - (1) another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area as defined by its existing ETC designation; or
 - (2) an independent wireless ETC certificated in the original license area with fewer than domestic 100,000 subscribers.

- **Assignment/Leasing to Investors:**
 - Assignment of a license won with a Rural Telco Bidding Credit back to an investor in the winning licensee would be prohibited throughout the initial license term.
 - An investor in the winning licensee would be prohibited from entering into a lease or wholesale agreement regarding capacity of any license won with the Rural Telco Bidding Credit.
 - To facilitate rural partitioning arrangements, these prohibitions should not apply if the assignment is to an investor that is:
 - (1) another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area as defined by its existing ETC designation; or
 - (2) an independent wireless ETC certificated in the original license area with fewer than domestic 100,000 subscribers.