

May 29, 2015

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Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation
WT Docket No. 14-170, GN Docket No. 12-268, RM-11395 and
WT Docket No. 05-211

Dear Ms. Dortch:

On May 27, 2015, Joseph R. Hanley, Senior Vice President, Technology, Services and Strategy, Telephone and Data Systems, Inc. (“TDS”), parent corporation of United States Cellular Corporation (“U.S. Cellular”), Grant B. Spellmeyer, Vice President, Federal Affairs and Public Policy, U.S. Cellular, Stephen P. Fitzell, General Counsel of U.S. Cellular, and George Y. Wheeler and the undersigned, both of Holland & Knight LLP, met with Roger Sherman, Jim Schlichting, Jean Kiddoo, Margaret Wiener, Karen Sprung, Russell Hsiao, Johanna Thomas and Sue McNeil of the Commission’s Wireless Bureau. During this meeting, we discussed certain issues now before the Commission pursuant to the Notice of Proposed Rule Making (“NPRM”) and supplemental public notice in the above-captioned proceedings.¹

Specifically, we stressed the importance of retaining the current Designated Entity (“DE”) rules which comply with the mandate of Section 309(j)(3)(B) of the Communications Act, which directs the Commission to promote “competition” in its licensing practices and to “dissemin[ate] licenses among a wide variety of applicants, including small businesses, rural telephone companies and women.”² We noted that since 1994 the Commission has recognized that carrying out the “small business” aspect of that pro-competition mandate has required permitting investment in DEs by larger entities, accompanied by appropriate safeguards to ensure that the small business entity remains in control of the DE. Also since 1994, the Commission has acknowledged that bidding credits for DEs have been a necessary incentive for these investments, which have allowed DEs to obtain more than a negligible number of licenses.³

¹ See *Updating Part 1 Competitive Bidding Rules*, Notice of Proposed Rulemaking, 29 FCC Rcd 12426 (2014); *Request for Further Comment on Issues Related to Competitive Bidding Proceeding, Updating Part 1 Competitive Bidding Rules*, Public Notice, FCC 15-49 (Apr. 17, 2015).

² 47 U.S.C. §309(j)(3)(B).

³ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5537 (1994).

As a demonstration of the importance of bidding credits, U.S. Cellular submitted the attached maps, which depict respectively the market areas actually won by U.S. Cellular's DE partners King Street Wireless in Auction 73 and Advantage Spectrum, L.P. in Auction 97, as well as the areas these applicants would have won on a *pro forma* basis without bidding credits, but assuming the same total outlay. In applying this constraint and thus reducing the number of licenses won, we assumed that King Street and Advantage Wireless would have bid for and won the markets with the highest population density, a reasonable assumption given the economics of deploying networks in low-density areas. The difference in the numbers of markets won with and without bidding credits, with all other factors kept constant, is stark. In the case of King Street, the reduction in the number of markets won without bidding credits would have resulted in curtailing the aggressive LTE deployment that it has been able to achieve. Moreover, the impact in rural markets would have been most severe.

Thus, we urged that the Commission not allow a justified concern over possible abuses among participants in a joint bidding arrangement in Auction 97 to obscure its traditional recognition of the necessary financial prerequisites of a solid DE program, one which allows DEs to achieve adequate scale and scope, and gives them a reasonable chance to succeed.

Accordingly, we also argued that the Commission should not adopt any of the measures proposed by commenters in these proceedings (measures NOT proposed by the Commission in the NPRM) which would have the effect, individually and collectively, of destroying the DE program. Among those proposals are draconian caps on the bidding credits available to DEs, restrictions on the percentage of equity ownership held by DE investors, extended DE holding periods, and discriminatory buildout requirements.

We pointed out that burdening DEs with buildout requirements not mandated for other licensees could have an especially negative impact in the context of the upcoming 600 MHz auction given the potential timing of fifth generation ("5G") technology availability vis-à-vis the timing of the auction. Specifically, small DEs could be forced to deploy networks before larger carriers have enabled a 600 MHz equipment ecosystem, making it more difficult if not impossible for them to deploy 5G networks at reasonable cost.

With respect to imposing a cap on bidding credits, we noted the level of bidding credits received historically by DEs affiliated with U.S. Cellular, and suggested that caps below this level would make it very difficult for DEs to partner with mid-sized carriers to build networks and deliver the public interest benefits noted above.

We stressed that the DE program has provided King Street, a female-controlled entity, with the opportunity to gain valuable experience as a network operator and new entrant into the wireless industry. King Street's president, Allison Cryor DiNardo, also served as a member of the Board of Directors of CTIA – The Wireless Association.

In addition, the DE program has helped U.S. Cellular remain in business and invest aggressively as a mid-sized carrier in an industry dominated by giants. Customers of wireless services have benefited from this investment and the competition it enables. For example,

working together, King Street and U.S. Cellular have been able to expedite deployment of 4G LTE service to more than 93% of the population in their service areas. Many of these customers are in rural areas, and but for the access to this spectrum, they would have limited or no access to high speed wireless broadband.

We also urged the Commission not to make any distinction between “financial” and “carrier” investments in DEs for the purposes of the “attributable material relationship” (“AMR”) rule, or for any other purpose. Carrier investments in DEs are desirable and should be encouraged given that carriers bring to such relationships vital operational knowledge, purchasing power that enables DEs to have competitive cost structures, and a long-term commitment to the industry. Particularly when DEs partner with non-dominant and regional carriers like U.S. Cellular, the combined capabilities and resources of the DE and the carrier foster expanded service and robust competition.

We further noted that, between 2006 and 2010 (*i.e.*, when the ten-year “holding period” and 50% cumulative AMR rule pursuant to Section 1.2110(b)(3)(iv)(A) of the Commission’s rules were in place), DE participation in auctions dropped drastically.⁴ That past experience provides a vivid sense of what will happen if the Commission adopts similar rules now.

Accordingly, we urged the Commission to return to the reform agenda set out in the NPRM, emphasizing that it should repeal the remaining 25% AMR rule, as proposed in the NPRM. We asked that the AMR rule be replaced with the Commission’s proposed two-pronged approach, which would use the existing controlling interest and affiliation rules to determine both whether an entity qualifies as a DE and whether it retains control over the spectrum associated with the licenses for which it has received bidding credits.⁵ By so doing, the Commission can assure that DEs will have a fighting chance to participate both in the upcoming 600 MHz auction and in the provision of twenty first century telecommunications services.

In response to a question, we also reaffirmed our support for a change in the relevant rules to forbid any two applicants in the same wireless auction from having any knowledge of each other’s bidding strategies or actual bids. Again, we noted that this is where any possible abuse occurred in the past, and where the remedy lies.

In response to questions, we also stated that all licensees should have flexibility to engage in network sharing, wholesaling, and other innovative business models as legitimate alternatives to traditional “facilities-based” business models.

In conclusion, we stressed that in these proceedings we have sought to defend the right of U.S. Cellular and similarly-situated carriers to participate in the DE program, demonstrating that such participation has served U.S. Cellular, its DE partners, their customers, and the general public interest.

⁴ See *Council Tree Communications, Inc. v. FCC*, 619 F.3d 235, 248 (3d Cir. 2010).

⁵ See NPRM, 29 FCC Rcd at 12431-40.

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This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

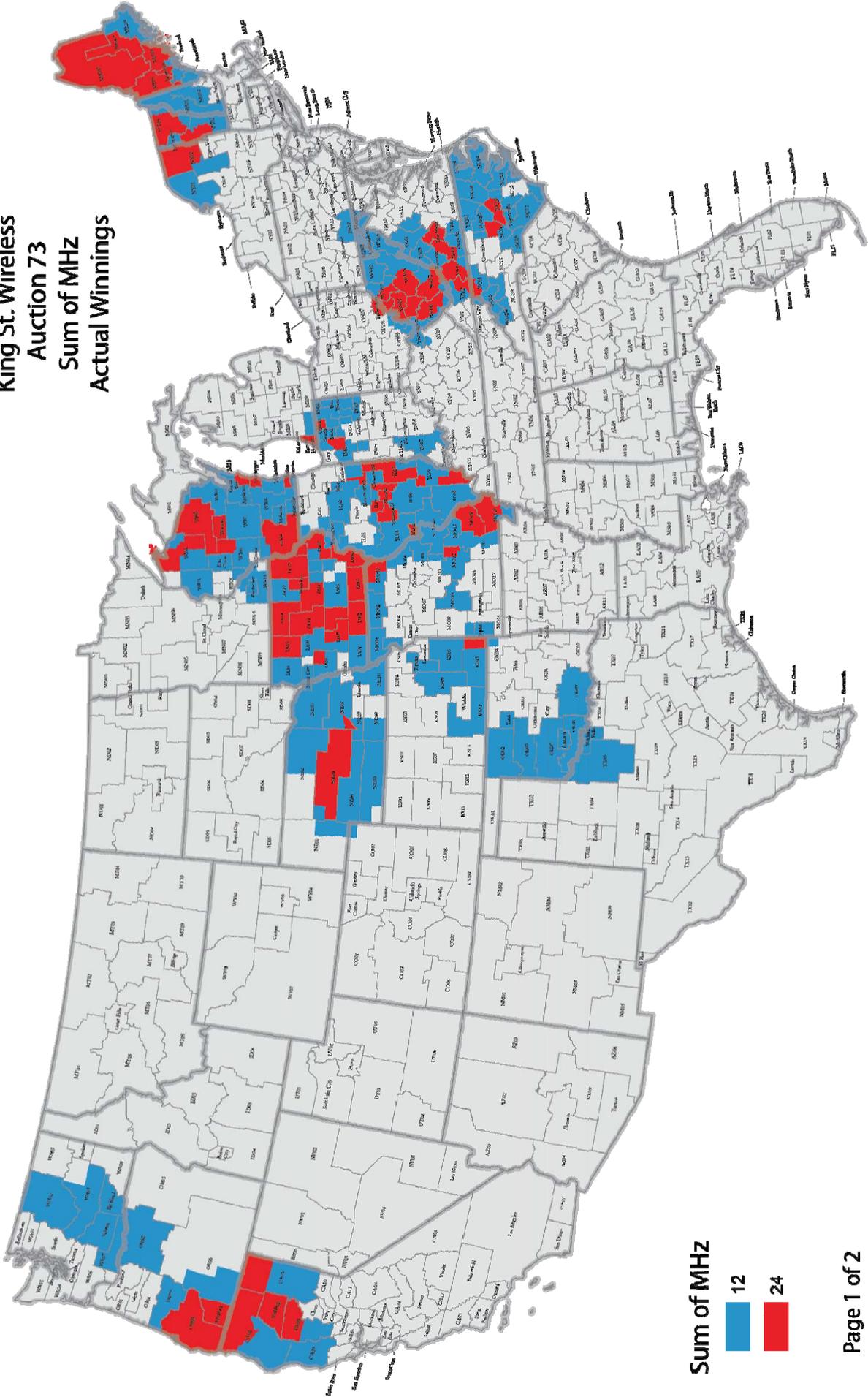
Respectfully submitted,
HOLLAND & KNIGHT LLP

/s/
Peter M. Connolly
Counsel for United States Cellular Corporation

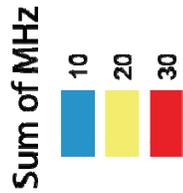
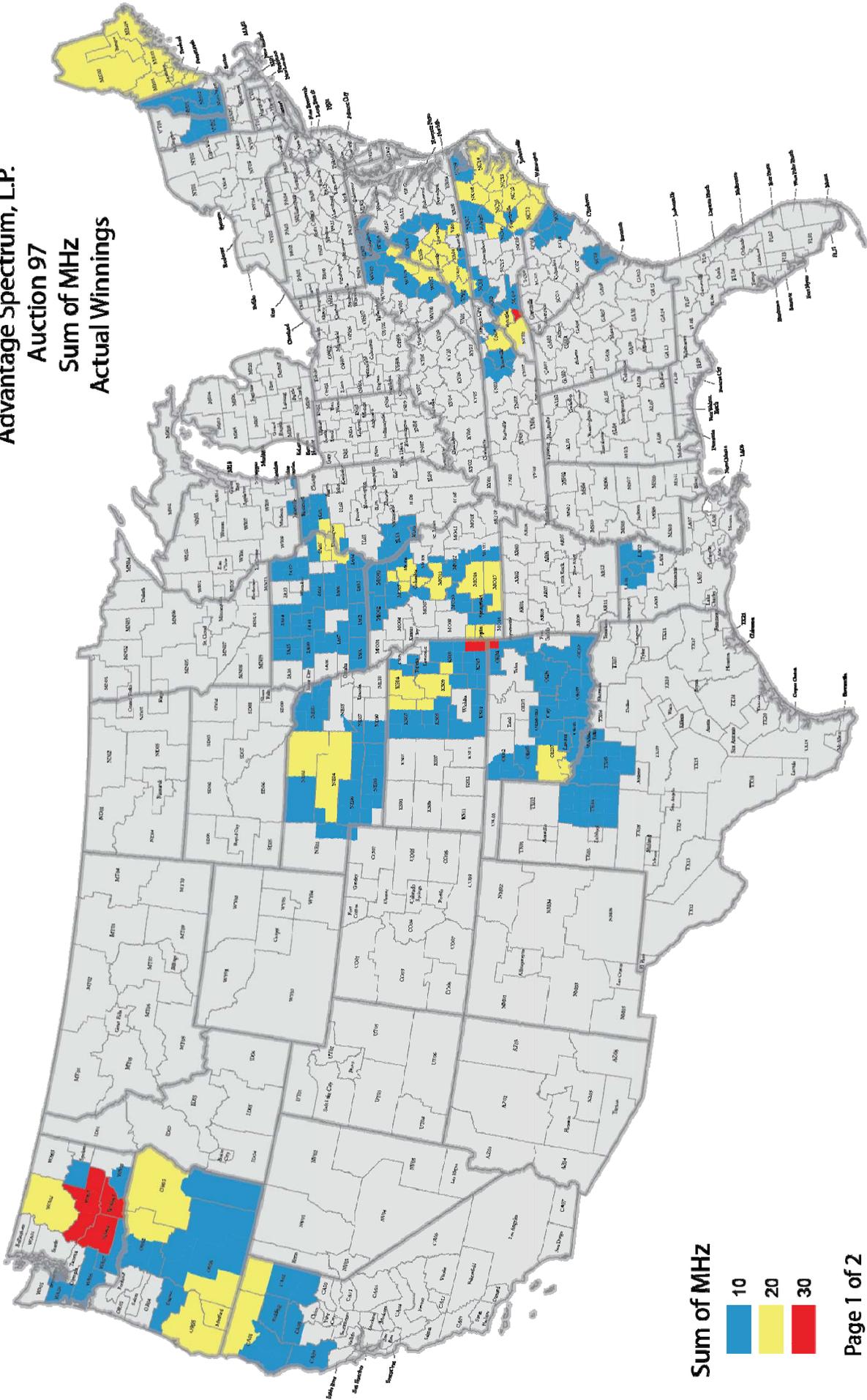
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King St. Wireless Auction 73 Sum of MHz Actual Winnings



Advantage Spectrum, L.P. Auction 97 Sum of MHz Actual Winnings



**Advantage Spectrum, L.P.
Auction 97
Sum of MHz
Proforma Winnings
with no discount**

