

June 3, 2015

**PRESENTATION BY
KING STREET WIRELESS, L.P.
TO
STAFF OF WIRELESS TELECOMMUNICATIONS BUREAU
IN**

WT Docket No. 14-170

GN Docket No. 12-268

RM-11395

WT Docket No. 05-211

**Russell Lukas
Tom Gutierrez
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102**

I. KING STREET WIRELESS L.P. – A SUCCESSFUL DESIGNATED ENTITY

- **Holds 152 700 MHz licenses.**
- **Constructed all licenses prior to initial construction deadline.**
- **Initiated the entire 700 MHz Block A Interoperability Proceeding and saw it through to the end.**
- **Is controlled by a female.**
- **Its president has served on CTIA's board.**

II. STATUTORY MANDATES

- **309(c) (3)(B) requires the Commission to**
 - **Promote competition**
 - **Avoid excessive concentration of licenses**
 - **Disseminate licenses to a wide variety of licensees, including**
 - **small businesses**
 - **rural telcos**
 - **minorities, and**
 - **women**

- **SECTION (j) (4)(D)**
 - **requires the Commission to ensure that the above protected groups “are given the opportunity to participate in the provision of spectrum-based services.”**

III. DE SUCCESSFUL PARTICIPATION IN MAJOR WIRELESS AUCTIONS HAS BEEN DROPPING PRECIPITOUSLY

- **Auctions 4, 5, 11 and 22 (the Initial PCS Auctions)**
 - **33% of licenses sold to DEs**

- **Auction No. 58:**
 - **22% of licenses sold to DEs**
 - **On a Value Basis, DEs won only 36% of licenses**

- **Auction No. 66:**
 - **20% of licenses sold to DEs**
 - **On a value Basis, DEs won only 6% of licenses**

- **Auction No. 73:**
 - **35% of licenses sold to DEs**
 - **On a value Basis, DEs won only 3%**

- **(Auction No. 97: No grants as of yet to DEs; resolution of Dish issue remains pending)**

- **Further reductions in DE eligibility, which is virtually certain to result in diminished DE licensing, would bring DE participation below any level that would be consistent with the Act.**

IV. VARIOUS PROPOSALS TO CUT BACK ON THE DE PROGRAM WOULD FAIL TO COMPLY WITH STATUTORY DIRECTIVES AS THEY WOULD PROVIDE BENEFIT ONLY TO NATIONWIDE AND RURAL CARRIERS

- **A \$10MM cap would significantly reduce successful DE participation, by limiting to \$40MM the total winning bid amount any single DE could have.**
- **A \$10MM cap would deter investment by mid-size and large carriers, as very few would likely set up a DE structure for a single-small-license entity.**
- **A \$10MM cap would preclude the type of scale necessary for successful industry participation.**
- **A minimum equity investment of 25% by the qualified DE would severely limit the pool of potential DE candidates.**
- **Automatic (or presumed) affiliation for any investment of 50% or more equity, even if non-controlling, would greatly reduce investment from mid-size carriers.**
- **The combined effect of these prospect changes would be to that no DE could receive bid credits for any city larger than, e.g., Nashville, and competition for all larger licenses would be reduced, to the benefit of the nation's largest carriers.**

- **Adoption of any of the above, modifications would:**
 - **Make the DE program a mini-program that caters only to nationwide carriers and rural telcos**
 - **Provide virtually nothing to non-rural small business**
 - **Provide virtually nothing to women**
 - **Provide virtually nothing to minorities**
 - **In no way help competition (and would actually thwart it)**

V. THE COMMISSION SHOULD IMPLEMENT THE “LESSONS LEARNED” FROM AUCTION 97 BY REPEALING RULES THAT AUTHORIZED DISH TO ABUSE THE AUCTION PROCESS

- **The “bidding consortium” exception to the anti-collusion rule serves no purpose other than to authorize collusion between bidders**
- **The Commission should the repeal § 1.2105(a)(2)(viii) and prohibit bidding consortia and all joint bidding arrangements**
- **The Commission should reinstate a “one-to-a-market” rule**
- **The Commission should remedy the gamesmanship exhibited by DISH, not cripple the DE Program**

VI. DE AUCTION 97 TEACHES THAT DE BIDDING PRODUCES SUBSTANTIAL NET AUCTION REVENUE GAINS

- **The DE Program is not taxpayer funded and does not reduce Government revenues**
- **DEs are the key marginal drivers of pricing**
- **Research shows that bidding credits of \$3.57 billion in Auction 97 yielded a net gain of more than \$20 billion in revenues**
- **The DE Program yielded record Auction 97 revenues *after* taking the bidding credits into account**
- **Proposals to limit the DE Program are intended to allow the largest (nationwide) carriers to pay less for more spectrum**
- **Limiting the DE Program will reduce auction revenue**

VII. THOSE PROPOSALS TO LIMIT THE DE PROGRAM WOULD MAKE IMPOSSIBLE THE REQUIRED SCALE TO PERMIT ONGOING OPERATIONS

- **As per the Wood & Wood white paper presented by King Street with its reply comments in this proceeding:**
 - **The impact of certain of the proposed restrictions, if adopted, on the existing DE program (i.e. increasing attribution when non-controlling entities have substantial equity investment and requiring qualified DE entities to have increased equity positions) is clear, and would present a clear threat to the Commission’s DE program.**
 - **Reductions in the level of bidding credits would make it more difficult for small businesses to successfully bid against a larger, well-financed carriers, and extending a mandatory holding period would hamstring small businesses in their ability to attract capital and make market-driven network deployment and upgrade decisions as technology changes over a shorter time horizon.**
 - **Constraining DE total bid credits limits the value of licenses that a DE could acquire in an auction. “At best, this is an attempt by large carriers to keep small businesses small by limiting their participation in a given auction and placing a hard cap on the size of their operations.”**
 - **Proposed caps on bid credits could drive small businesses out of the market. This would have implications for market concentration and competition (and therefore wireless consumers) going forward.**
 - **The acquisition cost of telecommunications equipment is a direct function of size and scale of the purchaser. Larger carriers consistently pay less – and often substantially less – for the same equipment.**
 - **The standard practice is for telecommunications equipment to be offered at a list price, but to be sold at varying discounts off that list**

price. Smaller carriers and new entrants have historically received a modest discount, while the largest carriers have received much more substantial discounts (in the range of 50 – 60% or more, depending on configuration and vendor).

- **Large carriers pay substantially less than small carriers, and large projects are less costly (per unit) to equip than smaller projects. In order to compete with large established carriers, a small business must be able to enter and operate at a sufficient scale so that this equipment cost penalty is not too great to allow it to compete.**
- **Vendor bids for larger buildout projects reflect more discounted price for equipment than bids for smaller projects.**
- **Real world experience reveals that, whether built or leased, high-volume backhaul facilities were less costly than lower volume backhaul facilities.**
- **In order to compete with established carriers, the entity and its projects must be of sufficient scale. This means that a small business must be able to acquire a sufficient number of licenses of a sufficient size; otherwise its cost to acquire necessary equipment and facilities will be substantially higher than that of its competitors.**
- **The availability of equipment is also a potential issue that is directly related to scale. The availability (and timing of delivery) of a vendor's equipment depends very much on the size of the customer.**
- **Operations costs are also directly impacts by scale. The size of a carrier directly determines the terms, and being larger enables a carrier to obtain better terms.**
- **Scale directly impacts a carrier's access to capital. Experience underscores the need for DE to be able to acquire capital from other industry participants. In order to do so, the DE must be able to pursue projects of sufficient size and scale.**

VIII. CONCLUDING COMMENTS

- **King Street has been a successful DE, in its bidding, building and industry participation.**
- **King Street is a female-controlled entity.**
- **The Act requires that the Commission to offer to each of women, minorities, small businesses and rural telcos, an opportunity to participate in the provision of spectrum-based services to avoid excessive concentration of licenses and to promote competition.**
- **Many of the proposals proffered by nationwide carriers and rural telcos would thwart, not promote, most of the DE statutory mandates.**
- **Only nationwide carriers and rural carriers would benefit from those proposals.**
- **When the Commission commenced auctions, it properly recognized the opportunity to be made available to DEs. Since that time, the benefits to DEs have declined considerably.**
- **The proposals of the nationwide-rural coalition would effectively dismantle the existing DE program without solving any problem.**
- **The proposal to cap bid credits means that no DE could ever obtain more than one license for a market the size of Nashville.**

- **That limit would preclude any DE from receiving funding for a medium sized carrier, or from operating profitably after obtaining a license.**
- **The problem with Auction No. 97 was collusion, not DE status, and the solution lies with barring all collusion, including that which may currently be permissible with joint bidding agreements.**

* * * * *