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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 June 11, 2015, Grant B. Spellmeyer, Vice President, Federal Affairs and Public Policy, United States Cellular Corporation (“U.S. Cellular”), and the undersigned met with Renee Gregory and Jessica Almond of Chairman Wheeler’s office to discuss certain issues now before the Commission pursuant to the Notice of Proposed Rule Making (“NPRM”) and supplemental Public Notice in the above-referenced proceedings.¹

During the meeting, we again urged the Commission to generally maintain the current Designated Entity (“DE”) program, while also ensuring, through adoption of the proposals set forth in the NPRM, that small businesses continue to have an opportunity to participate in the provision of spectrum-based services.² We therefore stressed that the Commission must not adopt rules that would undermine, and possibly even destroy, the DE program due to concerns regarding Auction 97 that are unrelated to the DE program itself. For instance, we again expressed our opposition to restrictions on the percentage of equity ownership held by DE investors, minimum equity requirements for the controlling interest(s) in a DE, and extended unjust enrichment periods, explaining that such requirements would make it even more difficult, and perhaps impossible, for DEs to obtain financing.

In particular, we strongly urged the Commission not to “cap” the amount of bidding credits a DE may claim for a given auction. We stressed that, in addition to being far lower in dollar amounts than the Auction 97 bidding credits alleged to be abusive, the unreasonably low

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, 30 FCC Rcd 4153 (2015).

² See NPRM, 29 FCC Rcd at 12430 (“Collectively, these proposals seek to update our rules to reflect that small businesses need greater opportunities to gain access to capital so that they may have an opportunity to participate in the provision of spectrum-based services in today’s communications marketplace.”).

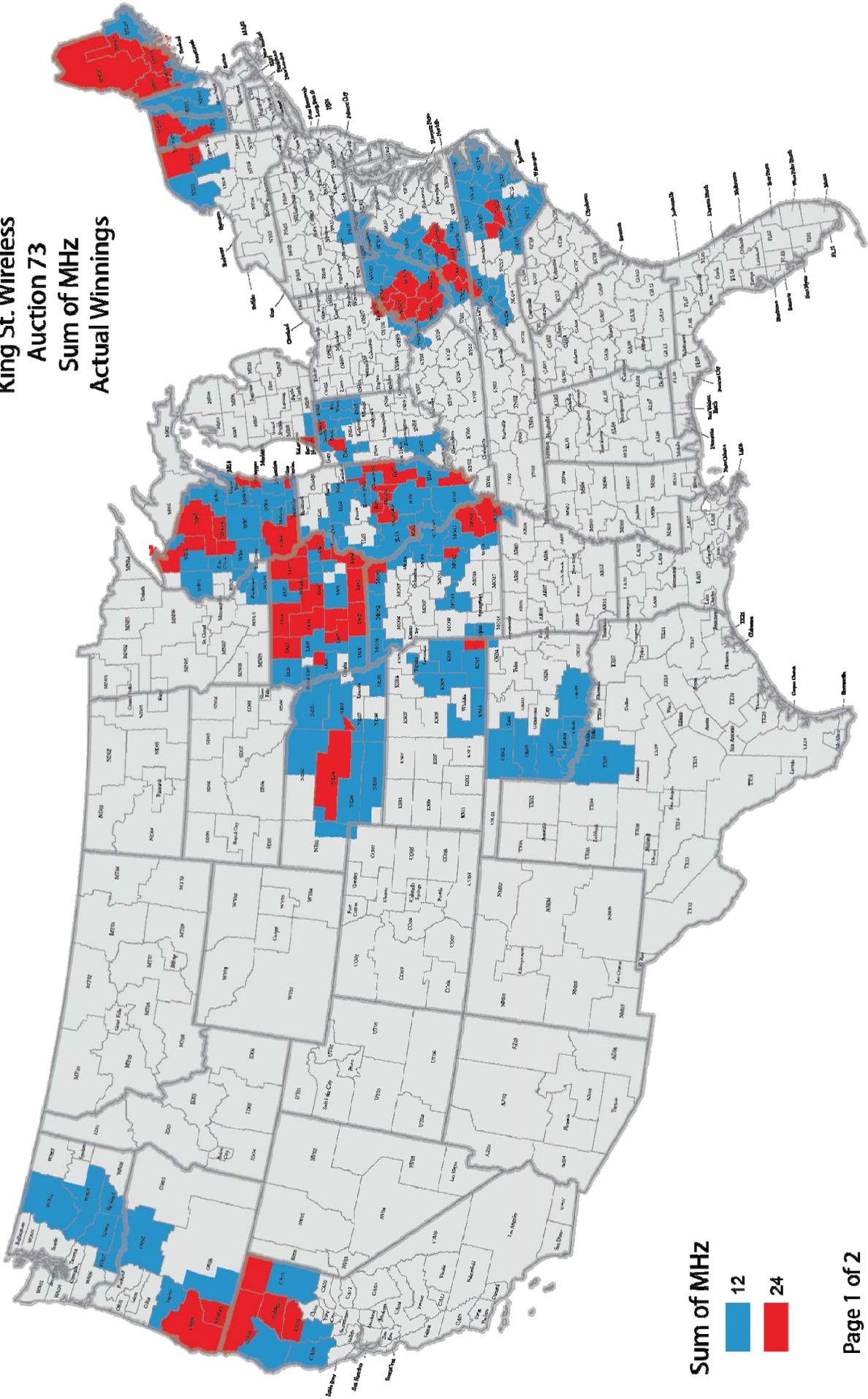
caps proposed by some commenters would effectively prevent DEs from competing for spectrum in heavily-populated markets. Moreover, even if a DE is not focused on the largest markets, the proposed caps would significantly restrict the number of licenses it could acquire. For instance, in Auction 97, the licenses for even many mid-sized markets individually sold for more than \$40 million, which would be the maximum amount a DE could bid with the assistance of bidding credits if the Commission were to adopt the \$10 million cap proposed by AT&T and the Rural-26 DE Coalition. Consequently, the proposed caps would prevent a DE from operating with sufficient scale to sustain itself in the industry, let alone become a viable competitive threat to the currently dominant carriers. We also explained that a bidding credit cap very well could prevent DEs from acquiring even a limited number of small-market licenses because such a cap would make it very difficult to obtain any level of financing.³

As a demonstration of the importance of bidding credits, we provided 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.

In response to a question regarding whether a bidding credit cap of any size would be reasonable, we noted the level of bidding credits received historically by DEs affiliated with U.S. Cellular, and explained that caps below this level would make it very difficult for DEs to partner with mid-sized carriers or otherwise obtain the financing necessary to acquire spectrum resources sufficient to compete in today's wireless marketplace. However, we also explained that any bidding credit cap, regardless of amount, would create significant issues for the DE program and make it difficult for the Commission to meet its statutorily-mandated public interest obligations. For instance, we noted that a cap amount that appears reasonable today will quickly become outdated given that spectrum acquisition costs continue to increase dramatically. We also noted that the 600 MHz licenses that will be offered in the incentive auction likely will go for a premium given the unique value of low-band spectrum, which would make any bidding credit cap based on the results of recent auctions for mid-band spectrum speculative. In addition, we

³ See Comments of Council Tree Investors, Inc., WT Docket 14-170, *et al.*, p. 30 (May 14, 2015) ("If DEs' bidding credits are to be capped at low levels, large investors would have no incentive to ally with them, and would instead choose not to invest their capital in auctions."); Letter from E. Ashton Johnston, Telecommunications Law Professionals PLLC, counsel to M/C Partners, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-170, *et al.*, p. 2 (May 21, 2015) (stressing that several of the proposals made by commenters, including a cap on bidding credits, would "dampen investor interest and make it more difficult for entrepreneurs to raise capital").

King St. Wireless Auction 73 Sum of MHz Actual Winnings



Sum of MHz

12

24

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

