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June 22, 2015

Via ECFS

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

Re: *EX PARTE* NOTICE

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

Dear Ms. Dortch:

On Thursday, June 18, 2015, Greg Whiteaker, Sarah Aceves and the undersigned, all with Herman & Whiteaker, LLC, on behalf of the Rural-26 DE Coalition[1] ("Rural-26") met with Roger Sherman, Patrick Donovan, Jean Kiddoo, Sue McNeil, Kelly Quinn, Johanna Thomas and Margaret Wiener of the Federal Communications Commission's ("FCC or Commission") Wireless Telecommunications Bureau.

The purpose of the meeting was to discuss concerns held by Rural-26 and possible remedies that would close existing loopholes within the FCC's Designated Entity ("DE") program, as described in comments submitted in response to the FCC Public Notice requesting

[1] Company members of the Rural Coalition are listed in Attachment A attached hereto. The Rural-26 represents an ad hoc group of rural telecommunications providers adversely affected by the exploitation of the DE rules in the AWS-3 auction and/or concerned about the likely abuse of the DE rules in the upcoming incentive auction.

further comment on issues relating to the FCC competitive bidding rules.[2] During the meeting, Rural-26 explained that the original intent of the DE program was lost during Auction 97 due to gamesmanship and exploitation of existing bidding credit rules. Various Rural-26 members who did not qualify for bidding credits in Auction 97 under the current FCC rules were consistently outbid in their home markets by larger companies that did qualify for bidding credits via those companies' DEs.

Rural-26 also discussed the importance of making changes to the DE program due to the likelihood that many more rural companies, including Rural-26 members, likely will participate in the upcoming incentive auction than participated in Auction 97, given the favorable propagation characteristics of the 600 MHz spectrum and the opportunity for rural providers to use this spectrum to provide mobile and fixed wireless broadband services in rural markets.

Rural-26 again urged the Commission to implement a cap on all bidding credits awarded to each qualified bidder, and explained that implementation of a cap will protect legitimate small businesses from potential abuse and ensure that those entities who receive a bidding credit are true small businesses or new entrants. Furthermore, Rural-26 discussed the importance of the FCC adopting two bidding credits: a non-revenue-based small business/rural communications company bidding credit and a revenue-based bidding credit that will encourage new entrant participation. Awarding such bidding credits is not only consistent with the Commission's statutory obligation,[3] but it also will help ensure that rural telephone and wireless companies are given a legitimate opportunity to deploy spectrum-based broadband services in rural areas.

Rural-26 also discussed the devastating effect possible elimination of joint bidding arrangements and bidding agreements would have on rural companies. In past spectrum auctions, such bidding arrangements have proven critical to some Rural-26 members seeking to obtain spectrum in larger markets that cover the service areas of multiple rural providers. The use of bidding consortia alone in these situations is not a viable alternative as the various rural companies may not qualify for the same level of bidding credit.

Rural-26 also urged the Commission to clarify exactly what types of agreements constitute "bidding agreements" and to further clarify whether "agreements not to agree" are considered reportable "bidding agreements." Currently, there is substantial uncertainty in the industry regarding the types of agreements that the Commission considers to be bidding agreements.

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[2] *See* Comments of the Rural-26 DE Coalition in Response to Public Notice Request for Further Comment, WT Docket No. 14-170 (filed May 14, 2015); Reply Comments of the Rural-26 DE Coalition WT Docket No. 14-170 (filed May 21, 2015).

[3] *See* 47 U.S.C. § 309(j)(4)(D) ("[T]he Commission shall ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures...").

Rural-26 also urged the Commission not to prohibit common ownership interests in more than one applicant in all situations. Because of the history of the licensing of cellular service, many rural telephone companies hold wireless interests through cellular partnerships. In several situations, Rural-26 members hold interests in more than one cellular partnership (whose management, business plans, and operations are otherwise wholly unrelated to each other.) Were the Commission to broadly prohibit all common ownership of auction applicants, it would substantially limit participation in the 600 MHz auction by numerous rural wireless carriers. The use of bidding consortia is not a viable solution to this problem as it would force otherwise unrelated wireless carriers to enter into bidding arrangements and may force such companies to violate anti-trust laws.

If the Commission adopts limitations on common ownership of auction applicants, the Commission should carve out an exception for existing, rural wireless partnerships. Common ownership and bidding arrangements should be permissible in such situations. Alternatively, an entity with multiple interests should continue to be able to limit its involvement in and knowledge of, the bidding strategy of more than one applicant during the auction process. There is a lengthy history of the use of such insulating procedures to ensure compliance with the Commission's anti-collusion rule, and the continued use of such procedures would avoid the unnecessary exclusion of rural wireless partnerships from the 600 MHz auction.

Finally, the Rural-26 stated that in order for the upcoming incentive auction to succeed, the Commission must ensure that rural and legitimate small businesses have a real opportunity to participate and obtain spectrum in the 600 MHz band and that in order to do so, the DE rules must be revised to, at the very least, level the playing field for small and independent operators seeking to provide local and rural wireless services.

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

Sincerely,

Donald L. Herman, Jr.
Counsel for the Rural Coalition

CC: Roger Sherman
Patrick Donovan
Jean Kiddoo
Sue McNeil
Kelly Quinn
Johanna Thomas
Margaret Wiener

ATTACHMENT A

Rural-26 DE Coalition

FTC Management Group, Inc.

Arctic Slope Telephone Association Cooperative, Inc.

Atlantic Seawinds Communications, LLC

Bug Tussel Wireless, LLC

Chariton Valley Communications Corporation, Inc.

Chester Telephone Company

Comporium Wireless, LLC

Cordova Wireless Communications, Inc.

Horry Telephone Cooperative, Inc.

KanOkla Telephone Association, Inc.

Leaco Rural Telephone Cooperative, Inc.

MobiNet LLC

Northeastern Iowa Telephone Company

Northwest Missouri Cellular Limited Partnership

Palmetto Rural Telephone Cooperative, Inc.

Paul Bunyan Rural Telephone Cooperative

Piedmont Rural Telephone Cooperative, Inc.

Plateau Telecommunications, Inc.

RSA 1 Limited Partnership d/b/a Chat Mobility
Iowa RSA 2 Limited Partnership d/b/a Chat Mobility

Sandhill Communications, LLC

Totelcom Networks LLC

Texas RSA 7B3, L.P. d/b/a Peoples Wireless Services

Public Service Wireless, Inc.

VTel Wireless, Inc.

West Carolina Rural Telephone Cooperative, Inc.

XIT Telecommunication & Technology, LTD