

July 2, 2015

**Via ECFS**

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

**RE: EX PARTE PRESENTATION**

**WT Docket No. 14-170:** *Updating Part 1 Competitive Bidding Rules*

**GN Docket No. 12-268:** *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*

**RM-11395:** *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*

**WT Docket No. 05-211:** *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*

Dear Ms. Dortch,

On June 30, Cary Mitchell of the law firm Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston Rural Carriers”),<sup>1</sup> Erin Fitzgerald of the Rural Wireless Association, Inc. (“RWA”), Jill Canfield of NTCA – The Rural Broadband Association (“NTCA”) and Tony Veach of the law firm Bennet & Bennet, PLLC<sup>2</sup> (together, “Rural Coalition”) met with Louis Peraertz, Senior Legal Advisor to Commissioner Mignon Clyburn, to discuss certain aspects of FCC Chairman Tom Wheeler’s Designated Entity (“DE”) bidding proposal.

The Rural Coalition expressed gratitude that the needs of rural carriers are being viewed as a priority in the Chairman’s DE bidding proposals, and urged that the current proposal for a 15% rural carrier bidding credit be increased to a 25% bidding credit. Additional bidding credit support is needed in order to level the playing field for rural carriers and to give them a fighting

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<sup>1</sup> The Blooston Rural Carriers have previously been identified in the record of these proceedings. *See, e.g.*, Comments of the Blooston Rural Carriers, WT Docket Nos. 14-170, 05-211, GN Docket No. 12-268, and RM-11395 at Attachment A (filed Feb. 20, 2015).

<sup>2</sup> Tony Veach attended this meeting on behalf of SRT Communications (Minot, ND), Panhandle Telephone Cooperative, Inc. (Guymon, OK), Copper Valley Telephone Cooperative (Valdez, AK), Nemont Telephone Cooperative, Inc. (Scobey, MT), Pine Belt Telephone Company, Inc. (Arlington, AL), and Central Texas Telephone Cooperative, Inc. (“CTTC”) (Goldthwaite, TX).

chance when bidding for highly sought-after low-band spectrum. In this regard, the Rural Coalition discussed the poor results of bidding by rural carriers in the AWS-3 auction (Auction 97). Tony Veach explained how an affiliate of CTTC – a bidder that was ineligible for a small business bidding credit in Auction 97 and would also be ineligible in the Incentive Auction under the proposed thresholds – was outbid by a Special Purpose DE substantially owned by DISH Network, Inc. that had access to a 25% bid credit. Unlike Special Purpose DEs that can be designed from the ground up to qualify for maximum bidding credits, rural telephone companies and cooperatives are ongoing business operations that have any of a number of affiliates and pre-existing operations that cannot be restructured to meet the small business maximum revenue thresholds. Access to a 25% bidding credit would have allowed a company like CTTC to bid on an equal footing with Special Purpose DEs in Auction 97, and adoption of a 25% rural provider credit will remedy this issue going forward.

In addition to providing bid credit parity between rural carriers and Special Purpose DEs, increasing the rural carrier credit from 15% to 25% will provide rural carriers and their customers a much better chance for success when bidding against nationwide and regional carriers. Rural carriers like those represented in the meeting compete at auction against nationwide and regional carriers that have access to tremendous amounts of capital to invest in spectrum licenses. A 25% rural provider credit will help these carriers to upgrade their existing networks and provide more robust services to rural America, and is particularly important given that Partial Economic Areas (“PEAs”) are significantly larger (and therefore more expensive to purchase and build out) than Cellular Market Areas. Meeting participants discussed the importance of a 25% rural provider bid credit in the context of rural economic development and job creation, and the fact that many of the persistent-poverty counties are in rural areas.<sup>3</sup> A 25% rural carrier credit is all the more necessary because AT&T and/or Verizon will be eligible to bid for 600 MHz “reserve” spectrum in many rural markets. AT&T or Verizon are reserve eligible in most of the country, including 74 percent of the nation’s geography and 40 percent of the POPs.<sup>4</sup>

On the topic of bid credit caps, the Rural Coalition expressed their continued support for a \$10 million cap on the rural service provider credit, and a \$10 million ceiling on the amount of bidding credits that any entity can use in the smaller PEA markets, consistent with Chairman Wheeler’s current DE bidding proposal. A \$10 million cap would allow rural service providers and rural bidding consortia to receive the full amount of the credit on gross bids of up to \$40 million (assuming a 25% credit is adopted), while the \$10 million ceiling on the use of bid credits in smaller markets (*e.g.*, PEA markets with 500,000 POPs or less) should help level the

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<sup>3</sup> United States Department of Agriculture Economic Research Service, *Geography of Poverty*, available at <http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx> (stating that the large majority (301 or 85.3 percent) of the persistent-poverty counties are nonmetro, accounting for 15.2 percent of all nonmetro counties); *see also* Comments of the Rural Carrier Coalition, WT Docket Nos. 14-170, 05-211, GN Docket No. 12-268, RM-11395. (May 14, 2015) (discussing how a rural provider bid credit will help rural carriers meet the wireless technology demands of critical industries like agriculture, food production, and energy).

<sup>4</sup> *See* July 1, 2015 *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, at p. 1 (with attached chart showing PEAs in which AT&T and/or Verizon are reserve eligible).

playing field for bona fide rural bidders vis a vis entities that want to pursue smaller PEA markets as an investment strategy.

The Rural Coalition also discussed how proposed restrictions on holding an interest in more than one auction application could inadvertently prevent rural cellular partnerships and their individual rural telco members, who may have interests in different geographic markets, from being able to bid in the auction independently from one another. As an example, the Rural Coalition explained that nationwide or regional service providers may be partners in and/or serve as managers of historic rural wireline cellular operations. The issue arises primarily with rural telcos that have telephone exchange areas in more than one Rural Service Area (“RSA”), and therefore ended up a part of more than one cellular RSA partnership as a result of the cellular B Block settlement process that applied to wireline companies in the mid to late 1980s.<sup>5</sup>

In this context, strict enforcement of a “one auction application” rule could prevent any of a number of rural cellular partnerships from being able to bid on their own and to control their own destiny if the nationwide carrier chooses to bid by itself separately. Conversely, in the absence of appropriate exceptions, the filing of a short-form application by just one of these partnerships could theoretically prevent a regional or nationwide carrier from filing its own separate application to bid. In previous auctions, these entities have not been foreclosed from bidding and have been able to pursue separate bidding strategies provided that relevant parties implement “ethical wall” procedures and certify their compliance with such procedures. The Commission should therefore continue to allow these types of bidding agreements, which have never been shown to cause any harm to bidding, and grandfather rural telcos and participants in wireline cellular partnerships from the multiple application restriction. As a related matter, the auction rules should continue to allow bidders in these circumstances to enter into agreements indicating that they are bidding independently and will not share bid strategy information.

Finally, rural telephone companies that want to bid as a group shouldn’t be limited to a strict “consortium” (joint venture) model. In previous auctions, if a consortium was a successful bidder, the Commission has required individual members to each file separate long-form applications for their separate license(s) or partitioned license areas. In other words, the joint venture only exists for purposes of bidding. This has worked in some instances, but rural carriers increasingly need to achieve economies of scale to compete in today’s wireless marketplace, and the consortium model doesn’t lend itself to groups of rural telcos that wish to work together on an ongoing basis as a single legal entity. Members of the Rural Coalition urge the Commission to clarify that rural carriers are not limited to using the consortium model if they want to work together, and that they may also form partnerships or LLCs among rural carriers for purposes of bidding and ongoing operations. The Commission should not aggregate members’ subscriber lines when evaluating the entity’s eligibility, and provided that rural carriers retain control of the enterprise, the entity should retain eligibility for rural carrier bidding credits.

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<sup>5</sup> See CC Docket No. 85-388; see also references in *Notice of Proposed Rulemaking*; WT Docket Nos. 98-205, 96-59; GN Docket No. 93-252; FCC 98-308; footnotes 139-140 (rel. Dec. 10, 1998) noting “settlements encouraged by the Commission during the initial phase of cellular licensing may have resulted in the creation of certain partial, often passive ownership interest in cellular licensees...” and “the attribution standard for cellular interests other than designated entities is set at 20 percent to account for our policy in the early days of the cellular industry to encourage the formation of settlement groups--a historic anomaly that has no counterpoint in the PCS context.”

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this *ex parte* presentation is being filed electronically with the Office of the Secretary.

Sincerely,

*/s/ D. Cary Mitchell*

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*/s/ Erin P. Fitzgerald*

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*/s/ Jill Canfield*

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**cc (via email):**  
Commissioner Louis Peraertz