

# HERMAN & WHITEAKER, LLC

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July 7, 2015

## Via ECFS

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

## **Re: EX PARTE NOTICE**

*Updating Part 1 Competitive Bidding Rules, et al.*

WT Docket No. 14-170; GN Docket No. 12-268; RM-11395; WT Docket No. 05-211

Dear Ms. Dortch:

On Thursday, July 2, 2015, Michael F. Hagg, CEO of Horry Telephone Cooperative, Inc., Greg Whiteaker, Sarah Aceves and the undersigned, of Herman & Whiteaker, LLC, all on behalf of the Rural-26 DE Coalition (“Rural-26”) met with Brendan Carr, Legal Advisor to Commissioner Pai, to discuss proposed changes to the Federal Communications Commission (“FCC” or “Commission”) Designated Entity (“DE”) program.

Rural-26 expressed strong support for the proposed institution of a bifurcated cap on bidding credits. Specifically, Rural-26 discussed the importance of the implementation of a \$10 million cap on bidding credits awarded to any qualified bidder in Partial Economic Areas (“PEAs”) with a population of less than 500,000. This approach will help afford small facilities-based telecommunications providers, including rural telephone companies, to compete for spectrum licenses in the rural markets that they serve and desire to serve. The proposed caps also will help protect bona fide DEs and rural telecommunications providers from potential abuse of the DE program.

Rural-26 also supports the adoption of a bidding credit for small, facilities-based telecommunications providers. Rural-26 remains concerned, however, that the currently

proposed 15% small provider bidding credit still gives spectrum speculators with shell DEs backed by deep-pocketed companies a financial advantage over legitimate facilities-based small telecommunications providers. In order to level the playing field, and reduce the incentive for arbitrage and abuse, Rural-26 urged the Commission to adopt a 25% non-revenue-based rural communications company bidding credit in addition to a 25% revenue-based small business bidding credit. Two equal, non-cumulative, 25% bidding credits will close the gap between large and small auction participants and further the comprehensive goal to minimize opportunities to abuse the DE program.

Rural-26 also expressed its concerns regarding possible elimination of joint bidding arrangements and bidding agreements and the negative effect it would have on rural telecommunications companies in future auctions. While elimination of such arrangements will not be as harmful in the incentive auction for which uniform PEA licenses will be offered, it will be problematic in any future auctions that offer licenses on the basis of more than one sized license area, such as Economic Areas (“EAs”) and Cellular Market Areas. Those companies that wish to enter into joint bidding agreements and/or consortia, including members of the Rural-26, in order to obtain spectrum in larger markets like EAs that cover the service areas of multiple rural providers, will be unable to compete in said areas if joint bidding arrangements and bidding agreements are eliminated. Moreover, Rural-26 explained that the use of bidding consortia would not be a viable alternative due to the fact that various rural companies may not qualify for the same level of bidding credit in future auctions.

Rural-26 also urged the Commission to adopt an exception for existing rural wireless partnerships, specifically for cellular “settlement” partnerships and their successors-in-interest, to the extent the Commission adopts limitations on common ownership of auction applicants. This will help ensure that small wireless partnerships and their partners are not blocked from participating in the 600 MHz spectrum auction.

During the meeting, Rural-26 explained that implementing changes to the DE program is essential, now more than ever, due to the likelihood that many more rural companies, including Rural-26 members, will participate in the upcoming incentive auction than participated in Auction 97. Rural-26 explained that favorable propagation characteristics of the 600 MHz spectrum will drive more interest from rural providers searching for opportunities to use low frequency spectrum to provide mobile and fixed wireless broadband services in rural markets.

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-26

CC: Brendan Carr  
Michael F. Hagg