July 8, 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 July 6 and July 7, 2015, John Prendergast and Cary Mitchell of the law firm Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP ("Blooston Rural Carriers"),[1] Erin Fitzgerald of the Rural Wireless Association, Inc. ("RWA"), Jill Canfield of NTCA – The Rural Broadband Association ("NTCA") attended separate meetings with Legal Advisor Brendan Carr from Commissioner Ajit Pai's office; Acting Legal Advisor Jessica Almond from Chairman Tom Wheeler's office; and Commissioner Jessica Rosenworcel and her Policy Advisor Valery Galasso to discuss certain aspects of the Commission's Designated Entity ("DE") bidding proposal.

On July 7, 2015, Tony Veach of the law firm Bennet & Bennet, PLLC[2] joined the Blooston Rural Carrier, RWA, and NTCA representatives (together, "Rural Coalition") in separate meetings with Commissioner Michael O'Rielly and his Legal Advisor Erin McGrath;

[1] The individual 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).

[2] Tony Veach attended meetings 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).

and with Patrick Donovan, Bill Huber, Michael Janson, Sue McNeil, Jim Schlichting, Kelly Quinn, Joel Taubenblatt, and Margaret Wiener of the Commission's Wireless Telecommunications Bureau ("WTB"). Members of the Rural Coalition also attended a separate briefing on FCC staff recommendations with respect to incentive auction procedures from Gary Epstein and Howard Symons of the Incentive Auction Task Force and Mary Margaret Jackson of the Media Bureau.

The Rural Coalition represents facilities-based providers of wireless service in rural America. The group 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 currently proposed 15% rural carrier bidding credit be increased to 25%. Additional bidding credit support is needed in order to level the playing field for rural carriers and to give them a fighting chance when bidding for highly sought-after low-band spectrum. In this regard, the Rural Coalition discussed the poor rural carrier bidding results in the AWS-3 auction (Auction 97). The Rural Coalition discussed an instance in which a rural bidder that was ineligible for a small business bidding credit in Auction 97 (and that will also be ineligible under the proposed new thresholds) was outbid by a Special Purpose DE that had access to a 25% credit. Special Purpose DEs can be designed from the ground up to qualify for maximum bidding credits – their disclosed revenue levels bear no relation to their access to funds to procure spectrum. Rural telephone companies and cooperatives, on the other hand, 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. Unlike well-funded Special Purpose DEs created for the express purpose of garnering bid credits, the rural carriers like those represented by the Rural Coalition are facilities-based service providers with existing networks that must be maintained at significant expense. Access to a 25% bidding credit would have allowed rural providers 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.

The Rural Coalition noted that there is unprecedented interest in the 600 MHz spectrum, and that AT&T and/or Verizon will be eligible to bid for reserve spectrum in most of the areas currently served by rural providers.[3] In addition to providing bid credit parity between rural carriers and Special Purpose DEs, increasing the rural carrier credit from 15% to 25% will help to ensure that rural providers have a more realistic opportunity for success when bidding against nationwide and regional carriers. The importance of a 25% rural provider credit is underscored by the disappointing rural bidder results in Auction 97, an auction in which bidders had the opportunity to bid on smaller geographic license areas (Cellular Market Areas or "CMAs"). The Partial Economic Area ("PEA") license areas that will be used in the Incentive Auction are significantly larger (and therefore more expensive to purchase and build out) than CMAs, and successfully bidding for these license areas will be particularly challenging for rural bidders. The Rural Coalition also explained that the funds saved by a 25% bid credit would enable rural carriers to use more of their scarce resources on build out and upgrading of their existing networks, rather than spectrum acquisition, thereby ensuring better and faster service to rural consumers.

---

[3] AT&T and/or Verizon are reserve eligible for spectrum covering 74% of the nation's geography and 40% of the POPs. *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).

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 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 discussed the following specific concerns relating to the logistics for rural providers seeking to participate in upcoming auctions and to qualify for the rural service provider bidding credit:

1. **The Commission Should Not Limit Rural Telephone Companies to the Consortium Model for Purposes of Qualifying for the Rural Provider Bid Credit When Bidding as a Group.**

In upcoming auctions, especially the Incentive Auction (which will feature license sizes much larger than traditional CMAs), the Commission should facilitate the ability of *bona fide* rural service providers to join together in their bidding effort. In any given PEA, there will likely be multiple rural providers, each with their own service area. One method for allowing rural providers to combine their bidding power is the rural consortium model, in which each member of the consortium individually qualifies for the rural bid credit. While this model should be available, it is not a suitable avenue for all rural bidder situations. The consortium is not an ongoing legal entity, but instead must partition any license won at auction during the long form process. As demonstrated in past auctions, many rural providers conclude that the best chance of operating a successful wireless service in a sparsely populated area is to keep the license intact, and achieve economies of scale by jointly operating the venture. The Commission should continue to facilitate such arrangements, similar to how the Commission treats small business bid credits, by allowing the formation of limited partnerships and LLCs that can qualify for the rural bid credit.

As discussed in greater detail below, a limited partnership of qualified rural providers (each having a service area in the PEA) should qualify for the rural bid credit so long as the subscribers/lines of each participating partner (including that partner's affiliates and controlling interests, discussed further below) remain below the 250,000 mark. Similarly, an LLC of qualified rural providers (each having a service area in the PEA) should qualify for the rural bid credit so long as the subscribers/lines of each participating member (including that member's affiliates and controlling interests, discussed further below)[4]

2. **The Commission Should Not Prevent Bona Fide Rural Providers from Participating in an Auction under the Multiple Application Rule Because of Participation in a Cellular Partnership.**

[4] A possible but less desirable alternative would be to aggregate only the subscriber lines of the controlling partners/members, but not those of insulated partners/members.

As indicated in prior comments,[5] many rural telephone companies remain in a cellular partnership as a result of the Cellular B Block settlement process in the 1980s. Often, the resulting partnership includes one of the nationwide or large regional wireless carriers that succeeded to the interest of one of the original partners as the result of a merger or direct acquisition.

The Rural Coalition 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, that may have interests in different geographic markets, from being able to bid in the auction independently from one another. The Commission should therefore grandfather rural telcos and participants in wireline cellular partnerships from the multiple application restriction.

In situations where a large carrier has *de jure* or *de facto* control of a cellular partnership, the Rural Coalition understands that the partnership may not be allowed to participate directly in the auction at the same time that the larger carrier is an applicant, under the multiple application prohibition. In such cases, the Commission should clarify that the other companies in the partnership will be able to participate in the auction individually, or can join forces to form a bidding entity to participate in the auction that does not include the large carrier.

In those rare cases where a cellular partnership includes one of the nationwide or large regional wireless carriers that does NOT have *de facto* or *de jure* control of the entity, then the Rural Coalition respectfully submits that the partnership should be able to participate in the auction, so long as the larger carrier is insulated from participation in the bidding effort. Such entities are generally made up of *bona fide* rural telcos that are partners with the larger carrier not by choice but as a result of the B Block settlement process. Historic cellular partnerships are well-positioned to bid and to build out rural networks. Moreover, historic cellular partnerships and nationwide carriers have been allowed to participate independently in prior auctions, and have been able to pursue separate bidding strategies provided that relevant parties implement "ethical wall" procedures and certify their compliance with such procedures. Such participation has never raised concern.

3. The Commission Should Not Deprive Rural Providers of the Rural Carrier Bid Credit Due to Participation in a Cellular Partnership that Includes a Nationwide or Regional Incumbent.

Similar to the circumstances described above with regard to the multiple application rule, there are situations where rural service providers should not be deprived of a rural bidding credit because they participate in a separate cellular partnership that includes one of the nationwide or large regional wireless carriers with more than 250,000 subscribers. In such cases, the Commission should clarify that the companies in the partnership that would otherwise qualify for the rural bid credit will be able to participate in the auction individually, or can join forces to form a bidding entity that does not include the unqualified carrier and participate in the auction.

4. Methodologies for Counting Subscribers/Lines for Purposes of the Rural Provider Bid Credit.

---

[5] *See* Comments of the Blooston Rural Carriers, WT Docket No. 14-170, at p. 10 (Feb. 20, 2015); *see also* Rural Coalition *Ex Parte* Letter, WT Docket No. 14-170 (July 2, 2015).

Rural telcos should be able to qualify for the rural provider bid credit if they choose to bid separately, if they form a consortium, or if they choose to partner with other rural telcos so they can hold a license or licenses together and operate as one entity. In other words, the Commission should not aggregate the subscribers attributed to each of the non-affiliated rural provider partners in the same manner as it would aggregate the gross revenues of partners in the context of evaluating eligibility for a small business bidding credit.

As a first example, if seven rural carriers from one state want to create a partnership or LLC amongst themselves to bid for one or more PEA licenses (a likely arrangement because PEAs are larger than the CMAs with which rural providers are accustomed), the Commission should allow the combined entity to qualify for a single rural provider credit as long as each participating member (including that member's affiliates and controlling interests) qualifies.

As mentioned above, another approach would be to aggregate subscribers of controlling members in a limited partnership or LLC; and subscribers of insulated members would not be counted toward the total, so long as each limited partner has less than 250,000, counting the partner and all of its affiliates and controlling interests.[6] While this approach, which mimics the small business bid credit attribution rule, would be preferable to general attribution, it is respectfully submitted that the better approach would be to simply not aggregate subscribers of rural carrier participants. While the controlling small businesses of a designated entity applicant can combine their revenues to some extent to overcome financial challenges, the same benefit does not translate as readily when combining rural telecom carriers. Each rural carrier brings with it an obligation to serve what is by definition a sparsely populated, often remote area with difficult terrain and long distances to connect in providing backhaul, etc. Usually, more towers are needed. While some economies of scale can be achieved by combining rural service areas, which is important, an inescapable dynamic of combining rural carriers is that the negatives associated with their rural service areas are combined as well.

The Rural Coalition also notes that when determining the number of subscribers of rural carriers participating in an auction applicant, the Commission must address a practical issue: Many rural provider customers subscribe to a bundled plan that may include e.g. wireless, video, broadband and/or wired voice services. It is respectfully submitted that the Commission should not double- or triple-count such subscribers in determining whether the 250,000 limit is surpassed.

As a separate but related matter, the Commission should be careful in adopting a rule that requires subscriber attribution for the applicant, affiliates, and controlling interests of affiliates. Such an approach should not be applied in an overly broad manner. For example, if Rural Carrier A participates in management/control of a separate cellular partnership, the subscriber attribution rule should only require Rural Carrier A to count (1) its own wireline subscribers (and subscribers of wireline affiliates or companies under common control); and (2) the subscribers of the cellular partnership. The Commission should not require Rural Carrier A to count the subscribers of the nationwide or regional provider that is in the cellular partnership, since Rural Carrier A does not control the larger carrier. Conversely, if Rural Carrier A does <u>not</u> participate

[6] Thus, for example, a nationwide or large regional carrier could not participate in an entity that qualifies for the rural service provider bidding credit, even if it was participating as a limited partner.

in management/control of the cellular partnership, then provided it holds less than 50% of the cellular partnership's total equity, it should only be required to count its own wireline subs.

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

D. Cary Mitchell
Partner
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP

Counsel to the Blooston Rural Carriers

/s/ John Prendergast

John Prendergast
Partner
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP

Counsel to the Blooston Rural Carriers

/s/ Erin P. Fitzgerald

Erin P. Fitzgerald
Assistant Regulatory Counsel
Rural Wireless Association, Inc.

/s/ Jill Canfield

Jill Canfield
Vice President, Legal and Industry & Assistant General Counsel
NTCA – The Rural Broadband Association

/s/ Anthony K. Veach

Anthony K. Veach
Associate Attorney
Bennet & Bennet, PLLC

Counsel to SRT Communications, Panhandle Telephone Cooperative, Inc., Copper Valley Telephone Cooperative, Nemont Telephone Cooperative, Inc., Pine Belt Telephone Company, Inc., and Central Texas Telephone Cooperative

cc (via email):
Commissioner Jessica Rosenworcel
Commissioner Michael O'Rielly
Valery Galasso
Erin McGrath
Jessica Almond
Brendan Carr
Patrick Donovan
Bill Huber
Michael Janson

Sue McNeil
Jim Schlichting
Kelly Quinn
Joel Taubenblatt
Margaret Wiener
Gary Epstein
Howard Symons
Mary Margaret Jackson