



Competitive Carriers Association
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July 9, 2015

Via ECFS

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

Re: EX PARTE NOTICE

GN Docket No. 12-268: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions;*
WT Docket No. 12-269: *Policies Regarding Mobile Spectrum Holdings;*
AU Docket No. 14-252: *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*

Ms. Dortch:

On July 8, 2015, Rebecca Murphy Thompson and C. Sean Spivey of Competitive Carriers Association (CCA) spoke by phone with Jim Schlichting and Joel Taubenblatt of the Wireless Telecommunications Bureau of the Federal Communications Commission (FCC or Commission) regarding the above-referenced proceedings. During this conversation, CCA urged the Commission to afford non-nationwide providers certainty regarding their eligibility to bid on reserve spectrum when it issues auction procedures for the upcoming auction of 600 MHz spectrum.¹

CCA and its members have been active participants in the Commission's incentive auction proceedings.² CCA represents the interests of more than 100 competitive wireless carriers, most of which are small carriers that serve otherwise underserved portions of rural America and many of which lack sufficient access to low-band spectrum. These smaller carriers' customers are the primary beneficiaries of the FCC's pro-competitive auction framework, which includes smaller geographic license sizes and the spectrum reserve.³ As Chairman Wheeler noted in a blog post

¹ *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252, Public Notice, 29 FCC Rcd 15750 (2014).

² *See, e.g., Ex Parte Letter from Atlantic Tele-Network, Inc., et al. to The Hon. Tom Wheeler, Chairman, FCC, GN Docket No. 12-268, WT Docket No. 12-269* (filed Apr. 22, 2015).

³ *See Is the FCC Responding to the Needs of Small Business and Rural America?: Hearing Before the H. Comm. on Small Bus.*, 113th Cong. 5 (2014) (statement of The Hon. Tom Wheeler, Chairman, FCC) ("Underlying all of our work on auctions is a commitment to competition and

leading up to the FCC’s Mobile Spectrum Holdings Report and Order,⁴ “rural consumers are denied the competition and choice that would be available if more wireless competitors also had access to low-band spectrum.”⁵

In its Report and Order, the Commission adopted two bright-line eligibility rules to bid in the reserve: spectrum eligibility and non-nationwide eligibility. Specifically, the Commission said “to qualify to bid on reserved licenses in a PEA, an entity must not have an attributable interest in 45 megahertz or more, on a population-weighted basis, of below-1-GHz spectrum that is suitable and available for the provision of mobile telephony/mobile broadband services in that PEA, at the deadline for filing a short-form application to participate in the Incentive Auction.”⁶ Additionally, the Commission will “permit bidding on 600 MHz spectrum by regional and local service providers in all PEAs, including those where such provider holds more spectrum than our 45 MHz holding threshold of the available low-band spectrum.”⁷

CCA discussed how the Commission has addressed attribution generally with respect to spectrum eligibility,⁸ but has not explicitly addressed attribution vis-à-vis non-nationwide carriers. The Report and Order does, however, refer to “non-nationwide providers” as “providers with networks that are limited to regional and local areas”⁹ In fact, the Commission recognized that “[n]on-nationwide service providers enhance competitive choices for consumers in the mobile wireless marketplace, and help promote deployment in rural areas.”¹⁰ The Commission adopted these “bright-line rule[s]”¹¹ because an “upfront, clear determination, instead of case-by-case analysis

ensuring smaller businesses have a shot to compete. For instance, the ‘market-based reserve’ spectrum in the Incentive Auction will provide opportunities for wireless providers to gain access to important low-band spectrum that could enhance their ability to compete and help ensure that two dominant carriers can’t run the table in the auction. Our establishment of smaller geographic license areas and 5 by 5 spectrum blocks in both the Incentive Auction and AWS-3 auction will also enhance small businesses’ ability to compete for and win spectrum licenses.”).

⁴ *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133 (2014) (Report and Order).

⁵ Posting of The Hon. Tom Wheeler, Chairman, FCC to Official FCC Blog, Getting the Incentive Auction Right, <https://www.fcc.gov/blog/getting-incentive-auction-right> (Apr. 18, 2014 12:32 ET).

⁶ Report and Order at 6204, ¶ 175.

⁷ *Id.* at 6207, ¶ 180.

⁸ *See id.* at 6204, ¶ 175 n.493.

⁹ *Id.* at 6206, ¶ 179 n.502.

¹⁰ *Id.* at 6207, ¶ 180.

¹¹ *Id.*

post-auction, would provide bidders with greater certainty in the auction process regarding how much spectrum they would be permitted to acquire at auction.”¹²

While we agree that the Commission established clear, bright-line rules regarding non-nationwide eligibility, CCA noted that the lack of specificity regarding applicable attribution rules for non-nationwide carriers may provide opportunities for nationwide carriers to circumvent limitations on their ability to bid on reserve spectrum. CCA encouraged the FCC to deter this kind of abuse. At the same time, however, CCA cautioned the Commission regarding unintended consequences. For example, there are certain existing, pro-competitive relationships by which a nationwide provider either leases spectrum to, or holds an equity interest in, otherwise non-nationwide providers. These relationships can help to facilitate the deployment of services to rural, hard to reach areas of the country. To the extent the Commission intends to address attribution rules for non-nationwide carriers, CCA asked the Commission to be cognizant of any “spillover” effect its defining (or redefining) “non-nationwide carrier” could have in other proceedings.

More specifically, several non-nationwide providers have entered into long-term spectrum leases for spectrum licensed to nationwide providers. A well-known example of this type of relationship is Verizon’s LTE in Rural America (LRA) program,¹³ though other examples also exist.¹⁴ These arrangements are designed to help smaller entities deploy service to rural parts of the country, using Verizon’s spectrum. While the Commission has addressed attribution with respect to spectrum for nationwide providers, non-nationwide providers would benefit from additional clarity regarding the impact of any long-term leases for spectrum they have entered into with nationwide providers for purposes of being eligible to bid on reserve spectrum. Because of the public interest benefits of these arrangements, CCA urged the Commission to exempt these types of leases from any attribution rule it adopts.

Additionally, several nationwide providers have equity interests in separate non-nationwide providers. To provide one example of many, several rural partnerships received initial investments from Alltel over a decade ago, which eventually transferred when Alltel sold its assets to Verizon. Depending on how the Commission attributes the nationwide carrier equity interest in these “non-nationwide carriers,” and other rules being decided concurrently, these partnerships could be excluded from the spectrum reserve, or even the auction entirely. CCA appreciates the FCC’s interest in protecting the incentive auction—and the spectrum reserve in particular—from gaming and abuse. Nevertheless, CCA cautioned the Commission against adopting overly broad rules that prevent preexisting rural partnerships from participating in the spectrum reserve.

¹² See *id.*; see also *id.* at 6191 ¶ 139.

¹³ See Lynnette Luna, *Verizon’s Rural LTE Partners to Begin Commercial Launches in Early 2012*, FierceWirelessTech, Nov. 10, 2011, www.fiercewireless.com/tech/story/verizons-rural-lte-partners-begin-commercial-launches-early-2012/2011-11-09.

¹⁴ See, e.g., Press Release, Sprint, Sprint, Competitive Carriers Association and NetAmerica Alliance Join Forces to Accelerate Deployment and Utilization of 4G LTE across the United States (Mar. 27, 2014), available at <http://newsroom.sprint.com/news-releases/sprint-competitive-carriers-association-and-netamerica-alliance-join-forces-to-accelerate-deployment-and-utilization-of-4g-lte-across-the-united-states.htm>.

Application of an attribution rule in certain, unique circumstances would be inconsistent with the intent of the reserve, as noted above. The FCC should consider certain limiting factors when apply attribution rules to otherwise non-nationwide providers, including whether the interest is non-controlling, whether the partnership or equity interest existed prior to adoption of the Report and Order, whether the non-nationwide carrier is independently managed and not controlled by a nationwide provider, and whether the non-nationwide carrier's network is limited to regional and local areas, as indicated in the Report and Order.¹⁵ Partnerships that include these types of factors should not be foreclosed from bidding on reserve spectrum merely as a result of insignificant, passive investments in them by nationwide providers.

CCA looks forward to working with the Commission to provide smaller entities the guidance they need to make an informed decision as to whether they will be able to participate in the upcoming auction.

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

Regards,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel, CCA

cc: Jim Schlichting
Joel Taubenblatt

¹⁵ Report and Order at 6206, ¶ 179 n.502.