

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 and 1002	)	AU Docket No. 14-252
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
Policies Regarding Mobile Spectrum Holdings Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 and 1002	)	WT Docket No. 12-269
	)	
Amendment of Parts 15, 73 and 74 of the Commission’s Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Spaces Devices and Wireless Microphones	)	MB Docket No. 15-146
	)	

To: The Commission

**PETITION FOR RECONSIDERATION OF  
THE BLOOSTON RURAL CARRIERS**

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural and independent telephone and wireless service provider clients (the “Blooston Rural Carriers”) and pursuant to Section 1.429 of the Commission’s Rules, hereby petitions for clarification and/or reconsideration of the Commission’s *Auction 1000 Bidding Procedures Public Notice*,<sup>1</sup> insofar as it requires small businesses and rural service providers participating in

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<sup>1</sup> Broadcast Auction Scheduled to Begin March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward), AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, Public Notice, 30 FCC Rcd 8975 (2015). The Blooston Rural Carriers have participated extensively in all phases of the proceeding establishing the rules and procedures for Auction 1000.

the forward auction of 600 MHz licenses to be active on at least 95% of their total eligibility from the very start of the auction, and does not provide these bidders with any activity rule waivers. As explained below, requiring small bidders to have at least 95% activity will unnecessarily limit the ability of small and rural carriers and entrepreneurs to pursue alternative bidding strategies as bidding in their markets of interest develops. As a related matter, the elimination of all activity rule waivers puts undue pressure on smaller bidders because it creates the very real risk that they could be eliminated from participation in the forward auction as a result of unforeseen circumstances that are beyond their control.

The Blooston Rural Carriers believe the Commission can adopt procedures that allow greater bidding flexibility by smaller carriers and that significantly reduce the risk of premature auction exit without reducing the speed of the auction or adding uncertainty with respect to the level of bidder demand. Accordingly, the Blooston Rural Carriers respectfully request that the Commission reconsider its decision to require smaller carriers to have at least 95% activity in the clock phase of the forward auction, and to instead allow them to maintain their current level of bidding eligibility if they are active on 80% of their total eligibility. The Commission's forward auction procedures should also provide smaller bidders with at least two (2) activity rule waivers to account for unforeseen circumstances and to protect them from possible elimination from the auction if they are forced to miss a single round of bidding. Use of a waiver by a bidder whose eligibility represents only a tiny fraction of total eligibility available in the auction will be so statistically insignificant as to be imperceptible to other auction participants, and it creates no potential for gaining advantage or otherwise "gaming" the system. In support hereof, the following is shown:

**I. The Commission’s 95% Activity Rule and Lack of Activity Rule Waivers for the Incentive Auction will Disadvantage Smaller Bidders**

**95% Activity Rule**

The Commission discusses bidding eligibility and activity requirements starting at Paragraph 209 of the *Auction 1000 Bidding Procedures Public Notice*. At Paragraph 210, the Commission determined that forward auction bidders “must be active on at least 95 percent of their bidding eligibility in all regular clock rounds to maintain their bidding eligibility.” The Commission has explained the rationale behind having an activity rule as follows:

*An activity rule requires bidders to bid actively throughout the auction to maintain bidding eligibility, rather than wait until late in the auction before participating. In the forward auction, the activity rule will provide an incentive for bidders to participate in each round of the auction.<sup>2</sup>*

The Blooston Rural Carriers agree with C Spire and CCA that a 95% activity threshold will disproportionately disadvantage small and rural carriers, as well as entrepreneurs, because it limits their ability to pursue alternative bidding strategies as the auction progresses. When an applicant has a smaller bidding focus, and it submits a commensurately smaller upfront payment, a 95% activity requirement has the effect of making it impossible to move bids between markets. Moreover, if the 95% activity rule is not met, then this will result in a much more substantial reduction in the bidder’s eligibility, possibly curtailing or eliminating the bidder’s ability to place additional bids in the auction. For example, if a group of rural bidders have targeted two PEAs, the smaller of which contains the greatest portion of their existing rural service areas, they may devote their earlier bidding efforts in an all-out effort to obtain the smaller market. If bidding on that market rises to a level above the rural group’s budget, they will likely be unable to switch their bidding effort to the larger market under the 95% activity rule. Allowing smaller bidders to

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<sup>2</sup> *Auction 1000 Bidding Procedures Public Notice* at Note 624.

maintain their current level of bidding eligibility if they are active on 80% of their total eligibility would provide them with the flexibility to implement alternative bidding strategies in the early stages of the auction.

### **Zero Waiver Policy**

A “zero waiver” policy in the context of a stringent 95% activity rule means that small bidders will have no flexibility, and they cannot push “pause” on the auction if they need additional time to confirm a higher bidding budget with their board, or make some other major change in bidding strategy. More importantly, it means that small bidders – who generally don’t have the resources for backup bidding systems or large bidding teams – could be disqualified from the Incentive Auction as a result of circumstances they cannot control, such as if they run into an unexpected technical or communications glitch, if the individual responsible for bidding gets caught in traffic or has a sudden illness. As the forward auction could potentially move to six or eight or ten rounds of bidding per day, if there are absolutely no round waivers, merely getting stuck in the elevator could cost a small or rural bidder its ability to participate further in the auction. It is respectfully submitted that such outcome is not in keeping with the intent of Section 309(j) to encourage participation in the auction by designated entities such as small businesses and rural telephone companies, and to ensure the wide dissemination of licenses.

While the Blooston Rural Carriers understand the Commission’s objective to curb the abuses of certain large bidders that may have previously participated through multiple applicants, and thereby exercised control over more than five round waivers in a way that strategically delayed the progress of the auction, the Commission should not throw out the baby with the bath water. Round waivers serve an important legitimate purpose, in recognition of the fact that

events can arise in a complex and fast moving auction that make bidding in one or more particular rounds difficult. The risk of such circumstances arising will be greater in the Incentive Auction, which is by far the most complex auction in the Commission's history, and will feature a plethora of new and complicated rules and procedures. Allowing small and rural bidders one or two round waivers will be vital to allow them to overcome bidding glitches and complexities, without creating the risk of undue gaming of the auction's progress. In addition, other measures taken by the Commission, such as stringent restrictions on participation in more than one applicant entity and the rule against joint bidding agreements, will significantly limit any abuse of round waivers.

### **CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the Commission should utilize an 80% activity rule for at least the earliest portion of the Incentive Auction, and should allow up to two round waivers (at least for small and rural bidders if not all bidders).

Respectfully submitted,

**THE BLOOSTON RURAL CARRIERS**



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By: D. Cary Mitchell  
John A. Prendergast  
Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast, LLP  
2120 L Street, NW, Suite 300  
Washington, DC 20037  
Phone: (202) 659-0830  
Their Counsel

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