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Via ECFS

January 19, 2016

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th 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, January 14, 2016, Greg Whiteaker, Sarah Aceves and the undersigned, all with Herman & Whiteaker, LLC, on behalf of the Rural-26 DE Coalition (“Rural Coalition”) met with Valerie Barrish, Leslie Barnes, Susan McNeil, Matthew Pearl, Kelly Quinn, and Margaret Wiener of the Federal Communications Commission’s (“FCC or Commission”) Wireless Telecommunications Bureau.

During the meeting, the participants discussed the Petition for Reconsideration filed on behalf of the Rural Coalition,¹ seeking reconsideration of the newly adopted prohibition of any individual serving as an authorized bidder for more than one applicant.² The Rural Coalition communicated that prohibiting an individual attorney from serving as an authorized bidder for more than one applicant, where those applicants share no common ownership and are not qualified to bid for licenses in the same or overlapping geographic areas, is already having a definitive chilling effect, discouraging many rural and independent service providers from participating in the upcoming Incentive Auction. Given the complexity of bidding and without the option to use the counsel of their choice to assist in bidding, many Rural Coalition members have communicated that they will not participate in the forward portion of the Incentive Auction.

¹ See Petition for Reconsideration of The Rural-26 DE Coalition; WT Docket Nos. 14-170, 05-211, GN Docket No. 12-268, RM-11395 (Oct. 19, 2015) (“*Rural Coalition Petition for Reconsideration*”), seeking reconsideration of *Updating Part 1 Competitive Bidding Rules, et. al.*, Report and Order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order, WT Docket No. 14-170, *et. al.*, FCC 15-80 (30 FCC Rcd 7493) (“*Competitive Bidding Order*”).

² *Rural Coalition Petition for Reconsideration* ¶ 1 citing 47 C.F.R. §1.2105(a)(2)(iii).

Also discussed were questions posed by the Rural Coalition relating to the Part 1 Competitive Bidding Rules. Specifically, whether the newly adopted Rural Service Provider Bidding Credit will apply where a parent company provides service to predominantly rural areas, but its subsidiary, which itself does not provide service, is the auction applicant. The Rural Coalition also expressed concern over statements that eligibility to receive the Rural Service Provider Bidding Credit could depend on the markets in which a rural service provider bids during auction. The Rural Coalition explained that it sees no basis for such criteria in the rules or the *Competitive Bidding Order*.

Finally, the participants discussed the prohibition on commonly controlled applicants and what comprises a “controlling interest” within the scope of the new rule. The Rural Coalition observed that the FCC adopted a new definition of “controlling interest” in rule 1.2105(a)(4) to determine common control for purposes of the prohibition. Although the term “controlling interest” in rule 1.2105(a)(4) is similar to the term in rule 1.2110(c)(2), in adopting rule 1.2105(a)(4), the FCC did not refer to rule 1.2110, nor did the FCC adopt an identical definition with the various implementing and expansive subparts contained in rule 1.2110(c)(2).³ The Rural Coalition argued that it was intentional and appropriate since the two rules serve very different purposes. The definition in rule 1.2110 is intended to be expansive for the purpose of determining whether an applicant has sufficient access to capital or needs government assistance. The prohibition on common applications, however, is prohibitive and blocks participation in auctions entirely. The definition in 1.2105(a)(4) therefore must be interpreted narrowly to ensure the integrity of auctions while also affording the broadest possible participation. The Rural Coalition argued that an entity that lacks positive or negative de jure or de facto control of an applicant is not a “controlling interest” of such applicant under rule 1.2105(a)(4) for the purpose of the prohibition on commonly controlled applicants. Such entity would therefore be permitted to participate as a separate applicant even if there was no other interest holder that could clearly be identified as having de jure or de facto control.

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 DE Coalition

CC: Valerie Barrish
Leslie Barnes
Susan McNeil
Matthew Pearl
Kelly Quinn
Margaret Wiener

³ Compare 47 C.F.R. §1.2105(c)(4) with 47 C.F.R. §1.2110(c)(2).