

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 1 of the Commission's)	WT Docket No. 97-82
Rules—Competitive Bidding Procedures)	
)	

To: The Commission

Comments of the Rural Telecommunications Group

The Rural Telecommunications Group (“RTG”),¹ by its attorneys, respectfully submits these initial comments in response to the Commission’s Fourth Further Notice of Proposed Rule Making (“*Fourth Notice*”) in the above-captioned proceeding.² RTG urges the Commission to ensure that only legitimate small businesses qualify for auction benefits by adding a “total assets test” to its current gross revenues threshold.

¹ RTG is a group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Services ("PCS"), and Multichannel Multipoint Distribution Service ("MMDS") to their subscribers. Many of RTG's members also hold Local Multipoint Distribution Service ("LMDS") licenses and have started to use LMDS to introduce advanced telecommunications services and competition in the local exchange and video distribution markets in rural areas. RTG's members are all affiliated with rural telephone companies.

² *Order on Reconsideration of the Third Report and Order, Fifth Report and Order and Order, and Fourth Further Notice of Proposed Rule Making in WT Docket No. 97-82*, FCC No. 00-274, 65 F.R. 52323 (August 29, 2000). The Wireless Telecommunications Bureau announced in a Public Notice that comments would be due today in accordance with the date established by the Federal Register. Public Notice, DA-00-2248 (October 3, 2000).

A significant obstacle to rural telephone companies' participation in spectrum-based businesses is ready access to capital. These companies are, for the most part, small or very small businesses under the Commission's definitions. A large percentage of rural telephone companies are also cooperatives, which may further limit access to capital for new ventures. Competitive bidding exacerbates this problem because funding is needed well before an entity can ensure investors or lenders that it will even be licensed to operate a wireless business. With the ever-increasing size of licensed areas, rural telephone companies cannot afford to purchase at auction both urban and rural areas typically encompassed by these license areas.

Yet rural telephone companies are otherwise the best-prepared and most willing entities to serve the rural and less-populated sections of the United States. In the many instances where rural telephone companies cannot afford to purchase spectrum, winning bidders typically fail to serve the least populated parts of their licensed areas. These winners are also typically unwilling to disaggregate or partition their licenses to rural telephone companies willing to serve these regions.

Congress was aware of this particular problem when it adopted competitive bidding procedures. The Commission should take all steps necessary to ensure that its competitive bidding procedures continue to meet Congress' explicit objectives for aiding rural telephone companies and other entities in obtaining wireless licenses. These goals include the development and deployment of new technologies, products and services for the benefit of rural Americans;³ promoting economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses to a wide

³ 47 U.S.C. §309(j)(3)(A).

variety of applicants, including rural telephone companies;⁴ recovery of a portion of the value of commercial spectrum for the American people and avoidance of unjust enrichment;⁵ and promoting the efficient and intensive use of spectrum.⁶

While RTG has disagreed with the Commission as to the extent and scope of auction incentives provided to designated entities, RTG does agree that small businesses continue to depend on these incentives to have any hope of winning lucrative spectrum bands. Without the most used Commission incentive—bidding credits—small businesses would have almost no chance of purchasing spectrum through auctions. While bidding credits alone cannot fulfill Congress’ directives in the most highly sought after radio frequency bands,⁷ credits are an important tool. RTG supports the Commission’s continued review of its small business rules to ensure that auction incentives are provided only to entities that meet the discrete criteria set forth first by Congress and then by the Commission.

In this regard, RTG supports the need for the addition of a “total assets test” to go along with the existing “gross revenues” test for determining which entities qualify for auction incentives such as bidding credits.⁸ The Commission should adopt a “total assets” threshold of \$75 million for very small businesses and \$150 million for small

⁴ 47 U.S.C. §309(j)(3)(B).

⁵ 47 U.S.C. §309(j)(3)(C).

⁶ 47 U.S.C. §309(j)(3)(D).

⁷ See, e.g. RTG Comments in the associated proceeding in this docket. Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, *Further Notice of Proposed Rule making in WT Docket No. 97-82*, RTG Comments of June 22, 2000 and Reply Comments of June 30, 2000.

⁸ 47 C.F.R. §1.2110(e).

businesses. In the alternative, the Commission might consider a service-specific threshold for total assets consistent with its current definition of “small businesses.”⁹

I. THE COMMISSION SHOULD ADOPT A TOTAL ASSETS THRESHOLD FOR DEFINING SMALL BUSINESSES ELIGIBLE FOR AUCTION INCENTIVES

RTG agrees with the Commission that a total assets threshold may better define what type of entities are deserving of the auction incentives—including bidding credits—mandated by Congress. Without this addition to the current “gross revenues” thresholds, new entities that are extraordinarily well-funded with debt or equity or established companies experiencing temporary revenue drop offs, may be able to qualify under the existing small business thresholds. RTG notes that many of these “new” entrants with little or no revenues are ultimately backed by and associated with extremely large existing companies that have used creative methods to structure these “small” businesses.

The Commission has long recognized that access to capital is the number one challenge facing small entities and that competitive bidding magnifies this challenge since significant capital is required of companies in their format stages even before they can ensure investors that they will be licensed to participate in wireless businesses.¹⁰ It established a definition and threshold for “small businesses” based solely on gross revenues, but declined to adopt a “total assets” threshold within this standard.¹¹

Recently however, the Commission has recognized that the lack of a total assets threshold may have an unintended impact on the types of entities that qualify for bidding

⁹ See 47 C.F.R. §1.2110(b)(1).

¹⁰ See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5532 9 (¶¶ 10-11, 97-110) (1994).

¹¹ Amendment of Part 1 of the Commission’s Rules—Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, in *WT Docket No. 97-82 and ET Docket No. 94-32*, 13 FCC Rcd at 388-389 (¶¶18-19) (1997).

credits and other auction incentives. In the context of PCS, the Commission expressed its concern with a stand-alone gross revenues threshold due to the potential for unfairness. “[A]mong those eligible to participate in entrepreneurs’ block auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not.”¹² RTG submits that this concern is not specific to PCS auctions, but a legitimate issue in any auction where status as a small business confers auction benefits. Rather than eliminate the auction advantage for legitimate small businesses due to this anomaly, as the Commission did in the context of PCS, the solution is to adopt a “total gross assets” threshold to accompany the “gross revenues” test of a small business.

RTG notes that in the past, the Commission rejected the use of a “total gross assets” test due, in part, to the objections of the Small Business Administration (SBA). However, the *Fourth Notice* expressly notes that it is the SBA that recently urged the Commission to rethink this stance.¹³

RTG urges the Commission to take either of two courses. First it can adopt a specific dollar amount for its total gross assets threshold. For very small businesses, RTG suggests that such an entity, together with its affiliates and attributable investors and their affiliates, have not more than \$ 75 million in assets; for small businesses, RTG suggests that assets not exceed \$150 million. RTG has polled its members and they believe that these levels reflect a fair definition of what constitutes a small, start up business while also reflecting the asset levels of an ongoing operation. In the alternative,

¹² Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services, *Sixth Report and Order and Order on Reconsideration in WT Docket No. 97-82*, FCC 00-313 (rel. August 29, 2000) at ¶ 45.

¹³ *Fourth Notice* at ¶ 81.

the Commission can adopt a variable asset level that is service-specific. A floating asset level has the advantage of reflecting the legitimate capital needs of various radio services. It has the disadvantage, however, of creating confusion.¹⁴

II. CONCLUSION

The Commission should include a total gross assets test in its rules defining small businesses. Otherwise, the Commission continues to run the risk that well-capitalized companies—with little or no revenues—will improperly qualify for the benefits that Congress directed be reserved for designated entities.

Respectfully submitted,

/s/

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¹⁴ RTG notes here that while the Commission's rules indicate that it can establish a variable definition of "small business" (*see* §1.2110(b)(1)), its rules for the awarding of bidding credits rely on fixed "gross revenues" amounts (*see* §1.2110(e)).