

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Part 1 of the)	WT Docket No. 97-82
Commission's Rules – Competitive)	FCC 00-274
Bidding Procedures)	

**COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA) hereby submits these comments in response to the Commission's Fourth Further Notice of Proposed Rule Making (NPRM) in the above captioned proceeding.¹ NTCA is a national association of more than 500 rural incumbent local exchange carriers (ILECs). These ILECs provide telecommunications services to end users and interexchange carriers throughout rural and small-town America. NTCA members are typically small carriers that serve no more than 50,000 access lines. All of NTCA's members are included in the definition of a "rural telephone company," as defined by the Telecommunications Act of 1996² and many hold wireless licenses.

NTCA applauds the Commission's willingness to revisit the issue of whether to use a total assets test to define small businesses. The Commission's current rule, which uses gross revenues alone as the general standard for measuring a business' size, may have an unintended impact on the types of

¹ *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC No. 00-274 (rel. August 29, 2000).

² Telecommunications Act of 1996, Publ L. No. 104-104, 110 Stat. 45, codified at 47 U.S.C. §§ 151 *et. seq.*

entities that qualify for bidding credits or other auction incentives. Without an examination of a company's total assets, new entities that are remarkably well-funded, with debt or equity, may be able to qualify for significant bidding credits and unfairly compete with *bona fide* small businesses.

In addition to the gross revenues test, NTCA proposes that the Commission adopt a total assets threshold of \$150 million for very small businesses and \$300 million for small businesses.

I. A TOTAL ASSETS THRESHOLD WILL FURTHER CONGRESSIONAL OBJECTIVES

Congress explicitly directed the Commission to disseminate licenses among a wide variety of applicants and ensure that small businesses and rural telephone companies are given the opportunity to participate in the provision of spectrum-based services.³ Congress recognized the needs of rural Americans when it provided the Commission with guidance on spectrum licensing.⁴

Bona fide small businesses, particularly rural telephone companies, tend to be connected to the communities they seek to serve. Large companies with no local ties often concentrate their efforts and investment on the profitable urban centers in their service territories and ignore the rural communities. Rural telephone companies often seek wireless licenses that encompass their own service territory because the community they serve needs to participate in the wireless future for its viability. Telephone cooperatives are unique in that they are non-profit and subscriber-owned. They are driven, not by profit, but by the

³ 47 U.S.C. § 309(j)(3)(B) and (4)(D)

⁴ *See*, 47 U.S.C. § 309(j)(3)(A).

needs of the community. The Commission should be doing all that it can to encourage auction participation by these small businesses.

NTCA has expressed its disappointment in the Commission's unwillingness to adopt rules specifically tailored to promote auction participation by rural telephone companies and has disagreed with the Commission on the effectiveness of bidding credits alone. NTCA does recognize, however, that bidding credits can be an effective tool to promote the participation of small businesses in spectrum auctions.

In order for bidding credits to work as intended, their use must be restricted to small businesses. Bidding credits are worthless if they are available to entities that are well funded, but have low gross revenues. A true small business cannot raise the capital necessary to compete at auction with a business that is not small but still receives a credit under the Commission's rules. In order to fulfill Congress' mandate of disseminating licenses to a wide variety of applicants, and provide spectrum opportunities to designated entities, the Commission should revisit its attribution rules and further restrict the class of applicants eligible to receive bidding credits or other auction incentives. In determining which entities qualify as small businesses, the Commission should examine total assets in conjunction with gross revenues.

II. NTCA PROPOSES THAT VERY SMALL BUSINESSES HAVE TOTAL ASSETS OF NOT MORE THAN \$150 MILLION AND SMALL BUSINESSES HAVE TOTAL ASSETS OF NOT MORE THAN \$300 MILLION

The Commission specifically seeks comment on the appropriate thresholds for small business determination. NTCA informally polled its members to determine what it believes is a fair threshold for generally determining which companies should qualify as small businesses. It is believed that a very small business will have total assets not exceeding \$150 million. A small business will have total assets not exceeding \$300 million.⁵ These amounts are less than the \$500 million total assets test used in determining eligibility for the PCS entrepreneur block auction. However, that auction limited participation to companies that were below the threshold. Under NTCA's proposal, entities with total assets between \$300 million and \$500 million will not be disqualified from participating in any auction, they will simply not qualify for bidding credits. It is believed that the \$150 and \$300 million thresholds will effectively limit the class of auction participants who qualify for auction incentives to *bona fide* small businesses, while at the same time providing opportunities to companies that have the resources necessary to construct and operate a viable wireless system.

III CONCLUSION

NTCA supports the use of a total assets test to be used in conjunction with a gross revenues test to determine the class of entities to qualify as small and

⁵ The total assets threshold for small business and very small business should be adjusted annually for inflation and should be reexamined periodically in light of changed circumstances.

very small businesses. *Bona fide* small businesses should not be forced to compete with large, well financed companies that qualify for bidding credits simply because they have low gross revenues. NTCA submits that the cut off for very small businesses be set at \$150 million in total assets and for small businesses at \$300 million.

Respectfully submitted,

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October 30, 2000

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments in response to the Commission's Fourth Further Notice of Proposed Rule Making (NPRM) of the National Telephone Cooperative Association in WT Docket No. 97-82, FCC 00-274 was served on this 30th day of October 2000 by first-class, U.S. Mail, postage prepaid, to the following persons.

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