April 5, 2006

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Reform of Auction Rules for Upcoming AWS Auction
AU Docket No. 06-30, WB Docket No. 05-211

Dear Mr. Chairman:

The undersigned organizations write to urge you to adopt the anonymous bidding proposal and reject the compromise proposed by the wireless industry. We also call upon you to prohibit material relations between designated entities and large wireless carriers – but not with small wireless carriers or other large companies. These two changes, taken together, will introduce much needed competition into the mobile phone and mobile data industry. On the other hand, failure to adopt these rules may cost the United States more than ***$10 Billion*** in auction revenues, as well as the harm done to consumers from the failure to introduce new competitors.

First, the FCC should prohibit large wireless carriers from maintaining significant relationships with "designated entities" (DEs). The DE rules give small businesses a 25% discount as a means of fulfilling Congress' instruction that the auction rules encourage entry by small businesses and busin-esses owned by women and minorities. Instead, as the record has shown, large wireless carriers use "sham" DEs to block genuine new entrants and receive a 25% discount off the bid price. This game playing has cost the American public billions of dollars in lost revenues and lost competition.[1]

Second, the FCC should adopt anonymous bidding rules. As the Department of Justice obs-erved, the FCC's open, ascending auction rules invite companies to develop "bidding signals" to communicate with each other. In this way, wireless companies of all sizes have worked together to exclude genuine new competitors and avoid bidding up licenses to their full value. Numerous academic papers have documented this behavior, detailing how companies avoid bidding against each other where possible and how they punish companies that break the unwritten "rules" of the game. The study submitted by the National Hispanic Media Coalition analyzing ten years of FCC auction data is only the latest study to confirm the Department of Justice's assessment.

The Department of Justice recommended that the FCC adopt anonymous bidding

[1]The FCC should not, however, adopt the more expansive proposals of preventing DEs from having material relation-ships with other large businesses. The goal of the DE program, to foster real competition in the wireless Industry, entry for small businesses, and encourage minority and women ownership of licenses, remain important, statutory goals. Providing small and minority businesses with access to capital from the *competitors* of existing incumbent carriers advances those goals, to the benefit of all consumers.

rules that prevent companies from signaling each other effectively. Unsurprisingly, nearly every wireless car-rier has asked the FCC to keep the existing rules. Failing that, the carriers ask the FCC to adopt a "compromise" designed by the wireless carriers that they claim addresses the FCC's and DoJ's concerns.

The proposed compromise does *not* address the critical problems of manipulation of auction rules by the incumbents. As an economic analysis submitted by the National Hispanic Media Coalit-ion shows, the proposal by T-Mobile and other wireless carriers relies upon an untested "ratio" to determine if the auction is "sufficiently competitive" to prevent collusion. But this does not eliminate the ability of companies to signal each other and punish bidders that break the rules. Nor does it pre-vent companies from creating or encouraging "sham bidders" to manipulate the ratio, in the same way they have used "sham DEs" to manipulate the designated entity credit program.

Finally, one of the chief authors of the compromise, Dr. Peter Cramton, now representing T-Mobile, concluded in an academic paper in 2002 that the FCC should adopt anonymous bidding to prevent collusion and foster entry by new competitors. While Dr. Cramton offers an explanation for why the proposed "initial eligibility ratio" resolves the problems he identified in 2002, he does not provide any empirical evidence to support this claim. The FCC would do better to rely upon Dr. Cramton's previous academic study, tested against real world data, than upon his new theoretical work financed by an AWS bidder.

In conclusion, the stakes in getting the rules right are huge. To give a sense of scale, Europ-ean countries using open bidding for 3G spectrum auctions received between one-half and one-quarter of the expected auction revenue.[2] Denmark, by contrast, adopted anonymous bidding. Despite holding its auction after the "new economy" bubble burst, Denmark's anonymous bid auction generated twice the expected auction revenue and facilitated entry of a new competitor.

Analysts and the Congressional Budget Office have estimated that the AWS auction will raise $25 Billion in auction revenues. But that analysis depends on a competitive auction and on large companies paying the full face value of their bids. Using the European 3G auctions as a guide, allowing companies to signal each other through open auctions could easily reduce auction revenue by $10 Billion or more. If wireless companies can continue to bid on licenses through designated entities, and thus receive a 25% discount, it could reduce the auction revenue another $3-$4 Billion.

This $10-plus Billion dollar potential loss represents only the revenue lost directly from a red-uced auction price. It does not even begin to address the continuing loss to the American consumer from failing to introduce new competitors into an already concentrated wireless market.

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[2]The one exception was the United Kingdom, which went first before bidders had a chance to work out the unwritten "rules" for signaling.

Between the signaling encouraged by open auctions and the sham DEs used to get a 25% discount FCC auctions have become little more than a high-stakes bridge game. Companies use well understood bids and "dummies" to buy licenses cheaply in the same way bridge players use bidding signals to "bid" for "game contracts" or "preempt" the other team. We urge you to shut down this "Billion Dollar Spectrum Bridge Game" by adopting the anonymous bidding rules and preventing wireless carriers from using dummy DEs to bid on licenses. If you do, the American people and the public interest will be the real winners.

Sincerely,

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