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

In the Matter of	)	
Comment Sought On Addressing Challenges to Broadband Deployment Financing	)	GN Docket No. 09-47
	)	GN Docket No. 09-51
NBP Public Notice #28	)	GN Docket No. 09-137

COMMENTS OF METROPCS COMMUNICATIONS, INC. – NBP Public Notice #28

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its Comments in response to the *Public Notice* (the "*Notice*") issued by the Federal Communications Commission (the "Commission") in the above-captioned proceedings.[2]

In the *Notice,* the Commission notes that "[o]ne identified obstacle to broadband access in rural communities is the lack of available private financing for network deployment, whether through capital investment, debt financing, or other financial support."[3] MetroPCS wholeheartedly agrees that the unavailability of private financing may be having an adverse impact on broadband deployment, particularly in rural areas. MetroPCS believes, however, that the best approach is to provide opportunities for a broader cross-section of carriers by creating market incentives for private financing rather than creating new government grant or financing programs. MetroPCS therefore suggests that the Commission adopt its Bidding Incentive

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed affiliates and subsidiaries.

[2] *Comment Sought On Addressing Challenges to Broadband Deployment Financing; NBP Public Notice # 28*, GN Docket Nos. 09-47, 09-51 and 09-137, DA 09-2610, rel. Dec. 18, 2009.

[3] *Notice* at 1.

Discount ("BID") proposal for upcoming auctions.[4] Such a proposal would allow new entrants, and small, rural and medium-sized carriers to better attract private capital allowing them greater opportunity to acquire additional spectrum and deploy broadband. MetroPCS thus responds to the following question presented in the *Notice*:

2. What new financing methods should be employed to increase effectiveness and encourage entrepreneurship in the private sector for supporting rural broadband deployment?

MetroPCS believes that creating market incentives, rather than creating new government funded programs, would be the best approach to fostering the financing of broadband. Given the regulatory problems created by prior efforts to offer Government-backed installment payment auction financing (*e.g.*, the C Block in Auction No. 5), the Commission should avoid any form of direct Government financing for auction bids. Rather, the Commission should adopt an auction design that will result in a fair distribution of additional spectrum by improving the likelihood that applicants other than the largest entrenched incumbents will compete for and win licenses for wireless spectrum. Increased successful participation of entrepreneurs, new entrants, and small and medium-sized wireless carriers in auctions for wireless spectrum will promote broadband deployment. One promising method of incenting private investment previously proposed by MetroPCS is for the Commission to implement a bidding incentive discount program to be used in the auctions of wireless spectrum, with the discount being in inverse proportion to how much spectrum a particular provider has in a particular market.

The implementation of competitive bidding procedures for the assignment of spectrum licenses has been one of the single most important regulatory changes to promote wireless

[4] *See* MetroPCS Comments in *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for our Future*, *Notice of Inquiry*, GN Docket No. 09-157, GN Docket Nos. 09-157 and 09-51, FCC 09-66 at 49-58 (rel. Aug. 27, 2009).

innovation and investment. Historically, comparative hearings were too slow, and lotteries were too random, to accomplish the ultimate objective of getting licenses promptly into the hands of those who value them highly and will put them to productive use.[5] There were, though, fears expressed when auctions were first proposed that well-heeled incumbents would end up with all of the licenses.[6] These concerns led to the designated entity ("DE") program which was designed to create opportunities for entrepreneurs, small businesses and other diverse applicants. In the early days, there were some notable successes in the DE program. For example, Cook Inlet Region, Inc. ("Cook Inlet") was an Alaska Regional Corporation organized under the Alaska Native Claims Settlement Act.[7] Cook Inlet, and various affiliated entities, became a notable success story for entrepreneur participation in telecommunications services. Cook Inlet and its affiliates constructed and introduced commercial service in more than 50 basic trading areas and rural markets throughout significant portions of the United States.[8] Dobson Communications likewise started as a DE and grew to serve 1.7 million subscribers in 16 states before being acquired in 2007 by AT&T. And, MetroPCS itself is an example of an early DE success story. The licenses that form the core of the MetroPCS systems were acquired by its predecessor in interest in the broadband PCS C Block auction (FCC Auction No. 5) in which licenses were set aside for entrepreneurs and very small businesses. Having now grown to become the fifth largest facilities-based carrier serving over 6 million customers with a distinct

[5] There is nothing in today's environment that suggests that comparative hearings are more likely to go faster today than in the past.

[6] The results of the 700 MHz upper band auction – in which most of the spectrum was acquired by AT&T and Verizon – ratifies these concerns.

[7] 47 U.S.C. §1601 at seq.

[8] *See Affidavit of Craig Floerchinger, Vice President of Cook Inlet Region*, filed December 1, 2000 with respect to Application File No. 0000216961.

business model, MetroPCS clearly is an embodiment of the benefits of encouraging the broad dissemination of licenses to diverse applicants as contemplated by the DE program.

Unfortunately, as the Commission knows well, controversy developed in the DE program as numerous DEs entered into strategic arrangements with large incumbent carriers which, in the view of many, undermined the core objectives of the program. These arrangements were the natural outgrowth of the need for licensees to gain access to substantial capital to construct and operate networks. Consequently, the Commission took major steps in 2006 to reduce the prospects of abuses in the program, including limiting the permissible relationships with strategic partners and extending the period that DE licenses had to be held before licensees would be excused from paying back the bidding credits.[9] These changes, though well intentioned, have had the effect of drastically reducing the level and extent of participation of DEs in spectrum allocations.[10] At this point, MetroPCS would be hard-pressed to identify any significant industry player that has emerged, or is likely to emerge, from today's DE program.

In part, the problem is the result of an inherent tension between the objectives of the DE program and the ingredients that are necessary for a new entrant to succeed in the wireless business. Wireless businesses are exceedingly capital intensive in the current market environment which favors wide area service. Thus, any program largely focused on promoting

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[9] *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Second Report and Order and Second Further Notice of Proposed Rulemaking, WT Docket No. 05-211, 21 FCC Rcd 4753 (2006).

[10] In response to the abysmally low (0.64 percent) of minority winning bidders, Commissioner Adelstein stated: "It's appalling that women and minorities were virtually shut out of this monumental auction. It's an outrage that we've failed to counter the legacy of discrimination that has kept women and minorities from owning their fair share of the spectrum. Here we had an enormous opportunity to open the airwaves to a new generation that reflects the diversity of America, and instead we just made a bad situation even worse. This gives whole new meaning to 'white spaces' in the spectrum." *Commissioner Jonathan S. Adelstein Comments on Lack of Diversity Among Winners of 700 MHz Auction*, FCC News Release, Mar. 20, 2008.

small and very small businesses is likely to be of limited impact due to the severe limitations on the access of such companies to the capital necessary to develop competitive, cutting-edge wireless services. The Commission became concerned when this need for access to capital was addressed by having the small and very small businesses become enmeshed with large incumbent carriers, and adopted restrictions on the "material relationships" that eligible DEs could have with an ineligible entity.[11] However, the current DE rules essentially cut off these cooperative benefits, which have had the predictable effect of reducing the number of DEs that succeeded in winning licenses at auction and became major players in the wireless market.

At the same time that the DE program was being subject to restrictions, the Commission adopted auction rules which tilted the playing field in favor of larger carriers. For example, the Commission licensed spectrum in larger blocks over large geographic areas and, in Auction 73, used combinatorial bidding. These changes, coupled with no limitation on large carrier participation, led to most of the spectrum being acquired by the Big-4 wireless carriers.

The Commission also must avoid any direct Commission-backed financing plans, such as installment payments or Commission financed loans. As the Commission is well aware, Commission-based financing plans, such as the installment payment program used in Auction 5, had severe adverse unintended regulatory consequences. The Commission-backed installment payments encouraged speculation by certain applicants. In effect, the Commission-backed financing promoted bidders who otherwise were unable to acquire private financing to purchase spectrum because they were unable to demonstrate to private financers an ability to build and operate their markets to cash flow break even. Unqualified bidders may use government money to bid up prices to be paid for the spectrum, putting such spectrum beyond the ability of

[11] See 47 C.F.R. §1.2110(b)(3)(iv) (defining impermissible material relationships between an

legitimate bidders who may have the necessary financing they need they need to fulfill their business plan. Further, since the installment payment program benefited only the smallest licensees with no real revenues (if the bidder had significant revenues they did not qualify for the financing), the risk of failure was high. Not surprisingly, many of the bidders who acquired spectrum with installment payments went bankrupt.[12] In addition, the Commission – as both lender and regulator – was unable to protect itself adequately with traditional secured financing mechanisms. With this sad history in mind, the Commission should eschew any installment payment or other forms of Commission-backed financing plans in an effort to promote broadband deployment. Rather, the better approach is to create incentives for the private financing marketplace to finance potential bidders through providing incentives that allow such bidders to participate and succeed in the auction. That way, private investors, rather than the government, will play the useful role of validating business models and backing those most likely to succeed; since such investors will be taking the financial risk associated with a failure of a bidder business plan.

Accordingly, MetroPCS respectively submits that it is time for the Commission to adopt new auction rules designed to foster new and increased competition, as well as increased broadband deployment, in the wireless marketplace. Rather than according bidding credits based upon an applicant's size, bidding credits should be given to applicants in inverse proportion to the amount of attributable spectrum that the applicant holds in the auctioned license territory. Specifically, MetroPCS proposes the following sliding discount scale:

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eligible DE and a non-eligible entity).

[12] There were other factors that contributed to the failure of the C Block auction including (1) the fact that the Commission pushed too much spectrum to market in a narrow timeframe; and, (2) unreasonable Commission delays, in the context of rapidly changing market conditions, in granting licenses.

Attributable Spectrum	% Discount
0 to 20 MHz	60%
20 to 40 MHz	40%
40 to 60 MHz	20%
60+ MHz	0%

A discount structure of this nature would likely succeed in reversing the trend where the most spectrum-rich incumbents are able to garner the lion's-share of spectrum in future auction. Rather, new entrants and small existing carriers desiring to expand and improve services within existing markets and to enter new markets would have an increased likelihood of being able to attract private capital and to become successful bidders in the auctions. The result would be increased broadband deployment as desired in the National Broadband Plan.

This sliding credit scale generally would allow market forces, rather than regulatory command and control processes, to work, while still increasing the prospects that new entrants, innovators and other persons needing spectrum would be able to attract capital and end up as licensees. While the credits are substantial, and larger than those offered in the past, they are necessary to encourage private lenders to commit capital to applicants other than the largest incumbents. The largest carriers are in many cases 10 times the size (or larger) of those they are bidding against for spectrum. Given the disparity in size, commercial lenders need additional incentives to back smaller competitors. Also, as is discussed further below, the big entrenched incumbents enjoy substantial economies of scale that enable them to bid more than new entrants and others who only have a small market presence. Under this combination of circumstances, a 60 percent discount is necessary and may not in some instances prove to be sufficient. However, such a discount represents a reasonable balance between the need of the Commission, on the one hand, to make winning bidders pay enough to ensure that they have a seriousness of purpose and an economic incentive to put the spectrum to productive use and, on the other hand, to reduce the price enough so that smaller applicants have a realistic chance to acquire and develop spectrum. Most important, the discount would provide additional financial incentive for lenders and investors to provide the capital which is necessary for a broad cross-section of companies to participate actively in broadband deployment.

In implementing this discount program, the Commission would need to attribute to each applicant any and all spectrum it has that covers any portion of the geographic area within the territory of the acquired license. The Commission could use current attribution rules to make this assessment. Applicants also would need to be attributed with all of the spectrum of any discloseable interest holder in the applicant. This would deter applicants from securing investments from incumbents with existing spectrum who would be ineligible to bid on the target licenses directly. Applicants also would need to be attributed with all spectrum held by any entity with which the applicant had an auction-related agreement or strategic relationship. This would reduce the risk that auction applicants receiving significant discounts would be acting as buyers of convenience for third parties who were ineligible to buy the spectrum on their own account.[13] Finally, as the Commission has done with the DE program, bidding discounts received pursuant to this program would be paid back if the subject license was acquired in the first five years, with the amount due being calculated on a straight-line basis.[14]

[13] In addition to these restrictions, applicants with more than the screen amount of spectrum should not be considered eligible to acquire spectrum in a particular market in the auction even if they were willing to pay full price without a discount. However, after the auction, the potential buyer could purchase this spectrum after repaying the discount.

[14] MetroPCS believes that a 5 year versus the current 10 year payback period is appropriate. If the term of payback is too long, investors may be deterred from investing since the residual value of the spectrum in the event an applicant's business model fails would be severely diminished.

Several wireless marketplace realities support this modified auction credit structure. The simple reality is that well-entrenched incumbents with substantial existing infrastructure always will be in a position to pay more for spectrum because their incremental costs of implementing service will be dramatically lower. Having allowed the major nationwide carriers to grow to their current sizes, the playing field simply is not level when it comes to the ability to attract capital and support auction bids. The reason that Verizon Wireless and AT&T Mobility were able to out-bid others in the 700 MHz auction is that they enjoy substantial incremental cost advantages. Unless the Commission takes steps to provide discounts to applicants with lesser spectrum resources in the pertinent market areas, financing for small and mid-sized carriers will dry up and the current consolidation trend will continue and intensify.

The proposed discount plan also is justified by other structural changes that are taking place in the wireless market. Studies show that net revenues to wireless carriers from data services will decrease dramatically over time, meaning that discounts on spectrum will be necessary in order for business plans to succeed. Private lenders scrutinize business plans carefully before making investment decisions. The BID program will enable a broader range of applicants to establish workable long-term business plans that will support investment.

Notably, the Commission has ample statutory authority to implement the changes proposed by MetroPCS. Section 309(j)(3) empowers the Commission "to design and test multiple alternate methodologies under appropriate circumstances" when coming up with systems of competitive bidding.[15] In designing the methodologies for use under the Act, the Commission is expected to promote "the development and rapid deployment of new

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Notably, the DE program was more successful when the payback period was 5 years and has been largely a failure since it was moved to 10 years.

[15] 47 U.S.C. § 309(j)(3).

technologies, products and services for the benefit of the public" and to promote "economic opportunity and competition" and to avoid "excessive concentration of licenses…by disseminating licenses among a wide variety of applicants including small businesses, rural telephone companies and businesses owned by members of minority groups and women."[16] Notably, many entities falling into these "DE" categories would qualify for the highest bidding credit under the MetroPCS plan because they do not control large blocks of spectrum in many markets in the United States.[17]

In effect, the MetroPCS proposal would recognize that the current straight up auction mechanism is not meeting the objectives of the Communications Act, or the public interest, because it is resulting in an undue concentration of licenses in a small number of service providers. The approach suggested by MetroPCS holds promise of curing this concentration by creating incentives for sources of capital to support a broader array of carriers without eliminating market forces as a governing principle behind the auction. Such an approach would promote broadband deployment. In sum, the proposed auction rule changes would be an appropriate use of regulatory power to foster increased financing for network deployment based upon evidence that the previously utilized auction policies in the auction are not working to achieve the important objectives of the Communications Act.

CONCLUSION

The foregoing premises having been duly considered, MetroPCS Communications, Inc. respectfully requests the Commission to take actions consistent with these comments.

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[16] 47 U.S.C. § 309(j)(3)(B).

[17] MetroPCS also proposes that the current "material relationship" provisions of the current DE rules should not apply to this program. The Commission needs to recognize that smaller carriers and new entrants need such material relationships to succeed, and in the context of promoting a more fair distribution of licenses, such a limitation is not appropriate.

Respectfully submitted,

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