

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

In the Matter of	)	
	)	
Media and Wireless Telecommunications	)	GN Docket No. 10-244
Bureaus Seeks Comment on	)	
Recommendation of the Advisory	)	
Committee on Diversity for	)	
Communications in the Digital Age for a	)	
New Auction Preference for Overcoming	)	
Disadvantage	)	

**COMMENTS  
of the  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”)<sup>1</sup> hereby comments on the above referenced Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age (the “Advisory Committee”) for a New Auction Preference for Overcoming Disadvantage. NTCA supports the effort to collect information in advance of a potential rulemaking proceeding to create a new designated entity preference for persons who have overcome a substantial disability. However, NTCA reminds the Federal Communications Commission (the “Commission”) that even those currently defined by statute as Designated Entities (“DEs”) struggle in their quest for primary spectrum opportunities. Any examination of the DE rules should include a study of the effectiveness of the current rules and a consideration of appropriate rule changes that would provide a more meaningful opportunity for *all* DEs – both those currently designated and those who might be added – to obtain and make effective use of much-needed spectrum.

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<sup>1</sup> NTCA is a national association representing more than 570 rural telecommunications providers. While NTCA’s members are all rural incumbent local exchange carriers, most provide their rural communities with a broad array of telecommunications services, including mobile wireless service.

The Bureaus correctly recognize that Sections 309(j)(3)(B) and (D) of the Communications Act of 1934, as amended, direct the Commission to disseminate spectrum licenses among “a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women” and to “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.” In 1994, the Commission complied with this directive by offering DEs installment payments, spectrum set-asides and bidding credits.<sup>2</sup> Of those provisions, only the bidding credit is a tool still employed by the Commission to comply with Section 309(j). The bidding credit is an amount by which a bid is discounted in an effort to provide an opportunity for small businesses to compete at auction with larger entities seeking the same spectrum.

NTCA’s members have found that the auction bidding credit is ineffective at providing a realistic opportunity for a DE such as a rural telephone company (most of whom are also small businesses) to compete with a nationwide provider seeking the same spectrum real estate. The difference in resources between a large, nationwide provider and a small rural telephone company is far too disparate for a mere bidding credit to level the playing field in any meaningful manner. The Commission should consider alternative licensing arrangements if it is to carry out the true purpose of Section 309(j). The Commission should license territory according to more granular geographic areas to help ensure that small companies and large companies are not competing against each

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<sup>2</sup> In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253 (Rel. April 20, 1994).

other at auction when they may not intend to serve the same territory. As additional spectrum is made available for licensing, the Commission should look at it creatively and find opportunities to set some of it aside specifically for designated entities. The Commission should also ensure that companies are not claiming DE benefits when they have the financial backing of large wireless providers.

Finally, the Commission should ensure that once auctions end, large licensees do not act to push DEs out of the market. The lack of automatic data roaming regulation,<sup>3</sup> the inability of DEs to obtain handsets due to the exclusive arrangements between large wireless providers and manufacturers,<sup>4</sup> and equipment standards that ensure that DEs cannot use the same equipment as the large providers or roam with them,<sup>5</sup> make it extremely difficult for DEs to survive, let alone thrive, in the provision of spectrum based services. The financial power of the largest nationwide providers combined with the failure of the Commission to act to protect DEs is creating a situation in which the opportunity for DEs to provide spectrum based services is rapidly dwindling. Thus, while it may be necessary and appropriate for the Bureaus to consider now whether and how to confer DE status on others such as persons who have overcome a substantial disability, such a designation could be of little, if any, import unless the Commission

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<sup>3</sup> See, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, *Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the National Telecommunications Cooperative Association*, WT Docket No. 05-265, FCC 10-59 (filed June 14, 2010).

<sup>4</sup> See, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, *Comments of RTG, OPASTCO and NTCA*, RM No. 11497 (filed Feb. 2, 2009).

<sup>5</sup> See, The Business Broadband Marketplace, *Joint Reply Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies*, WC Docket No. 10-188 (filed Nov. 4, 2010).

takes the additional steps needed to enable each DE to initiate operations and compete effectively.

## CONCLUSION

NTCA is supportive of the effort to examine whether it is appropriate to create a new DE preference for persons who have overcome a substantial disability. However, the designation would offer little if the Commission fails to create more meaningful opportunities for all DEs. Bidding credits do not enable small businesses to compete with large nationwide providers seeking the same spectrum. Additional spectrum opportunities and regulation to appropriately protect small businesses from the market control exerted by the nationwide providers post- auction are essential to ensure that DEs can continue to participate in the provision of spectrum-based services.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in GN Docket No. 10-244, DA 10-2259, was served on this 7<sup>th</sup> day of February 2011 via electronic mail to the following persons:

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