



August 8, 2014

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **EX PARTE NOTICE**

Amendment of the Commission's Rules With Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185

Auction of Advanced Wireless Services Licenses, Competitive Bidding Procedures for Auction 97, AU Docket No. 14-78

Dear Ms. Dortch:

Recently, representatives of Competitive Carriers Association ("CCA") and CTIA – The Wireless Association® ("CTIA") met with Commission staff to discuss CCA, CTIA and NTCA—The Rural Broadband Association's supplemental *ex parte* letter concerning an interim waiver of the Commission's "former defaulter" rule for the upcoming auction of AWS-3 spectrum.¹ Specifically:

On August 6th, Rebecca Murphy Thompson and Sean Spivey on behalf of CCA and Scott Bergmann and Brian Josef on behalf of CTIA met with Brendan Carr, Wireless, Public Safety and International Legal Advisor to Commissioner Pai, and with Roger Sherman, Sue McNeil, Gary Michaels, Bill Huber, Scott Mackoul and Kelly Quinn of the Wireless Telecommunications Bureau;

On August 7th, Rebecca Murphy Thompson, Sean Spivey and Scott Bergmann met with: (i) Renee Gregory, Engineering and Technology, Wireless and Incentive Auction Legal Advisor to Chairman Wheeler, (ii) Louis Peraertz, Wireless, International and Public Safety Legal

¹ See *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA *et al.* to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 (filed Aug. 1, 2014) ("August 1st Ex Parte").

Advisor to Commissioner Clyburn, and (iii) David Goldman, Senior Legal Advisor to Commissioner Rosenworcel; and

On August 8th, Sean Spivey and Scott Bergmann met with Erin McGrath, Wireless, Public Safety and International Legal Advisor to Commissioner O’Rielly.

If administered properly, Auction 97 will unleash 65 megahertz of mobile broadband spectrum—thus playing a vital role in addressing the wireless industry’s continued need for spectrum—while at the same time bringing in revenues necessary to fully fund FirstNet. Both CCA and CTIA agree that Auction 97 must be a success.

Unfortunately, an overly broad application of the former defaulter rule could inhibit robust auction participation. Section 2.2106(a) of the Commission’s rules requires applicants who have previously been in default on any Commission license or have previously been delinquent on any non-tax debt owed to any Federal agency to submit an upfront payment equal to 50 percent more than that set for a particular license.² The purpose of this rule is to ensure that applicants are credit-worthy and able to make final payments on any licenses they may win in an auction,³ yet the rule applies regardless of the size of the default or the amount of time that has passed since the debt was paid.

At the outset, CCA and CTIA expressed that time is of the essence. Short form applications for Auction 97 are due September 12th, and potential bidders need sufficient time well in advance of that deadline to determine how much money they will need to allocate for upfront payments to bid in the auction. An additional 50 percent payment comes at a tangible price to potential bidders. As CCA and CTIA have previously noted, there is a Time Value of Money (“TVM”) factor that comes with making additional upfront payments.⁴ If the total of additional upfront payments for Auction 97 is similar to those for the AWS-1 and 700 MHz auctions, the TVM impact would be significant.⁵ Moreover, the financial concerns surrounding these payments are amplified by the fact that Auction 97 spans over two calendar years; thus, upfront payments will be made (and reported) in 2014 for license assets that won’t be acquired until 2015.

² 47 C.F.R. § 1.2106.

³ *Uniform Auction Rules*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 15293, ¶ 41 (2000) (positing that the “former defaulter” rule balances the interests of ensuring that bidders are not in default on certain debts, ensuring that entities can meet present and future responsibilities as a Commission licensee, and preventing an entity’s past business misfortunes from precluding its participation).

⁴ *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA *et al.* to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 *et al.* at 2 (filed May 30, 2014) (noting that no interest is paid on upfront payments despite being held for months at a time).

⁵ *Id.*

To ease these concerns, CCA and CTIA (along with NTCA) have proposed a variety of scenarios by which Auction 97 bidders could demonstrate creditworthiness and a capacity to meet their financial obligations.⁶ CCA and CTIA discussed their proposed criteria for an interim waiver for Auction 97, as well as a more permanent change to the rule. CCA and CTIA urged the Commission to consider exception criteria that provide meaningful relief to potential bidders, as opposed to an overly conservative “waiver” or “exclusion” that does not address bidders’ concerns. CCA and CTIA also discussed with the Wireless Bureau Representatives the timing for review of short form applications, and how best to balance providing bidders with as many avenues as possible to demonstrate creditworthiness with the need for objective, easily verifiable data.

The Commission can best fulfill the objectives of the Spectrum Act and its AWS-3 proceeding by ensuring maximum participation in the AWS-3 auction. The spectrum to be auctioned in Auction 97 will play an important role in meeting carriers’ needs for mobile broadband capacity, and otherwise qualified entities should not be held back by immaterial past debts or defaults. By providing a reasonable amount of flexibility in application of the former defaulter rule, the Commission will promote a robust auction and serve the public interest.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel
Competitive Carriers Association

/s/ Scott Bergmann

Scott Bergmann
Vice President, Regulatory Affairs
CTIA – The Wireless Association®

cc (via email): Renee Gregory
Louis Peraertz
David Goldman
Brendan Carr
Erin McGrath
Roger Sherman
Sue McNeil
Gary Micahels
Bill Huber
Scott Mackoul
Kelly Quinn

⁶ See August 1st Ex Parte at 2.