

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Updating Part 1 Competitive Bidding Rules)	WT Docket No. 14-170
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	
Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver)	RM-11395
)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures)	WT Docket No. 05-211
)	

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”) hereby submits its comments in response to the Notice of Proposed Rulemaking¹ in the above-captioned proceeding. NTCA is a national association of more than 900 members. All of NTCA’s members are rural incumbent local exchange carriers (“RLECs”), many of whom also provide video, wireless, and broadband

¹ *Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, *Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver*, RM-11395, *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Notice of Proposed Rulemaking, FCC 14-146 (rel. Oct. 10, 2014) (“NPRM”).

services to their rural communities. Many NTCA members also act as competitive carriers in other rural towns and outlying areas, offering voice, video, broadband, and wireless services to residential consumers and businesses.

NTCA herein urges the Commission to adopt a new category of Designated Entity (“DE”) bidding credit applicable to rural telephone companies’ wireless affiliates. These carriers serve markets far different from other small businesses and operate under unique circumstances in areas that larger carriers often choose to ignore. A separate bidding credit would help to bring advanced wireless services to rural areas and would be consistent with the Communications Act.

NTCA also urges the Commission to modify its current Attributable Material Relationship (“AMR”) rule and in its place adopt the more flexible approach as proposed in the NPRM. However, thoughtful consideration is necessary to achieve a balance between affording certain entities bidding credits to facilitate their access to valuable wireless spectrum and ensuring that ineligible entities are not able to circumvent the rules and obtain bidding credits meant for small businesses and other worthy parties. The Commission should therefore proceed with all due caution to ensure that overly restrictive rules adopted in response to the recently completed AWS-3 auction do not defeat the purpose of the bidding credit provisions.

II. THE COMMISSION SHOULD CREATE A BIDDING CREDIT SPECIFICALLY APPLICABLE TO RURAL TELEPHONE COMPANIES

The Commission should adopt a new category of bidding credit applicable to rural telephone companies’ wireless affiliates. These carriers serve markets far different from other small businesses and operate under far different circumstances in areas that larger carriers often

choose to ignore. A separate bidding credit would help to bring advanced wireless services to rural areas and would be consistent with the Communications Act.

As the NPRM correctly notes, “[t]he Communications Act directs [the Commission] to consider the use of bidding preferences 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.’”² Section 309(j) of the Communications Act was created in recognition of the unique challenges that each of these groups face. While the statute clearly does not contemplate a bidding credit regime that groups small businesses, rural telephone companies, and minority/women owned businesses as a homogenous group, these three separate and often distinct entities are currently so combined. While many rural telephone companies qualify as “small businesses,” not all do. Even those rural telephone companies that qualify for small business credits operate under far different circumstances than a typical small business. Rural telephone companies serve primarily sparsely-populated and less profitable, high-cost-to-serve rural areas that most carriers, understandably, choose to ignore. Rural telephone companies’ sense of community drives a desire to provide their customers with a wide array of services, wireline and wireless, unlike a typical business that is driven solely by profit. A separate rural telephone company accommodation would recognize that unique status and commitment to rural areas and go a long way towards enabling these carriers to compete at auction against larger deep-pocketed providers.

² *Id.*, ¶ 66, citing 47 U.S.C. § 309(j)(4)(D).

To be clear, bidding credits alone are no “silver bullet” for an entity seeking to compete in a spectrum auction and thus the Commission should consider additional tools. Indeed, only a small handful of licenses awarded in the recently completed AWS-3 spectrum auction went to rural carriers, and NTCA estimates that bidding credits had an almost negligible effect on these carriers’ ability to purchase spectrum.³ However, bidding credits can, if properly structured, serve as a valuable tool for smaller providers such as those represented by NTCA when competing at auction against larger providers with much greater access to capital.

As to the specifics, the Commission could restrict eligibility for a rural telephone company bidding credit to entities meeting the definition of “rural telephone company” in the Communication Act.⁴ This credit should amount to 25 percent on top of any small business credit for which the eligible rural telephone company would otherwise qualify. This additional bidding credit would bolster rural carriers’ ability to compete in spectrum auctions and help the Commission to achieve its statutory duty of “avoiding excessive concentration of licenses and 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.”⁵

³ See, Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97, Public Notice, DA 15-131(Jan. 30, 2015), Attachment A.

⁴ 47 U.S.C. § 153 (44).

⁵ 47 U.S.C. § 309(j)(3)(B).

III. THE COMMISSION'S ATTRIBUTABLE MATERIAL RELATIONSHIP RULES MUST NOT UNDULY RESTRICT SMALL PROVIDERS' ACCESS TO MUCH NEEDED SPECTRUM

The Commission should modify its current AMR rule and in its place adopt a more flexible approach as proposed in the NPRM. The current AMR rule is overly broad and prevents small wireless providers from being able to enter into leasing and other arrangements that help them secure the financing necessary to build wireless networks and provide wireless services to rural communities.

As an initial matter, it should be noted that a Commission update of its DE bidding credit rules is an important part of fulfilling its duty to ensure that consumers living in rural areas of the nation have access to the advanced services available to those living in urban areas. Again, as noted above, bidding credits alone are certainly no panacea for an entity seeking to compete in a spectrum auction, and they certainly were not so in the AWS-3 auction. However, the Commission should review its bidding credit rules keeping in mind that overly restrictive rules can limit small providers' access to much needed and difficult to obtain capital and therefore defeat the very purpose of the rules in the first place. Such a review of the bidding credit rules is particularly important in advance of the Broadcast Television Spectrum Incentive Auction, as this auction will make available perhaps the last available "beachfront" spectrum.

With that in mind, the recent controversy surrounding certain entities' use of bidding credits in the recently completed AWS-3 auction is an issue that the Commission must confront. Bona fide small businesses and rural telephone companies that are the intended beneficiaries of small business bidding credits are losers as well when forced to compete at auction against larger

providers utilizing such credits. Such a result only contributes to the excessive concentration of spectrum licenses in the hands of entities unlikely to be interested in serving rural areas.

At the same time, any Commission action going forward to address this issue should not result in overly restrictive rules that, while well intended – and possibly successful in preventing ineligible entities from circumventing the rules – also inadvertently limit *bona fide* small businesses and rural telephone companies from utilizing bidding credits as the Commission intended and in keeping with the goals of Section 309(j). The Commission’s DE bidding credit rules must achieve a balance between affording certain entities bidding credits to facilitate their access to valuable wireless spectrum and ensuring that ineligible entities are not able to circumvent the rules and obtain bidding credits meant for small businesses and other worthy parties.

For example, the current AMR rule adopted nearly a decade ago has failed to achieve the proper balance. In particular, as some parties have argued,⁶ the current AMR unduly restricts DE’s ability to enter into certain wholesaling and leasing arrangements that are vital to small businesses’ ability to gain access to capital. The NPRM correctly states that the AMR rule “may inhibit the highest and best use of spectrum by preventing small businesses that lack access to traditional sources of capital from being able to acquire alternative revenue streams through leasing and other spectrum use arrangements, even in circumstances where they retain control

⁶ S. Jenell Trigg & Jeneba Jalloh Ghatt for MMTTC, *Digital Déjà Vu: A Road Map for Promoting Minority Ownership in the Wireless Industry*, GN Docket No. 12-268, at v, 32–34 (filed Feb. 27, 2014); Letter from Cheryl Johns, Assistant Chief Counsel for Telecommunications, SBA Office of Advocacy, to Marlene H. Dortch (fil. Aug. 25, 2009).

over their business venture.”⁷ In addition, as Commissioner Clyburn notes, the current AMR rule “penalize[s] a DE for raising funds for its own spectrum-based communications business by temporarily leasing to another company more than 25 percent of any of its licenses even if those licenses were not acquired with DE bidding credits and the lessee had no influence over the DE.”⁸ In short, the AMR as it exists today does not make bidding credits available to the entities that need them the most.

Thus, NTCA supports the NPRM’s proposal to adopt a more flexible approach that moves away from a restrictive bright-line AMR rule to a process that would evaluate small business eligibility for DE bidding credits using a case-by-case two-step test. As the NPRM states, the Commission would retain its existing controlling interest and affiliation standards (possibly subject to certain amendments as discussed below) and conduct a rigorous review of DE applicants to ensure that DEs retain control over licenses obtained with bidding credits.

In addition, to more effectively target the use of bidding credits to those entities contemplated by Section 309(j), the Commission should also consider restricting larger nationwide and regional carriers from providing a material portion of the total capitalization of DE applicants or otherwise exercising control over such applicants as part of the definition of “material relationship.” NTCA has been supportive of such a rule amendment previously in this proceeding⁹ and stands ready to work with the Commission to adopt appropriately balanced rules

⁷ NPRM, ¶ 24.

⁸ *Id.*, Statement of Commissioner Mignon L. Clyburn.

⁹ Comments of NTCA, WT Docket No. 05-211 (fil. Feb. 24, 2006), pp. 4-5.

that limit the use of bidding credits to the entities addressed in Section 309(j). To be clear, the Commission certainly should not include in the definition of “material relationship” *every* relationship between a large carrier and the DE. Arrangements such as joint marketing, trademark arrangements, reselling, and roaming agreements likely do not affect the financing, management or control of the otherwise qualified DE, and thus should not be inadvertently swept up in any more restrictive definition of “material relationship.” As with the discussion of the AMR above, thoughtful consideration must be given toward achieving a proper balance between restricting ineligible entities from obtaining bidding credits and inadvertently limiting small businesses and rural telephone companies from having a realistic chance to compete at spectrum auctions.

IV. CONCLUSION

NTCA appreciates the Commission’s commitment to ensuring that small businesses have the opportunity to acquire spectrum and provide competitive wireless services to consumers. However, the Commission should adopt rules in line with the intent of the statute, recognizing the unique position of rural telephone companies. Rural telephone companies are uniquely situated to bring spectrum-based services to rural America and should be given every opportunity to do so. A targeted bidding credit and more flexible DE rules, while not panaceas that make up for the vast differences in resources between rural telephone companies and large carriers, are steps that will help ensure that the Commission fulfills the mandates of Section 309(j) of the Communications Act, as amended.

Respectfully Submitted,



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