

**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
)	

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

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”) hereby submits its reply comments in response to the Notice of Proposed Rulemaking¹ in the above-captioned proceeding. NTCA is a national association of nearly 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 joins those commenters urging the Federal Communications Commission (“Commission”) to modify its rules to allow bona fide arrangements between small businesses and/or rural telephone companies and to ensure that its rules are not abused.

Congress identified small businesses and rural telephone companies as Designated Entities (“DEs”) in Section 309(j) of the Communications Act and directed the FCC to disseminate licenses to them.² As it considers economic opportunities for Designated Entities, the Commission was further directed that it may not base its public interest, convenience and necessity decision solely or predominately on the expectation of Federal revenues.³

While the AWS-3 auction was a rousing financial success, raising substantial Federal revenues, it failed to meet the objectives of Section 309(j). As commenters point out, nearly all of the bidding credits awarded went to entities with a majority owner valued at \$32 billion.⁴ While NTCA agrees that small companies require additional access to capital to successfully compete at auction, the AWS-3 auction cannot be viewed as successful implementation of Congress’ intent. Bidding credits attempt to bolster the bidding success rate of small companies who lack the resources of large companies often vying for the same spectrum resource. The

² 47 U.S. C. § 309(j)(3)(B).

³ 47 U.S.C. §309(j)(7)(B).

⁴ *See, e.g.*, Comments of the Blooston Rural Carriers, AT&T.

purpose of bidding credits is thwarted if large companies with vast resources are able to obtain them.

II. THE COMMISSION SHOULD PERMIT DEs TO PARTNER WITH OTHER DEs, BUT NOT WITH NATIONWIDE CARRIERS

To help ensure that Congressional intent is achieved, the Commission should modify its rules to facilitate investment in legitimate DEs. NTCA supports the suggestion of the Blooston Rural Carriers that the Commission should allow DEs to partner with rural telephone companies or other DEs, but not with nationwide carriers.⁵ NTCA agrees that the Commission “should recognize that relationships between rural telephone companies aimed at obtaining spectrum for rural service benefit the public interest, and do not pose any threat to the integrity of the auction process.”⁶ Such relationships should be exempt from the restrictions on material relationships and attribution. Winning DEs should have the ability to lease spectrum to other rural telephone companies or other small company DEs without losing eligibility for bidding credits.

III. THE COMMISSION SHOULD INCREASE THE SMALL BUSINESS SIZE THRESHOLDS

NTCA agrees that the current bidding credit revenue levels are not appropriate and should increase. The proposed across-the-board 36.4% increase in the small business size thresholds is based on the increase in the U.S, Gross Domestic price index between 1997, the year they were adopted, and 2013. Expanding bidding credit eligibility makes sense and would facilitate the acquisition of additional spectrum by small companies.

⁵ Comments of the Blooston Rural Carriers, p. 7.

⁶ *Id.*

IV. RURAL TELEPHONE COMPANIES AND THEIR SUBSIDIARIES SHOULD BE ELIGIBLE FOR BIDDING CREDITS

The Commission's rules require a bidder to qualify as a small business in order to be eligible for bidding credits.⁷ NTCA agrees with the Rural Wireless Association ("RWA") that since many rural telephone companies do not qualify as a "small business," the rules are currently "insufficient to provide meaningful opportunities for the nation's small, rural wireless companies." The Commission should therefore offer a bidding credit to entities that qualify as a "rural telephone company" under Section 1.2110(c)(4) of its rules, or a subsidiary or affiliate of a qualified rural telephone company.⁸ Given that an objective definition of "rural telephone company" already exists, a bidding credit would be simple for the Commission to administer and there is little room for bidder abuse.

NTCA, the Blooston Rural Carriers, and the Rural Wireless Association, Inc. ("RWA") agree that the Commission should offer a 25% bidding credit – equal to the average credit available to small businesses – to all rural telephone company bidders. This new bidding credit should be independent of any small business bidding credit for which a rural telephone company bidder may be eligible, and the credits should be cumulative. Allowing the rural telephone credit to be cumulative with any small business bid credit is appropriate because rural telephone companies serve primarily sparsely-populated and less profitable areas that other carriers choose to ignore. Adopting a separate and targeted accommodation for rural telephone companies would recognize this commitment and would help satisfy the Congressional goals of Section

⁷ 47 C.F.R. §1.2110(f)(2).

⁸ Comments of Rural Wireless Association, p. 3.

309(j), by avoiding an excessive concentration of licenses and ensuring that small businesses and, separately, rural telephone companies, have the opportunity to participate in the provision of spectrum-based services. As RWA explains, there was never any intent that rural telephone companies also be small businesses to qualify for DE status.⁹ Rural telephone companies have a long history of serving rural communities, many of which remain unserved by the nationwide providers, and should be encouraged to work with other DEs to continue to provide high-quality service to rural America.¹⁰ There is no potential of abuse if the Commission adopts a separate incentive to encourage rural telephone company participation in spectrum auctions.

⁹ *Id.*, p. 4.

¹⁰ Bidding credits are an important part of encouraging rural telephone participation in spectrum auctions, but they alone cannot make up for the vast differences in resources between small providers and nationwide providers. The Commission should also consider additional measures such as licensing spectrum according to small geographic areas and rural area partitioning incentives.

V. CONCLUSION

NTCA appreciates the Commission's commitment to reviewing the Part I competitive bidding rules and respectfully requests that the Commission adopt rule changes, as described above. These changes will provide additional meaningful spectrum based opportunities to rural telephone companies who are committed to deploying advanced wireless services to consumers living, working and traveling in rural America.

Respectfully Submitted,



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