



August 1, 2014

VIA ELECTRONIC FILING

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

Re: 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

Dear Ms. Dortch:

Competitive Carriers Association (“CCA”), CTIA – The Wireless Association® (“CTIA”) and NTCA – The Rural Broadband Association (“NTCA”) (collectively the “Wireless Industry Representatives”) hereby submit this letter to supplement the Commission’s record in its ongoing proceeding regarding the AWS-3 auction. This auction will unleash an additional 65 megahertz of mobile broadband spectrum and is expected to play a vital role in addressing the wireless industry’s continued need for spectrum. Wireless Industry Representatives take this opportunity to propose steps the Commission can take to promote auction participation and provide certainty and clarity to potential bidders. Specifically, Wireless Industry Representatives express concern that the Commission’s “former defaulter” rule will inhibit auction participation, and suggest an alternative policy the Commission can follow to ensure that participating bidders are able to make final payments on any licenses they may win.

Section 1.2106(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.¹ This rule applies regardless of the size of the default or the amount of time that has passed since the debt was paid. 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.² However, this provision is often overbroad in its application, assessing a 50 percent

¹ 47 C.F.R. § 1.2106.

² *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

penalty on many bidders who, while they might have been delinquent on some non-tax debt to a Federal agency, are nevertheless good credit risks and able to pay in full for the licenses for which they have applied to bid. Wireless Industry Representatives previously have urged the Commission to grant a limited, temporary waiver of the former defaulter rule while considering a more permanent revision through a rulemaking proceeding. While Wireless Industry Representatives continue to support this approach, we also offer an alternative solution for the AWS-3 auction.

To the extent that the Commission is concerned with an AWS-3 applicant's creditworthiness, there are alternative measures the Commission could take to ensure that Auction 97 bidders are capable of meeting their financial obligations. Specifically, the Commission should waive its application of the former defaulter rule as applied to any of the following situations:

- (i) Debts occurring more than five years prior, and resolved more than three years prior, to the application deadline; or
- (ii) Debts that were for less than the lesser of \$100,000 or 0.1% of the average annual revenues of the applicant (as computed under the FCC's competitive bidding rules), or where the bidder can demonstrate that prior defaults were not material nor indicative of any auction payment risk; or
- (iii) An applicant (or its controlling parent) that has an "investment grade" rating from Moody's, Standard and Poors, or another recognized rating agency;³ or
- (iv) An applicant that can provide a letter of credit from an FDIC member institution or an agricultural credit bank that serves rural utilities and is a member of the United States Farm Credit System (which is modeled after the FDIC)⁴ in an amount adequate to indicate that the applicant will be able to make final payment, or can otherwise demonstrate an ability to make final payment, in the event that it wins the licenses for which it has applied to bid.

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).

³ "Investment grade" is a rating of Baa3 or better by Moody's and BBB- or better by Standard & Poors, or an equivalent rating by any other rating agency.

⁴ The Commission has found that Farm Credit System Insurance Corporation insurance provides protection that is equivalent to those indicated by holding FDIC-insured deposits, and that permitting letters of credit meeting these criteria provides flexibility to rural providers. *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98, ¶ 60 (2014). *See also Mobility Fund Phase 1*, Order, 27 FCC Rcd 13457, ¶ 10 (2012) ("Furthermore, other special circumstances exist to warrant grant of a waiver here. Some Auction 901 winning bidders, particularly rural telecom cooperatives, claim to have more transactional experience with CoBank than with other banks that specifically meet the criteria of section 54.1007(a)(1). While these entities could petition to amend section 54.1007(a)(1) to expand the criteria to include institutions like CoBank, or seek individual waiver, we find that considering such individual petitions could unduly delay the distribution of Mobility Fund Phase I support. Therefore, we believe that under these circumstances, we should waive the rule on our own motion to allow winning bidders to use LOCs issued by CoBank.").

There can be no doubt that 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' need for mobile broadband capacity, and otherwise qualified entities should not be held back by non-relevant past debts or defaults. By providing flexibility regarding 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

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