



August 14, 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<sup>®</sup> ("CTIA") met with Commission staff to discuss CCA, CTIA and NTCA—The Rural Broadband Association's ("NTCA") supplemental *ex parte* letter concerning an interim waiver of the Commission's "former defaulter" rule for the upcoming auction of AWS-3 spectrum.<sup>1</sup> CCA, CTIA and NTCA (collectively "Wireless Industry Representatives") have previously explained how an overly expansive application of Section 1.2106(a) of the Commission's rules could dampen participation in and depress revenues from Auction 97, in contravention of the public interest. At the same time, Wireless Industry Representatives acknowledge a desire by the Commission to protect the integrity of the auction process, as well as a need for an objective, easy to administer standard to timely determine the creditworthiness of auction participants.

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<sup>1</sup> See *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA and Scott Bergmann, Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185, AU docket No. 14-78 (filed Aug. 8, 2014) ("August 8th Ex Parte").

Wireless Industry Representatives maintain that their previously proposed waiver criteria strikes the appropriate balance between protecting auction integrity and facilitating robust participation by otherwise creditworthy auction applicants.<sup>2</sup> For administrative ease and in an effort to reduce complexity in implementation of a waiver, however, Wireless Industry Representatives offer an alternative standard for consideration. Specifically, Wireless Industry Representatives urge the Commission to provide a blanket, interim waiver of the former defaulter rule for Auction 97 to any applicant that has not received within the seven years prior to the date short-form applications are due a notice that it is in default on any Commission license or any non-tax debt of more than \$100,000 owed to any Federal agency. For purposes of this waiver, an applicant is not in default if any debt was paid within two quarters of receiving the notice or is the subject of a good faith dispute or a pending legal or arbitration proceeding. Defaults shall expressly include any debt that is currently subject to debt collection procedures. As is currently the case under rule 1.2106, no interest will be paid on the upfront payment.<sup>3</sup>

Wireless Industry Representatives remain committed to ensuring that Auction 97 is a success. A pivotal element to ensuring this success is immediate action to prevent an overly broad application of the former defaulter rule through adoption of a blanket, interim waiver of the former defaulter rule. Otherwise qualified entities should not be held back by immaterial past debts or defaults, and providing a reasonable amount of flexibility in application of the former defaulter rule will promote a robust auction in furtherance of the public interest. For

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<sup>2</sup> See *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.* (filed Aug. 1, 2014).

<sup>3</sup> Wireless Industry Representatives understand that the Commission also is considering a permanent change to the former defaulter rule through a Notice of Proposed Rulemaking. Wireless Industry Representatives recommend that the NPRM propose amending and replacing the rule to provide relief identical to that allowed for under this waiver standard. Specifically, 47 C.F.R. § 1.2106(a) should be amended and replaced as follows:

The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. Any auction applicant that has received within the last seven years a notice that it is in default on any Commission license or any non-tax debt of over \$100,000 owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license. “In Default” shall be defined to mean that the applicant has a debt that was not paid within two quarters of receiving the notice and is not the subject of a good faith dispute or a pending legal or arbitration proceeding. “In default” shall expressly include any debt that is currently subject to debt collection procedures. No interest will be paid on the upfront payment.

these reasons and those outlined previously, the conditions for a waiver of the rule are satisfied in the present instance.<sup>4</sup>

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<sup>®</sup>

*/s/ Jill Canfield*

Jill Canfield  
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<sup>4</sup> See DirecTV Group, Inc. and EchoStar, LLC Petition for Expedited Rule Making to Amend Sections 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver, RM-11395 at 11-12 (filed June 8, 2007).