

**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 Sections 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
	)	

To: The Commission

**REPLY COMMENTS OF  
THE RURAL WIRELESS ASSOCIATION, INC.  
AND NTCA – THE RURAL BROADBAND ASSOCIATION**

The Rural Wireless Association, Inc. (“RWA”)<sup>1</sup> and NTCA – the Rural Broadband Association (“NTCA”)<sup>2</sup> (together “the Associations”) file these joint reply comments in

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<sup>1</sup> RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies that serve rural consumers and those consumers traveling in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

<sup>2</sup> NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

connection with the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice requesting further comment on issues related to its competitive bidding proceeding.<sup>3</sup>

## I. INTRODUCTION.

The Associations have put forth a very narrowly tailored proposal for a Rural Telephone Company Bidding Credit (“Rural Telco Bidding Credit”). The bidding credit as proposed is limited in scope, geographic applicability and financial impact, and has garnered significant support from rural stakeholders.<sup>4</sup> Adopting a cumulative 25% bidding credit that is capped at \$10 million and available only to rural telephone companies (or their affiliates/subsidiaries) that seek spectrum in an area in which they are designated as an eligible telecommunications carrier would facilitate the ability of such companies to obtain spectrum to serve rural consumers, while minimally impacting auction revenues. The proposal minimizes the potential for abuse by restricting the transfer of spectrum to outside investors and requiring overall compliance with the attributable material relationship rules, in whatever form they survive. Given that the proposal would fulfill important legal and public policy considerations – and that no commenters have opposed it – the Commission should implement a Rural Telco Bidding Credit.

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<sup>3</sup> *In the Matter of Updating Part 1 Competitive Bidding Rules, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, 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, Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*; Public Notice, WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WT Docket No. 05-211; FCC 15-49 (rel. Apr. 17, 2015); (“*Further Notice*”).

<sup>4</sup> *See* Comments of the Blooston Rural Carriers, WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395, at pp. 2-10 (May 14, 2015); *see also* Comments of the Rural Carrier Coalition, WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395 (May 14, 2015) (“*Rural Carrier Coalition Comments*”). An outline of the key elements of the proposed Rural Telco Bidding Credit is included in these joint reply comments as Attachment A. This outline reflects a consensus between the Associations and the Blooston Rural Carriers.

## **II. THE COMMISSION SHOULD ADOPT THE PROPOSED RURAL TELEPHONE COMPANY BIDDING CREDIT.**

The cumulative Rural Telco Bidding Credit as proposed will make a tangible difference in rural carriers' ability to procure spectrum and serve rural consumers. Rural telephone companies have a long history of providing service to the most sparsely populated and difficult to serve areas of the country. Providing rural telephone companies the means to obtain spectrum will help to ensure that rural consumers have access to fixed and mobile wireless broadband technologies and meet the Commission's statutory obligation to ensure that rural telephone companies have realistic opportunities to successfully compete for spectrum. Section 309(j) of the Communications Act of 1934, as amended (the "Act"), requires that the Commission, in designing competitive bidding systems, "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses [and] *rural telephone companies*..."<sup>5</sup> In prescribing the regulations governing those competitive bidding systems, the Commission must "ensure that small businesses [and] *rural telephone companies*...are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures..."<sup>6</sup>

Rural telephone companies were explicitly designated by Congress – separate and apart from other small businesses – for special treatment in the provision of spectrum based services. If Congress had intended that the Commission devise policies that benefit only small businesses, it would have so stated. But Congress' intent is clear. It wanted to ensure as an explicitly distinct matter that rural telephone companies have access to spectrum for "the

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<sup>5</sup> 47 U.S.C. §309(j)(3)(B) (emphasis added).

<sup>6</sup> 47 U.S.C. §309(j)(4)(D) (emphasis added).

development and rapid deployment of new technologies, products and services for the benefit of . . . those residing in rural areas.”<sup>7</sup> Congress approved provisions that directed the Commission to adopt policies specific to rural telephone companies, irrespective of whether or not a particular company is also a small business.

The current bidding credit rules are insufficient to provide realistic opportunities for most rural telephone companies to obtain spectrum at auction. The Associations disagree that the use of bidding credits for small businesses alone “has proven particularly successful as an administratively efficient means of promoting provider diversity and competition in spectrum auctions.”<sup>8</sup> The results of Auction 97 clearly bear this out. Less than half of the rural qualified bidders were able to qualify under the current Commission’s Designated Entity (“DE”) rules as small businesses, and at the close of the auction rural telephone company bidders accounted for just 25 (or 1.55%) of the total licenses won and \$871,350 (or 0.024%) of the total \$3.57 *billion* in bidding credits awarded.<sup>9</sup>

A Rural Telco Bidding Credit is unlikely to facilitate license speculation. Rural telcos are uniquely situated and unattractive to outside investors seeking financial gain. Because they focus on rural areas where distances are great and densities are low, rural telephone companies are not the darlings of outside investors who are looking for relatively quick returns on investment that can be made by carriers that serve more populated areas or offer a narrowly-tailored specialized service. Accordingly, rural telcos prove to be less-than-ideal vehicles for speculators or outside investors looking to game the system.

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<sup>7</sup> 47 U.S.C. § 309(j)(3)(A).

<sup>8</sup> Comments of Competitive Carriers Association, WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395, at p. 12 (May 14, 2015) (“*CCA Comments*”).

<sup>9</sup> See *Rural Coalition Ex Parte*; see also *In the Matter of Updating Part 1 Competitive Bidding Rules*, Comments of the Blooston Rural Carriers, WT Docket No. 14-170, Attachment B (February 20, 2015) (“*Blooston Initial Comments*”).

Although the Commission is currently examining both Small Business Bidding Credit revenue thresholds and credit percentages, existing auction rules are clear that the cumulative Rural Telco and Small Business Bidding Credits for those entities that are eligible for both would not exceed 50 percent.<sup>10</sup> The Associations agree with NTCH that, “given the history of auctions to date where 15%, 25% and even 35% discounts have had little impact on the ability of DEs to win auctions, a large number [like 50%] is justified.”<sup>11</sup>

The Commission should recognize, however, that the proposed Rural Telco Bidding Credit would not automatically provide *all* (or even *most*) rural telephone companies and their subsidiaries/ affiliates with an automatic 50% credit. In reality, most rural telephone companies would be eligible only for a much smaller bidding credit. First, many rural telephone companies do not qualify for a Small Business Bidding Credit. Of the 38 rural telephone entities that participated in the recently concluded AWS-3 Auction, nearly half (18) did not receive bidding credits. Of the 11 rural entities that won licenses, only 5 were bidding credit eligible. Second, of the 20 rural bidders that were eligible for a small business bidding credit – 14 were only eligible at the “small business” level of 15%. Had a Rural Telco Bidding Credit been made available to eligible Auction 97 bidders, 14 entities would have been eligible for a cumulative Rural Telco and Small Business Bidding Credit of 40% and only six rural entities out of 70 total qualified

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<sup>10</sup> In its *Incentive Auction Report & Order*, the Commission stated that it would adopt “the same size-based bidding credits for the forward auction as the Commission applied in auctioning 700 MHz Band spectrum: 15 percent for small businesses...and 25 percent for very small businesses...” *In the Matter of Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, WT Docket No. 12-269, GN Docket No. 12-268, FCC 14-50, ¶ 31 (rel. June 2, 2014).

<sup>10</sup> 47 C.F.R. § 1.2111(d).

<sup>11</sup> Comments of NTCH, Inc., WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395, at p. 6 (May 14, 2015).

bidders would have been eligible for a cumulative Rural Telco and Small Business Bidding Credit of 50%.

**III. ANY CHANGES TO THE COMMISSION’S JOINT BIDDING ARRANGEMENT RULES SHOULD ALLOW MAXIMUM FLEXIBILITY FOR RURAL WIRELESS PROVIDERS.**

The Commission tentatively concluded that it is in the public interest to retain its current rules regarding joint bidding arrangements among non-nationwide providers.<sup>12</sup> The Associations support this conclusion because these rules help rural wireless carriers pool their resources and better compete for spectrum with larger carriers. Joint bidding arrangements protect the public interest and are consistent with the Commission’s obligation under Section 309(j) of the Act to seek to promote the deployment of services “for the benefit of the public, *including those residing in rural areas.*”<sup>13</sup> The Associations oppose AT&T’s suggestion that the Commission drastically limit joint bidding by requiring auction applicants that wish to coordinate their bidding to form bidding consortia and banning all other joint bidding arrangements.<sup>14</sup> The Associations understand that concerns remain regarding the potential abuse of joint bidding arrangements in Auction 97, but this proposed “solution” is a significant overreach that would harm the ability of rural wireless carriers to compete for spectrum. There is no one “best way” for rural wireless providers to work together. Flexibility to pursue a joint model/structure that works for the companies’ unique circumstances is key.

There is simply no evidence that small rural wireless carriers ever abused the Commission’s joint bidding rules or obtained any unfair advantage by entering into joint bidding relationships. Similarly, there is no evidence that small rural wireless carriers abused the

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<sup>12</sup> *Further Notice at* ¶ 28.

<sup>13</sup> 47 U.S.C. § 309(j)(3)(A) (emphasis added).

<sup>14</sup> Comments of AT&T, WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WT Docket No. 05-211, at pp. 12-14 (May 14, 2015) (“*AT&T Comments*”).

Commission's joint bidding rules in Auction 97 in order to "limit...bid exposure," or create "shadow demand" to distort market signals and prevent price discovery.<sup>15</sup> The Associations' members' ability to use joint bidding arrangements is already naturally limited by geography and the related scarcity of suitable bidding partners. The Commission should not impose further limitations on rural wireless carriers to address questionable behavior by other parties.

#### **IV. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL DE BUILDOUT AND REPORTING REQUIREMENTS.**

The Associations agree with the Competitive Carriers Association that the Commission should not "impose overly burdensome obligations that would hamstring smaller carriers' ability to compete or raise capital for the auction," and should avoid "impairing smaller competitors through accelerated buildout schedules or expansive coverage requirements that are disproportionately onerous for smaller entities."<sup>16</sup> The Associations oppose the imposition of additional unnecessary regulatory hoops upon DEs, including a requirement proposed by T-Mobile that DEs demonstrate license build-out activity within one year of acquiring a license.<sup>17</sup> The Associations' members are small businesses with limited staff and financial resources, and whose licenses are already subject to buildout requirements. The Associations agree with King Street that "it would be absolutely counter-productive to require enhanced build-out showings from those who are least equipped to do so. If any licensee fails to meet its FCC-stipulated

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<sup>15</sup> *AT&T Comments* at pp. 12-13.

<sup>16</sup> *CCA Comments* at p. 10.

<sup>17</sup> Comments of T-Mobile USA, Inc., WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395, at p. 7 (May 14, 2015) (stating "the Commission should require designated entities to show some evidence of build-out activity, such as engaging in due diligence activities, hiring employees or contractors, conducting site acquisition surveys, entering into lease, co-location, or network share agreements, or negotiating with vendors, within one year of acquiring a license (or, for 600 MHz spectrum, within one year of clearing broadcast users)").

buildout obligations, the Commission should have the right to sanction it. There is no reason to apply a heightened standard to DEs.”<sup>18</sup>

The Associations share the industry’s concerns about abuse of the DE program, but believes that the rules should prevent system abuse *before* licenses are granted. Attempting to cast a wide net through the imposition of additional DE-specific reporting requirements after the auction occurs would be inefficient, and harm *bona fide* DEs – small businesses and rural wireless providers that can least afford additional regulatory burdens.

**V. CONCLUSION.**

The Associations continue to urge the adoption of competitive bidding rules that ensure the delivery of services to consumers in rural areas. These rules should promote deployment of advanced wireless services to consumers living, working and traveling in rural America and encourage auction participation by small rural wireless carriers that serve those consumers.

Respectfully submitted,

**Rural Wireless Association, Inc.**

**NTCA – The Rural Broadband Association**

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<sup>18</sup> Comments of King Street Wireless, L.P., WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395, at p. 11 (May 14, 2015).



**ATTACHMENT A**  
**Rural Telco Bidding Credit Structure**

- A 25% credit available to an entity that:
  - (1) qualifies under the Act or Commission’s rules as a rural telephone company or is a subsidiary/affiliate of a rural telephone company; and
  - (2) has no more than 250,000 domestic retail subscriber lines, counting all fixed business and residential subscriber lines, aggregated over all affiliates.
- Rural Telco Bidding Credit would be separate from, and in addition to, any Small Business Bidding Credit for which an applicant would qualify.
- The discount would be available on an eligible entity’s gross winning bid(s) for any geographic area license(s) that overlap, in whole or in part, the qualified rural telephone company’s wireless or wireline service area defined by its existing ETC designation.
- The Commission should not aggregate access lines served by non-affiliated rural telephone companies. As long as qualified rural telephone companies or their affiliates/subsidiaries have control of the bidding entity, the bidder should be eligible for the Rural Telco Bidding Credit in areas where one of its members operates and has ETC status.
- **Monetary Cap:** No one rural telephone company could receive more than \$10 million in Rural Telco Bidding Credits.
  - The \$10 million cap would not accumulate, and would apply to individual companies or consortia.
  - A consortium of three rural telephone companies would be eligible for \$10 million – not \$30 million.
- **Assignment:** The Rural Telco Bidding Credit should be subject to the same unjust enrichment criteria that the Commission ultimately adopts for the Small Business Bidding Credit, unless the license is assigned or partitioned to:
  - (1) another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area; or
  - (2) *an independent wireless ETC certificated in the original license area with fewer than 100,000 domestic subscribers.*
- **Leasing:** Subject to certain restrictions, entities that win licenses with the Rural Telco Bidding Credit should be able to enter into lease or wholesale agreements regarding the capacity of that spectrum with companies that have not invested in the license winner.
  - The Commission should restrict lease or wholesale agreements with nationwide wireless carriers in a fashion similar to the way that the Attributable Material Relationship rule limits such agreements regarding spectrum won with the Small Business Bidding Credit.
  - The Commission should recognize that relationships between rural carriers aimed at obtaining access to spectrum for rural service benefit the public interest. The Commission should allow lease or wholesale agreements between a winning bidder and:

- (1) another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area as defined by its existing ETC designation; or
  - (2) *an independent wireless ETC certificated in the original license area with fewer than 100,000 domestic subscribers.*
- **Assignment/Leasing to Investors:**
    - Assignment of a license won with a Rural Telco Bidding Credit back to an investor in the winning licensee would be prohibited throughout the initial license term.
    - An investor in the winning licensee would be prohibited from entering into a lease or wholesale agreement regarding capacity of any license won with the Rural Telco Bidding Credit throughout the initial license term.
    - To facilitate rural partitioning arrangements, these prohibitions should not apply if the assignment is to an investor that is:
      - (1) another rural telephone company or rural telco subsidiary/affiliate with wireless or wireline presence in the original license area as defined by its existing ETC designation; or
      - (2) *an independent wireless ETC certificated in the original license area with fewer than 100,000 domestic subscribers.*

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