

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

Auction of Advanced Wireless Services) AU Docket No. 14-78
Licenses Scheduled for November 13, 2014)
Comment Sought on Competitive Procedures)
for Auction 93

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments to recommend relatively simple steps the Wireless Telecommunications Bureau (the “Bureau”) can take to maximize the potential for small company participation in the upcoming AWS-3 auction. The spectrum is sought after by many carriers, and the Federal Communications Commission (the “Commission”) should strive for a level playing field that enhances the ability of all with interest to bid. Small and rural wireless providers require a reasonable opportunity to acquire spectrum to compete with national providers and/or to provide service in the most remote areas largely ignored by the national providers. Properly structured, the auction will promote a high level of participation, not only increasing revenues, but also protecting and promoting competition. Specifically, NTCA reiterates its plea regarding the timing of certain auction events and the relaxation of the “former defaulter” rule. NTCA also supports commenters who request that the Bureau lower the minimum bidding requirements and those who oppose package bidding

¹ 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.

AUCTION TIMING

As an initial matter, NTCA suggests that the deadline for the filing of the short-form application, and the start of the anti-collusion rules, be set for September 24, 2014. As explained in a recent *ex parte*,² NTCA will host its annual Fall Conference this year on September 21-24 and it is the last of the known fall industry association meetings.³ NTCA's rural company members use the opportunity to engage in face-to-face discussions regarding business opportunities and policy issues. The members take the anti-collusion rules seriously. Out of an abundance of caution, if the anti collusion rules are in effect, NTCA's members will not participate in open forum discussions regarding the auction, its processes and financing opportunities. The implementation of the anti-collusion rules prior to September 24 will stifle useful discussions and may result in decreased auction participation. While a short form deadline of September 24 may compress the contemplated schedule, it still leaves the Commission 50 days to process applications prior to the auction start. This time frame is consistent with previous short-form application deadlines⁴ and is realistic.

² Letter from Rebecca Murphy Thompson, Competitive Carriers Association ("CCA"), Julie Kearney, CEA, Scott K. Bergmann, CTIA – The Wireless Association ("CTIA"), and Jill Canfield, NTCA, to Marlene H. Dortch, FCC, RM-11395, GN Docket No. 13-185, AU Docket No. 14-78, GN Docket No. 12-268 (filed May 30, 2014).

³ See Comments of CCA, pp 2-4.

⁴ See Letter from Rebecca Murphy Thompson, CCA, Julie Kearney, CEA, Scott K. Bergmann, CTIA, and Jill Canfield, NTCA, to Marlene H. Dortch, FCC, RM-11395, GN Docket No. 13-185, AU Docket No. 14-78, GN Docket No. 12-268 (filed May 30, 2014);

Similarly, auction participation is likely to increase if there is some certainty as to when post-auction payments will be due. As NTCA and CTIA recently noted,⁵ auctions typically last between one and two months, with the down payment and final payment deadlines typically due 10 to 20 business days following the public notice announcing an auction's end. The timing of Auction 97 leaves it unclear whether payments will be due in late 2014 or early 2015. The Commission should offer advanced notice that post-auction payments will be due in early 2015. This notice would offer potential auction participants the ability to appropriately budget and make necessary financial arrangements to ensure their ability to bid.

FORMER DEFAULTER RULE

NTCA repeats its request that the Bureau provide a limited waiver to its “former defaulter” rule.⁶ The Bureau seeks comment on the appropriate upfront payments for Auction 97. However, 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. This rule encompasses any and all debts – regardless of the amount of the debt, or if the debt was long ago paid.

This financial penalty of the former defaulter rule directly affects bidders' financing plans and can discourage auction participation. The FCC has before it a petition to remedy the

⁵ Letter from Scott K. Bergmann, CTIA, and Jill Canfield, NTCA, to Marlene H. Dortch, FCC, GN Docket No. 13-185 (filed May 18, 2014).

⁶ See Letter from Rebecca Murphy Thompson, CCA, Julie Kearney, CEA, Scott K. Bergmann, CTIA, and Jill Canfield, NTCA, to Marlene H. Dortch, FCC, RM-11395, GN Docket No. 13-185, AU Docket No. 14-78, GN Docket No. 12-268 (filed May 30, 2014);

overbroad application of the rule and prevent its wildly disproportionate application.⁷ While significant or relatively recent defaults may warrant an auction penalty, the Commission should have the ability to distinguish them from minor defaults or long ago resolved delinquencies. The Commission should consider a permanent revision to the former defaulter rule, but in the meantime, a limited, temporary waiver of the rule should be granted so that it does not impede robust participation in upcoming auctions.

MINIMUM BIDS

NTCA supports commenters who request that the Bureau adopt lower minimum acceptable bid percentages, minimum bids and eligibility requirements than those proposed in the Public Notice.⁸ Higher than necessary minimum acceptable bids, minimum opening bids and eligibility amounts will discourage small business participation, driving up prices too high, too quickly, with prices doubling every three rounds. The Commission has previously recognized, “very rapid increases in minimum acceptable bids may potentially discourage bidder participation, inhibit price discovery, and create bid approval issues...”⁹ Large companies have the resources to rapidly increase bid amounts. But large jumps in minimum bids will quickly raise the price too high for small companies who may be able to make a 20% higher winning bid, but not 30%. As the United States Cellular Corporation also noted, “large percentage increases

⁷ *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, *Public Notice*, Report No. 2829 (Aug. 22, 2007).

⁸ See Comments of Verizon Wireless, pp. 4 – 8, United States Cellular Corporation, pp. 17-18.

⁹ *Auction 73 Procedures PN*, 22 FCC Rcd at 18203.

to minimum acceptable bids also can result in reduced auction revenue and economic inefficiency.”¹⁰

Rather than set bid increases at 30 percent as proposed, the Bureau should encourage the greatest amount of auction participation by dictating that subsequent bids should increase between 10 and 20 percent over the prior bid.

NTCA also supports Verizon Wireless’ request that the Bureau lower the MHz-POP used to set the minimum opening bids. In the AWS-1 auction, the Bureau used minimum opening bids of \$0.05 per MHz-POP in urban areas and \$0.03 per MHz-POP for rural areas.¹¹ These lower amounts promoted participation from small and rural providers and resulted in a successful auction. More than tripling the minimum opening bid will discourage small businesses from participating in the auction, while offering no corresponding benefit.

PACKAGE BIDDING

NTCA joins commenters who oppose package bidding.¹² Package bidding strongly favors the largest carriers to the detriment of all others and adds an unnecessary level of complexity and uncertainty. With package bidding, large carriers are able to obtain desirable licenses at discounted prices by combining them with other, smaller licenses, typically sought by smaller carriers. Bidders on smaller packages or single licenses cannot know if their provisionally winning bid will be lost to a larger provider who has included the same license as part of an offer for a larger group of licenses. Standard auction procedures offer ample opportunities for carriers to obtain any license it is willing and able to pay for and aggregate

¹⁰ Comments of United States Cellular Corporation, p. 17

¹¹ See, Comments of Verizon Wireless.

¹² See, Comments of United States Cellular Corporation, CCA,

them accordingly. Package bidding is therefore not only harmful, it serves no purpose other than to offer an advantage to large carriers.

CONCLUSION

For the above mentioned reasons, NTCA respectfully requests the following for Auction 97: 1) short-form applications triggering the anti-collusion rules be due on or after September 24, 2014; 2) final auction payments be required in 2015; 3) the former defaulter rule be waived; 4) minimum bidding requirements be lowered and 5) package bidding not be permitted.

Respectfully Submitted,



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