

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

| | | |
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| 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 |
| |) | |

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

Rural Wireless Association, Inc.

Daryl A. Zakov, Assistant General Counsel
Erin P. Fitzgerald, Assistant Regulatory Counsel
P.O. Box 50551
Arlington, VA 22205-5551
(202) 371-1500

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NTCA – The Rural Broadband Association

Jill Canfield
Vice President, Legal and Industry &
Assistant General Counsel
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203
(703) 351-2000

Summary

The Rural Wireless Association, Inc. (“RWA”) and NTCA – the Rural Broadband Association (“NTCA”) (together “the Associations”) file these joint comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice requesting further comment on issues related to the competitive bidding proceeding.

The Commission has a statutory obligation to ensure that rural telephone companies have a realistic opportunity to successfully compete for spectrum. Rural telephone companies have a demonstrated history and commitment to serving rural areas, but they need spectrum to fill gaps in mobile broadband service. As shown most recently in Auction 97, the current bidding credit rules are insufficient to provide realistic opportunities for most rural telephone companies to obtain spectrum at auction.

To address this issue, the Commission should create a narrowly-tailored bidding credit for rural telephone companies (“Rural Telco Bidding Credit”). The Rural Telco Bidding Credit would allow eligible entities to secure a 25% discount on their gross winning bid(s) for any geographic area licenses that overlap, in whole or in part, the qualified rural telephone company’s wireless or wireline service area as defined by an existing Eligible Telecommunications Carrier (“ETC”) designation. This credit would be available to any entity that: (1) qualifies under the Act or Commission’s Rules as 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 (as the term is defined in 47 C.F.R. § 153(2)). Although the Rural Telco Bidding Credit would be cumulative with any other bidding credit for which the company is eligible, the Rural Telco Bidding Credit would be capped at \$10 million aggregated over all areas for which the company is eligible to receive the bid credit.

Further, assignment and leasing restrictions would be imposed on licenses obtained with the Rural Telco Bidding Credit in order to prevent abuse.

The Associations support changes to the Commission's Designated Entity ("DE") eligibility rules that encourage auction participation by *bona fide* DEs and that protect against abuse. First, winning bidders should be prohibited from assigning any license won with a small business bidding credit back to an investor in the licensee. Further, the Commission should address the rural telephone cellular general partnership issue to prevent the disqualification of rural telephone companies from Small Business Bidding Credit eligibility by requiring the attribution of the gross revenues of a cellular general partnership (of which they hold a fractional interest) against them. Finally, any changes imposed to address unjust enrichment concerns should not negatively impact rural wireless carriers.

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To: The Commission

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

The Rural Wireless Association, Inc. (“RWA”)¹ and NTCA – the Rural Broadband Association (“NTCA”)² (together “the Associations”) file these joint comments in response to

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who 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.

² 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.

the Federal Communications Commission's ("FCC" or "Commission") Public Notice requesting further comment on issues related to its competitive bidding proceeding.³

I. INTRODUCTION

The nation's rural telephone companies have a long history of providing their rural consumers with state of the art telecommunications services. They serve sparsely populated areas with unforgiving terrain. They offer vital communications links to consumers living in areas that other providers decline to serve. Unlike most start-ups or large or regional providers, rural telephone companies are situated in the communities which they serve and their business decisions are influenced by community need and not solely by profit. Rural telephone companies have a background in, and dedication to, rural communities that have been recognized by Congress and policy makers since the time when plain old telephone service made its debut across the country.⁴

Effective wireless competition is still lacking in parts of rural America.⁵ In some

³ *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").

⁴ The Rural Electrification Administration was authorized in 1947 to provide low-cost loans to rural telephone companies and cooperatives. In establishing the telephone loan programs, Congress declared a policy of "assuring the availability of adequate telephone service to the widest practical number of users." 7 U.S.C. § 921. The House committee report for the legislation supported "area coverage," which entails "planning, financing, and constructing a rural telephone system so that service will be available to all the subscribers within the company's area who want it, whether the installation of their particular telephone will be profitable or not." H.R. Rep. No. 246, 81st Cong., 1st Sess. 8 (1949).

⁵ *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 14-63, at ¶ 1 (rel. June 14, 2014) (noting that

such places, existing providers may hold spectrum but focus their build-out efforts on more populated areas to the detriment of rural consumers. Access to spectrum promotes competition, and access to spectrum by rural wireless providers is critical to ensuring that consumers living and working in rural America have access to spectrum-based services that is reasonably comparable to that experienced by residents of urban areas.

Creating a bidding credit for rural telephone companies (“Rural Telco Bidding Credit”) and addressing gaps and abuses in the current Small Business Bidding Credit rules prior to the 600 MHz Broadcast Incentive Auction (“Incentive Auction”) is particularly important because low-band (below 1 GHz) spectrum is particularly well-suited for the provision of robust broadband coverage in rural areas. Its propagation characteristics allow for less expensive network construction and maintenance by allowing licensees to build fewer towers and still cover vast distances. Obtaining 600 MHz spectrum would enable a rural telephone company to keep construction costs low and offer an affordable wireless broadband solution to the nation’s farmers, ranchers, and energy producers, and to consumers and other businesses situated in rural areas. It would also help provide affordable wireless broadband communications channels for machine to machine (“M2M”) capabilities, increasingly used in rural areas for precision agriculture, energy production and monitoring, and medical diagnostics.

II. THE CURRENT BIDDING CREDIT RULES ARE INSUFFICIENT TO PROVIDE REALISTIC OPPORTUNITIES FOR MOST RURAL TELEPHONE COMPANIES TO OBTAIN SPECTRUM AT AUCTION

The current bidding credit rules targeted at small businesses are insufficient to provide meaningful opportunities for the nation’s small, rural wireless companies to acquire spectrum at auction. Despite being an overall financial success, the recently-concluded Auction

92 percent of non-rural consumers, but only 37 percent of rural consumers, are covered by at least four 3G or 4G mobile wireless providers’ networks).

97 yielded unfortunate and telling results for rural wireless carriers and the customers that they serve. Rural wireless carriers participated in the AWS-3 Auction in droves – more than half of the 70 qualified bidders in the auction were rural telephone companies or rural telephone company affiliates, but only 28.9% of these entities won licenses. Less than half of the rural telcos that were successful bidders were able to qualify under the 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 (less than one million or 0.024%) of the total \$3.57 billion in bidding credits awarded.⁶

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 telephone companies must look to traditional sources of capital that are generally more limited and difficult to obtain. A NTCA survey of rural telephone companies with wireless assets highlights the challenges. Sixty-two percent of survey respondents characterized the process of obtaining financing for wireless projects as “somewhat difficult” or “very difficult.” Seventy-three percent of all respondents indicated that competition from nationwide carriers was their greatest concern, with nearly half pointing to the difficulty of obtaining spectrum at auction.⁷ Despite these concerns, rural telephone companies are ready and willing to bid in the upcoming auction, but their ability to successfully do so will be largely determined by the rules adopted at the conclusion of this

⁶ 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*”)

⁷ See NTCA 2014 Wireless Survey Report, found online at: <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2014ntcawirelessurvey.pdf>.

proceeding.

III. THE COMMISSION HAS A STATUTORY OBLIGATION TO ENSURE THAT RURAL TELEPHONE COMPANIES HAVE A REALISTIC OPPORTUNITY TO SUCCESSFULLY COMPETE FOR SPECTRUM

When the Telecommunications Act of 1996 was adopted, Congress specifically recognized the unique position of rural telephone companies and their provision of wireless service to rural consumers. 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*...”⁸ 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...”⁹

While many rural telephone companies are small businesses, many rural telephone companies do not meet the Commission’s definition of “small business” for the purposes of bidding credit eligibility. Accordingly, rural telephone companies were explicitly designated by Congress – separate and apart from other small businesses – for comparable 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

⁸ 47 U.S.C. §309(j)(3)(B) (emphasis added).

⁹ 47 U.S.C. §309(j)(4)(D) (emphasis added)

spectrum for “the development and rapid deployment of new technologies, products and services for the benefit of . . . those residing in rural areas.”¹⁰ 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.

IV. THE COMMISSION SHOULD ADOPT A RURAL TELEPHONE COMPANY BIDDING CREDIT.

A rural telephone company bidding credit would not only satisfy Congress’ intent in adopting Section 309(j), it would also meet the Commission’s overall objective to support voice and broadband-capable networks in areas that the marketplace would not otherwise serve and to ensure that consumers in rural, insular and high-cost areas have access to reasonably comparable services. The Associations continue to support the adoption of a Rural Telco Bidding Credit that is extremely limited and narrowly tailored.¹¹ The Rural Telco Bidding Credit proposal further detailed below would help meet the specific policy objective of encouraging the build out of broadband-capable wireless networks to ensure that consumers in rural, insular and high-cost areas have access to services that are reasonably comparable to those accessible to residents of urban areas.¹²

¹⁰ 47 U.S.C. § 309(j)(3)(A).

¹¹ See *Ex Parte* Letter from Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association, Erin Fitzgerald, Assistant Regulatory Counsel, Rural Wireless Association, Inc., John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, and Cary Mitchell, Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 14-170 (March 18, 2015) (“*Rural Coalition Ex Parte*”).

¹² See *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, ¶ 267 (rel. June 10, 2014).

a. Proposed Rural Telco Bidding Credit Structure.

The Commission should offer a 25% Rural Telco Bidding Credit separate from, and in addition to, any small business bidding credit for which an applicant would qualify. This credit would be available to any entity that: (1) qualifies under the Act¹³ or Commission's Rules¹⁴ as 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 (as the term is defined in 47 U.S.C. § 153(2)¹⁵). To promote the formation of partnerships among qualified rural telephone companies or rural telephone company bidding consortia, the Commission should not aggregate access lines served by non-affiliated rural telephone companies. So long as qualified rural telephone companies or their affiliates 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 Eligible Telecommunications Carrier ("ETC") status.

¹³ 47 U.S.C. § 153(44) Rural telephone company. The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—
(A) provides common carrier service to any local exchange carrier study area that does not include either—
 (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

¹⁴ Section 1.2110(c)(4) of the Commission's DE rules defines a "rural telephone company" using language that is substantially identical to § 153(44) of the Act. *See* 47 C.F.R. § 1.2110(c)(4).

¹⁵ Section 153(2) of the Act defines "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For the purposes of this section, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

The credit would allow eligible entities to secure a discount on their gross winning bid(s) for any geographic area licenses that overlap with, in whole or in part, the qualified rural telephone company's wireless or wireline service area defined by its existing ETC designation. Although the Rural Telco Bidding Credit would be cumulative with any other bidding credit for which the company is eligible, the Rural Telco Bidding Credit would be capped at \$10 million aggregated over all areas for which the company is eligible to receive the bid credit (*i.e.*, no one rural telephone company could receive more than \$10 million in Rural Telco Bidding Credits).¹⁶

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. 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..."¹⁷

It is also important to note 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. First, many rural telephone companies do not qualify for any Small Business Bidding Credit at all. 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

¹⁶ For example, if a rural telephone company qualifies for a small business credit, capped for discussion purposes at \$25 million, *and* the Rural Telco Bidding Credit, it could receive an overall bid credit of up to, but no more than, \$35 million.

¹⁷ *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).

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

If a winning bidder seeks to reassign a license acquired with the Rural Telco bidding credit, the Associations propose that the winning bidder make unjust enrichment payments as otherwise delineated in the Commission’s rules.¹⁸ The Associations understand that the Commission is currently reviewing the unjust enrichment period applicable to licenses acquired with the Small Business Bidding Credit, and expects that any changes to the unjust enrichment period would apply to both the Small Business Bidding Credit and the Rural Telco Bidding Credit. The credit would be subject to unjust enrichment payments *unless* the license or any portion thereof is assigned 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 subscribers. This will both facilitate rural partitioning arrangements in the public interest and ensure that rural telcos do not use the Rural Telco Bidding Credit to acquire a license and then “flip” the license before constructing a network and initiating service.

b. A Rural Telephone Bidding Credit of 25% is Appropriate.

The Commission seeks information regarding what discount percentage should apply to a bidding credit reserved for rural telephone companies.¹⁹ The rationale for using a 25% discount percentage is based on the governing statute and rules. Neither Section 309(j), nor the

¹⁸ 47 C.F.R. § 1.2111(d).

¹⁹ *Further Notice* at ¶ 22.

Commission's rules, lump rural telephone companies in with small businesses generally. Instead, each receives separate and equal mention.²⁰ There is simply no textual basis to suggest that rural telephone companies *must also be small businesses* in order to be eligible for bidding credits; in fact, the structure of the statute compels a contrary conclusion. Accordingly, the Commission should treat small businesses and rural telephone companies equally by establishing a Rural Telco Bidding Credit equivalent to the average credit available to small businesses – currently 25%.²¹

The Commission also seeks information regarding to the extent to which a rural telephone company bidding credit would better enable these entities to compete successfully for licenses at auction.²² The most recently available auction data is from the AWS-3 Auction, or Auction 97. 10 RWA members participated in Auction 97, and won 14 licenses total. In an attempt to provide the Commission with the data-driven comment that it is seeking, RWA has used members' Auction 97 bidding records to provide a picture of what the results might have looked like with the addition of a Rural Telco Bidding Credit.²³ For 10 licenses on which RWA members bid but did not ultimately win, the RWA member's last provisionally winning bid was no more than 25% less than the winning bid. In such cases, a Rural Telco Bidding Credit of 25% could have helped those members make up the difference between their last provisionally winning bid and the final bid price. Given that *all* rural wireless carriers participating in Auction 97 won a total of 25 licenses combined, a Rural Telco Bidding Credit could have increased

²⁰ 47 U.S.C. 1.2110(a) (defining “designated entities” as “small businesses...*and* rural telephone companies”) (emphasis added).

²¹ 47 C.F.R. § 1.2110(f) (providing Small Business bidding credit percentages of 15, 25, and 35 percent depending on an applicant's average gross revenues).

²² *Further Notice* at ¶ 22.

²³ RWA staff used the publicly available data on the Federal Communications Commission's website at http://wireless.fcc.gov/auctions/default.htm?job=auCTION_summary&id=97.

winning bids by those carriers by 40%.²⁴

c. The Proposed Rural Telco Bidding Credit is Narrowly Tailored and Avoids Potential Abuse.

The Associations support a monetary cap on the Rural Telco Bidding Credit and a prohibition against assignment of a license won with a Rural Telco Bidding Credit back to an investor in the license holder. This assignment prohibition would last through the initial license term. These provisions would prevent an investor in a winning licensee from exploiting loopholes in the current rules to obtain large amounts of spectrum at a tremendous discount and discourage the “flipping” of spectrum prior to network construction and service initiation.

A careful analysis of rural telephone companies’ bidding history and ability to financially compete for spectrum indicates that a credit of up to \$10 million as proposed is sufficient and appropriate. A cap of \$10 million on a 25% bidding credit would allow a rural telephone company to bid up to \$40 million and obtain the full credit. Not only is it unlikely that a rural telephone company will have the financial ability to bid more than \$40 million for spectrum in a rural area, the limited opportunity for a return on investment in rural areas, the higher costs of service in rural areas and the lower population densities mean it would not make good financial sense to do so. A cap helps ensure that the funds are used for spectrum acquisition in truly rural markets and while up to \$10 million would be a substantial help for small rural carriers, the credit is small enough to be unappealing to outside investors and helps guard against any concerns of “unjust enrichment” by rural carriers.

The Rural Telco Bidding Credit protections would be further strengthened with the inclusion of: (1) a prohibition against assignment of a license won with a Rural Telco Bidding

²⁴ Of course, it is also possible that the ultimate winner would have submitted another bid over and above the rural bidder. In such a case, the license price would have been higher – and the American taxpayer would have been the real winner.

Credit back to an investor in the winning licensee that would last the entire initial license term; and (2) a restriction that prohibits an investor in the winning licensee from entering into a lease or wholesale agreement regarding capacity of any license won with the Rural Telco Bidding Credit. These restrictions help ensure that licenses won with a Rural Telco Bidding Credit will actually be held and built out by legitimate rural telephone companies that serve rural consumers. However, to facilitate rural partitioning arrangements, the 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 subscribers. This would allow rural wireless carriers to work together to serve rural communities, while preventing other entities from taking advantage of a credit that is otherwise unavailable.

d. The Rural Telco Bidding Credit is Not Duplicative of the Universal Service Fund.

The Commission has sought comment as to whether a Rural Telco Bidding Credit may be duplicative of other FCC and Federal government programs designed to facilitate network expansion into rural, unserved, and underserved communities, such as the Universal Service Fund (“USF”). The Associations urge the Commission to consider the separate, complimentary purposes for which the USF and a Rural Telco Bidding Credit would exist.

Bidding credits are inherently linked to procurement of spectrum. One of the principal means by which the Commission fulfills its mandate under Section 309(j) of the Communications Act to promote “economic opportunity and competition...by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses [and] rural telephone companies....” is through the award

of bidding credits. A Rural Telco Bidding Credit would help the Commission to meet this objective in a way that the Small Business Bidding Credit alone was unable to do in Auction 97.

The USF is intended to be used for building and maintaining networks – not procuring spectrum licenses. Noting that the “Mobility Fund builds on prior proposals” for modernizing the USF, the Commission cited the Federal-State Joint Board on Universal Service’s recognition of the importance of “directly addressing the *infrastructure needs* in areas unserved by mobile service” in its creation of the Mobility Fund.²⁵ The National Broadband Plan also recommended that the Commission create a Mobility Fund to enhance 3G networks and *infrastructure*.²⁶ The Commission’s rules governing Mobility Fund Phase I required applicants to already “have access to spectrum in an area that enabl[ed] it to satisfy the applicable performance requirements...”²⁷ Without necessary access to spectrum, rural carriers will not have the ability to build networks and will have no need to maintain them.

Concerns regarding duplicative programs are misplaced. A Rural Telco Bidding Credit would not be duplicative but would instead provide rural telephone companies with a reasonable opportunity to participate in the provision of spectrum-based services as the Congress instructed in the Act. In fact, since universal service dollars are not available for spectrum

²⁵ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal State Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*; Report and Order and Further Notice of Proposed Rulemaking; FCC 11-161; ¶ 302 (rel. Nov. 18, 2011) (citing *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Recommended Decision, WC Docket No. 05-337, CC Docket No. 96-45, 22 FCC Rcd 20477 (Fed.-State Jt. Bd. 2007)*) (emphasis added).

²⁶ *Connecting America: The National Broadband Plan*, Recommendation 8.3 (2010) (noting that lack of 3G coverage in certain geographic areas was a “significant” issue because 3G infrastructure would be used to roll out 4G networks, and recommending that one-time support be given for deployment of 3G networks) (emphasis added).

²⁷ 47 C.F.R. § 54.1003.

acquisition, a Rural Telco Bidding Credit would help ensure the policy objectives of universal service are met. The law dictates that “consumers in all regions of the Nation, including . . . those in rural, insular and high cost areas, should have access to [telecommunications services], that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”²⁸ The FCC has recognized that the Communications Act requires it to “prevent degradation of universal service and the division of our society into information ‘haves’ and ‘have nots.’”²⁹ While the Universal Service Fund will help ensure that rates are kept comparable in rural areas and that companies can build networks, the Rural Telco Bidding Credit will help ensure that spectrum on which a network can be built is made available to rural carriers.³⁰

V. THE COMMISSION SHOULD ADOPT RURAL PARTITIONING INCENTIVES.

The Associations support the adoption of a mechanism that would allow a winning bidder to deduct from its auction purchase price the pro rata value (as determined by population percentage) of any portion of its winning license area partitioned to a rural carrier so long as the

²⁸ 47 U.S.C. § 254(b)(3).

²⁹ MTS and WTS Market Structure, 50 Fed. Reg. 939,941 (1985).

³⁰ It is important to note that rural telephone companies are not the only telecommunications service providers that receive USF support. The FCC has stated that the two largest nationwide carriers receive approximately 1/3 of the annual funding received by wireless eligible telecommunications carriers. *See In the Matter of Connect America Fund; Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime*; Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking; WC Docket Nos. 10-90, 14-58, 07-135; WT Docket No. 10-208; CC Docket No. 01-92; ¶ 243 (rel. June 10, 2014) (estimating that two of the largest national providers that have announced commercial roll-out of LTE receive \$185 million in annual support, and that regional and small providers receive approximately \$400 million). Like nationwide and regional carriers, members of the Associations use USF support to build and maintain networks in high cost, rural areas where population density is such that network buildout is not economical any other way. Unlike nationwide and regional carriers, however, rural telephone companies rarely *also* benefit from the high profits yielded in metropolitan and suburban centers.

partitioned area includes all or a portion of the rural carrier's service area.³¹ Such a mechanism would encourage larger carriers to facilitate rural carrier participation in the provision of wireless services. Rural carriers would have another opportunity to obtain spectrum, and a larger carrier would benefit by being compensated twice for making that spectrum available – a discount on its final auction payment and the payment that it negotiates with the rural carrier.³² This mechanism would not be likely to result in a windfall to large carriers or significantly diminish auction revenue because the potential areas involved would be low population markets, and thus, of small monetary value. It would, however, encourage large carriers to carve out spectrum to rural carriers to expedite rural network build-outs.

VI. CHANGES TO THE DESIGNATED ENTITY ELIGIBILITY RULES SHOULD ENCOURAGE AUCTION PARTICIPATION BY BONA FIDE DESIGNATED ENTITIES AND PROTECT AGAINST ABUSE.

The Associations understand the Commission's challenge of balancing the competing goals of: (1) affording DEs flexibility to obtain necessary capital; and (2) preventing the unjust enrichment of ineligible entities, and they recognize the need for rules to prevent ineligible entities from using small businesses as fronts to obtain bidding credits and unfairly compete for spectrum at auction. At the same time, any rules imposed must not inadvertently exclude "genuine" DEs from effectively participating in spectrum auctions, exercising DE benefits, or raising the capital necessary to actively participate in an evolving marketplace.

a. The Commission Should Increase the Small Business Bidding Credit Revenue Thresholds, But Doing So Will Not Obviate the Need for a Rural Telco Bidding Credit.

The Associations support increasing the gross revenue thresholds defining the three tiers of small businesses. Under the Commission's proposal:

³¹ *Blooston Initial Comments* at pp. 11-13.

³² *Id.* at p. 12.

- Businesses with average annual gross revenues for the preceding three years not exceeding \$4 million would be eligible for a 35 percent bidding credit;
- Businesses with average annual gross revenues for the preceding three years not exceeding \$20 million would be eligible for a 25 percent bidding credit;
- Businesses with average annual gross revenues for the preceding three years not exceeding \$55 million would be eligible for a 15 percent bidding credit.

The Associations support this proposal, but caution that increasing the gross revenue thresholds would not eliminate the need for the implementation of a Rural Telco Bidding Credit. RWA members' revenues vary considerably with approximate annual average gross revenues (including affiliates) that range from \$11 million to \$65 million.³³ This means that, while some would be newly eligible for a 15% bidding credit if the threshold were to be increased to \$55 million, many would remain ineligible. Without a Rural Telco Bidding Credit, those rural telephone companies left ineligible for a Small Business Bidding Credit could be forced to again compete against "special purpose DEs" on an uneven playing field.

b. Winning Bidders Should Be Prohibited From Assigning Any License Won With A Small Business Bidding Credit Back To An Investor.

The Associations propose a prohibition during the length of the initial license term against assignment of a license won with a Small Business Bidding Credit back to an investor in the licensee; provided, however, that the prohibition should not apply if assignment is to an investor that itself qualifies as a small business at the time of the license assignment. Similar to the investment restriction the Associations propose be applied to the Rural Telco Bidding Credit, this limitation would help ensure that the companies obtaining bidding credits are legitimate small businesses that seek spectrum for the purpose of building it out and providing service to consumers. It would discourage non-qualifying investors from gaming the system to obtain

³³ As noted above, RWA's members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA's member companies serves fewer than 100,000 subscribers.

spectrum at a discount and help guarantee that small businesses do not acquire a license and then “flip” the license before constructing a network and initiating service.

c. The Commission Should Address the Rural Telephone Cellular General Partnership Issue.

The Associations support the Blooston Rural Carriers’ proposal to clarify the Commission’s affiliation rules to prevent rural telephone companies from losing DE status because they may hold a fractional interest in a cellular partnership established well before the auction rules and DE program were put in place.³⁴ In the early days of cellular licensing, rural telephone companies often participated in settlement agreements as part of the B-Block (i.e., wireline cellular) licensing process; and many of the settlements resulted in the creation of a partnership, in which one or more rural telephone companies ended up with a fractional partnership interest. All members of the partnership were deemed “general partners” in many of these settlement arrangements, even though the partnership is managed by a dominant member that has been given plenary power to control the day-to-day operations of the partnership.

While the participating rural telephone company with a typically miniscule equity interest is nominally a general partner, it usually lacks the ability to control the partnership’s day-to-day operations and/or strategy in any significant way.³⁵ This is an issue that negatively impacts a number of the Associations’ members, and one that could easily be rectified. The Associations agree that the Commission should not disqualify a rural telephone company from eligibility for Small Business Bidding Credits by attributing to it the gross revenues of a cellular general partnership in which it holds a minority general partnership interest. In most such partnerships, the cellular partnership’s total gross revenues are simply not available for use by the rural telephone bidder in an auction.

³⁴ *Blooston Initial Comments* at pp. 10-11.

³⁵ *Id.*

d. Changes Imposed to Address Unjust Enrichment Concerns Should Not Negatively Impact Rural Wireless Carriers.

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.³⁶ The Associations' members are small businesses with limited staff and financial resources, and whose licenses are already subject to build-out and associated reporting requirements. 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 (rather than preventing non-legitimate DEs from procuring licenses in the first place) would be inefficient, and harm *bona fide* DEs – small businesses and rural telephone companies that can least afford additional regulatory burdens.

VII. CONCLUSION.

The Associations thank the Commission for its continued efforts in this proceeding, and 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.

³⁶ Comments of T-Mobile USA, Inc., WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WT Docket No. 05-211, at p.14.

Respectfully submitted,

Rural Wireless Association, Inc.

NTCA – The Rural Broadband Association

By: /s/ Daryl A. Zakov

By: /s/ Jill Canfield

Daryl A. Zakov, Assistant General Counsel
Erin P. Fitzgerald, Assistant Regulatory Counsel
P.O. Box 50551
Arlington, VA 22205-5551
(202) 371-1500

Jill Canfield
Vice President, Legal and Industry &
Assistant General Counsel
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203
(703) 351-2000

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