In the Matter of

Updating Part 1 Competitive Bidding Rules
Expanding the Economic Innovation Opportunities 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

WT Docket No. 14-170
GN Docket No. 12-268
RM-11395
WT Docket No. 05-211

COMMENTS OF THE RURAL-26 DE COALITION

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May 14, 2015
SUMMARY

Results of the recently concluded AWS-3 auction are an all too obvious indicator of the need for reform of the competitive bidding rules and the FCC’s Designated Entity program. It is time for change in the DE program that will allow for legitimate and robust participation by small businesses, rural telephone and wireless companies and new entrants in future spectrum auctions. Accordingly, the Rural-26 DE Coalition, an ad hoc group of rural telecommunications providers adversely affected by the exploitation of the DE rules in Auction 97 and concerned about the likely abuse of the DE rules in the upcoming Incentive Auction, urges the Commission to adopt a new, two-pronged DE framework that awards bidding credits to existing communications providers with less than 250,000 subscribers and to other small businesses and new entrants based on a gross revenue calculation.

A central tenet of the Rural Coalition’s DE proposal is the implementation of a $10 million cap on all bidding credits awarded to each qualified bidder. Specifically, the Commission should cap all bidding credits awarded to qualified DEs at $10 million per bidder and any applicant awarded a bidding credit under the proposed DE framework proposed herein. Implementation of a cap will protect all legitimate DEs from further abuse of the DE program by large carriers and spectrum speculators. Additionally, all bidding credit recipients would be required to meet any and all FCC mandated interim performance requirements before sale of the relevant spectrum license or be subject to full forfeiture of any bidding credit associated with that license. Finally, only those entities eligible for a bidding credit would be permitted to enter into a joint bidding arrangement or consortium with other DE eligible bidders.
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COMMENTS OF THE RURAL-26 DE COALITION

The “Rural-26 DE Coalition” (the “Rural Coalition”)\(^1\), by its counsel, submits the following comments in response to the Request for Further Comment regarding the revision of the Federal Communications Commission’s (“FCC” or “Commission”) Part 1 competitive bidding rules.\(^2\) The Rural Coalition is an ad hoc group of rural telecommunications providers adversely affected by the exploitation of the Designated Entity (“DE”) rules in the AWS-3 auction (“Auction 97”) and/or concerned about the likely abuse of the DE rules in the upcoming Incentive Auction. As explained in greater detail herein, the Rural Coalition proposes new DE rules to award bidding credits to

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\(^1\) Company members of the Rural Coalition are listed in Attachment A attached hereto.

existing communications providers with less than 250,000 subscribers and to other small
businesses and new entrants based on a gross revenue calculation. To deter abuse and
gaming of the DE rules, the Rural Coalition proposes capping all bidding credits awarded
to qualified DEs at $10 million per bidder and suggests implementing other safeguards to
ensure that legitimate small and rural businesses and new entrants actually benefit from
the FCC’s DE program.\(^3\)

I. INTRODUCTION AND BACKGROUND

The Rural Coalition is comprised of 26 facilities-based wireline and wireless
companies, all of which are engaged in the provision of communications services in rural
regions of the United States. Thirteen Rural Coalition members participated in Auction
97, either individually or via joint bidding arrangements, but only four qualified for
bidding credits as DEs under the Commission’s current DE rules.\(^4\) Of the four Rural
Coalition members who actually won licenses in Auction 97\(^5\), only two qualified as DEs.

Those Rural Coalition members who bid on rural licenses and did not win
licenses were consistently and systematically outbid by DEs set up with the backing of
Dish Network Corp. (who utilized SNR Wireless LicenseCo, LLC and Northstar

\(^3\) The Rural Coalition and AT&T submitted the framework for this proposal to the
Commission in a joint letter filed by AT&T on May 11, 2015. See AT&T; FTC
Bureau, *Reforming the FCC’s Designated Entity Program*, WT Docket No. 14-170, GN
Docket No. 12-268 (filed May 11, 2015) (“Rural Coalition Letter”). Since the filing of
the Rural Coalition Letter, one additional company joined the Rural Coalition.

\(^4\) See 47 C.F.R. § 1.2110 (Establishing eligibility for bidding credits based on gross
revenues).

\(^5\) Successful Rural Coalition bidders were Chester Telephone Company, FTC
Management Group, Inc., Sandhill Communications, LLC, and Bug Tussel Wireless
LLC’s affiliate, Michigan Wireless, LLC.

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Wireless, LLC as DEs) (collectively, “Dish”) and other large companies with a nationwide presence and billions of dollars in revenue. The fact that Dish and others were able to utilize the DE program to qualify for a 25 percent bidding credit, to the disadvantage of legitimate small and rural businesses, shows without ambiguity, a broken system that needs fixing.

On May 11, 2015, the Rural Coalition submitted a joint proposal with AT&T outlining the framework for true reform of the DE program – reform that may only be accomplished through large and small carrier cooperation.\(^6\) The Rural Coalition is a true ad hoc, grassroots effort to help curb abuses in the DE program; abuses that have kept spectrum out of the hands of legitimate small businesses, rural telephone companies and new entrants, and accordingly, fixing the DE program is a key priority of the Rural Coalition. While the proposals contained herein and in the joint proposal filed with AT&T lay the basic foundation for the proposed DE reform, the Rural Coalition understands that further discussion regarding the specific implementation of these proposals is warranted in the coming months. The Rural Coalition looks forward to such discussion.

\(^6\) See supra note 3.
II. ARGUMENT

A. The Commission Should Adopt a New, Two-Pronged Designated Entity Framework

In the Notice, the FCC seeks “additional comment on a number of proposed changes to the Commission’s Part 1 competitive bidding rules.”\(^7\) including comment on proposals related to bidding credits, bidding preferences and alternatives to promote small business participation in wireless.\(^8\) To this end, and based on strong, bipartisan call for reform, the Rural Coalition, as part of its joint proposal with AT&T, urges the Commission to adopt a new and improved DE framework. Redefining “small business” in a way more aligned with the structure of today’s wireless industry will benefit legitimate small businesses and rural telephone companies\(^9\) and, in turn, will serve the public interest.

As a threshold matter, imposing a strict cap of $10 million on the bidding credit available to an eligible applicant will help the very entities the DE program is designed to benefit and deter large entities backed with Wall Street capital from gaming the rules and

\(^7\) See Notice at ¶ 1.
\(^8\) Id.
\(^9\) See 47 U.S.C. § 153(44) (“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.”).
denying U.S. taxpayers billions in revenue. Capping the amount of the bidding credit an entity may receive will prevent abuses that are endemic in the current DE program. Further, tying a bidding credit to an actual build by the DE will encourage legitimate bidding during auctions and deliver spectrum licenses to entities actually willing to deploy the acquired spectrum. Finally, limiting DEs from entering into bidding arrangements and consortiums with non-DEs will encourage broad and robust participation at auction.

It is evident given the experience of the Rural Coalition members in Auction 97 and from the public record in this proceeding, that legitimate small businesses, rural telephone companies and existing communications operators (including rural wireless companies) are not benefiting from the DE program as it currently exists. As such, the Rural Coalition urges the Commission to adopt a new DE framework that will benefit legitimate small businesses, rural telephone companies and new entrants. The Rural Coalition believes that the two-pronged approach described herein will repair a flawed DE program and incentivize otherwise deterred entities to participate in future spectrum auctions.

B. The FCC Should Adopt a Non-Revenue-Based Small Business/Rural Telephone Company Bidding Credit

Section 309(j) of the Telecommunications Act of 1996 (“Telecommunications Act”) directs the FCC to ensure that small businesses, rural telephone companies and businesses owned by members of minority groups and women have the opportunity to
meaningfully participate in the provision of spectrum-based services.\textsuperscript{10} Expressly awarding bidding credits to rural telephone companies would be consistent with the Commission’s statutory obligation. Moreover, rural telephone companies have the experience and motivation to use spectrum to provide vital, wireless communications services to their communities.

If one examines the history of the DE program, however, it is clear that utilizing gross revenues alone to determine eligibility for a bidding credit unnecessarily and unjustly excludes the exact businesses Section 309(j) was designed to protect. Accordingly, the Rural Coalition herein proposes a new, non-revenue based bidding credit in which auction applicants would be permitted to claim a Small Business/Rural Operator bidding credit of 25 percent (“Rural Operator Credit”). To be eligible for the Rural Operator Credit, applicants must provide commercial communications services to a customer base of fewer than 250,000 (combined wireless, wireline, broadband, cable or any communications) customers.

A large number of rural telephone companies and existing rural wireless providers do not qualify for bidding credits under the exiting revenue-based DE rules. In fact, in Auction 97, many members of the Rural Coalition, who are incumbent local exchange carriers (“LECs”) and providers of wireless services in rural areas, found themselves bidding in their home markets – where they desperately need spectrum to

\textsuperscript{10} See 47 U.S.C. § 309(j)(4)(D) (“[T]he Commission shall ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women 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…”).
serve rural communities – against nationwide carriers, some backed by billions in Wall Street monies, who did qualify for bidding credits. For example, as previously explained to Commissioner Pai and FCC staff\(^{11}\), during Auction 97, Atlantic Seawinds Communications, LLC (“Atlantic”) placed bids in the Wilmington, NC CMA218-G market, the home Cellular Market Area for its parent LEC, Atlantic Telephone Membership Corporation.\(^{12}\) Because Atlantic did not qualify as a DE under the current DE rules, it found itself bidding as the incumbent LEC in a market without a bidding credit against much larger competitors, including Dish and U.S. Cellular, who qualified for bidding credits.\(^{13}\) Atlantic was the provisional winning bidder in Round 29 at a gross bid of $4,236,000. In Round 30, U.S. Cellular (receiving a 25 percent bidding credit through its DE, Advantage Spectrum, L.P.) outbid Atlantic, who could no longer afford to continue bidding in the auction. Once bidding credits were applied to the provisional winning bid, the final net winning bid amount to be paid by Advantage Spectrum, L.P. – $3.724 million – was well below the amount Atlantic was prepared to pay for critical spectrum in its home service area. Had Atlantic, as an existing and legitimate small


\(^{12}\) See Attachment B for round by round results.

\(^{13}\) See Auction of Advanced Wireless Services (AWS-3) Licenses, 70 Bidders Qualified to Participate in Auction 97, DA 14-1564, Att. A (rel. Oct. 30, 2014). See also 47 C.F.R. § 1.2110(f)(2) (“Size of bidding credits. A winning bidder that qualifies as a small business may use the following bidding credits corresponding to its respective average gross revenues for the preceding 3 years: ...(ii) Businesses with average gross revenues for the preceding years, 3 years not exceeding $15 million are eligible for bidding credits of 25 percent; and (iii) Businesses with average gross revenues for the preceding years, 3 years not exceeding $40 million are eligible for bidding credits of 15 percent.”).
business and rural telephone company, qualified for a bidding credit under the DE rules, it could have continued bidding against larger competitors, and even if it had eventually not been the provisional winning bidder at the conclusion of Auction 97, it would have at least participated on a more level playing field with the larger gamers of the DE program.

The Rural Coalition believes the 250,000 combined subscriber benchmark strikes the correct balance in awarding this proposed bidding credit to legitimate small businesses, rural telephone companies, rural wireless operators and other existing communications providers.\(^\text{14}\) As such, using a benchmark of 250,000 combined subscribers is more than sufficient in awarding a bidding credit not only to rural telephone companies, but also to rural, regional and urban wireless operators and other truly small communications providers that may not be directly affiliated with rural telephone companies. The Rural Coalition believes that the Rural Operator Credit should be extended to all existing communications companies – not just rural telephone companies – with less than 250,000 subscribers.

Taken on its face, the non-revenue based Rural Operator Credit is designed to compliment what Section 309(j) of the Telecommunications Act set out to accomplish – to ensure that small businesses and rural telephone companies have a legitimate opportunity to participate in the provision of wireless services. The Rural Operator Credit goes to the heart of competition and rural and competitive deployment issues by

\(^{14}\) A rural telephone company, for example, by definition is a local exchange carrier that provides common carrier service to significantly fewer than 250,000 subscribers. See supra note 9.
granting existing legitimate communications providers with fewer than 250,000 combined subscribers a 25 percent bidding credit that they can use to acquire and actually deploy and enhance spectrum-based services, regardless of where they operate and regardless of the communications services offered.

C. The FCC Also Should Adopt a Revenue-Based Bidding Credit to Encourage New Entrant Participation

In order to encourage participation in spectrum auction by new entrants that may bring competitive services to both urban and rural markets, the Rural Coalition proposes a second bidding credit based on gross revenues, which bidding credit cannot be combined with the proposed Rural Operator Credit. To qualify for the Small Business/New Entrant bidding credit of 25 percent (‘New Entrant Credit’), applicants must have average annual gross revenues of $55 million or less for the last three completed fiscal years. The Rural Coalition believes that $55 million, as proposed by the FCC, sufficiently accounts for legitimate new entrants (and other small businesses) that are seeking to deploy wireless services. While there may be some entities that would qualify for both the Rural Operator Credit and the New Entrant Credit, the Rural Coalition believes that these credits should not be cumulative – meaning that an entity would have to choose which bidding credit it desires.

D. Both Bidding Credits Must Have Significant Limitations to Limit Potential Abuse

i. The FCC Should Adopt a Strict $10 Million Cap on All Awarded Bidding Credits

To avoid potential abuse of both bidding credits, the Rural Coalition proposes a strict cap of $10 million per bidding entity. A $10 million cap on bidding credits awarded to any single qualified applicant will ensure that those entities that receive a bidding credit are true small businesses and new entrants. Because the proposed DE framework would provide a 25 percent bidding credit, any entity with a capital budget for bidding in a spectrum auction of up to $40 million would reach the limit of this $10 million bidding credit cap. Spending $40 million on spectrum is a significant expenditure for any legitimate small business and rural telephone company, as these entities will then need additional capital – possibly $100 or $200 million more – to actually build and operate a wireless network. As indicated in the Rural Coalition’s May 11, 2015 joint proposal filed with AT&T, the $40 million amount would cover the complete auction spend of 22 of the 31 winning bidders in Auction 97.16

Further, institution of a hard cap of $10 million for any bidding credit will significantly minimize, if not eliminate entirely, the damage that large gamers may cause to the DE program or competitive bidding in future spectrum auctions. Of course, a qualified DE may still spend more than $40 million on wireless licenses, and some new entrants likely will, but the Rural Coalition does not believe that amounts bid in excess of $40 million should be subsidized by the federal government under the guise that the

16 See Rural Coalition Letter at ¶ 10 and Att. A.
bidder is a small business that needs the benefit of a substantial government discount in order to acquire spectrum licenses.

ii. Except in Instances of Rural Partnerships and Rural Telephone Company Ownership, Each Bidder Should be Allowed to Receive Only One Bidding Credit

As indicated herein, as part of this proposed DE framework, bidding credits would not be cumulative. Instead, legitimate small businesses and rural telcos would be eligible to claim only one bidding credit, either directly or indirectly, through any attributable relationship with or attributable investment in another bidding entity. This safeguard would prevent any individual or entity from benefiting either directly or indirectly from more than one bidding credit and would prevent a company from setting up multiple DEs to take advantage of the $10 million bidding credit cap.

The Rural Coalition recognizes that additional work will be required to implement the “one credit per bidder” limitation and whether it should be applied to any reportable interest in any bidder regardless of size. In general, the Rural Coalition believes that the restriction should be applied broadly in order to deter abuse and gaming of the program.

Long-standing rural partnerships and their individual partners, along with telephone companies with multiple rural owners, however, should be exempted from the restriction, so long as such partners, partnerships and companies are not bidding against each other in the same Partial Economic Area, Cellular Market Area or Economic Area. In order to facilitate rural deployment (both wireline and wireless), rural companies often form partnerships and acquire interests in other rural telecommunications...
providers and rural telephone companies. Those members with said partnerships or ownership by other rural telephone companies would be permitted to benefit from more than one bidding credit where the members are bidding in their own service area and not bidding against another DE in which they hold an attributable interest. This approach will continue the facilitation of rural deployment without punishing those rural telephone companies with ownership in wireless partnerships or in other legitimate small businesses.

iii. Recipients of Bidding Credits Under Either Prong Must Meet FCC-Mandated Interim Build-Out Requirements

In addition to limiting the size and scope of entities eligible for bidding credits, the Rural Coalition believes that qualification as a DE should also be contingent on an entity actually constructing and operating licenses acquired at auction. Spectrum is a scarce resource and Commission rules should discourage warehousing of spectrum. Under the Rural Coalition’s proposed DE framework, any applicant who obtains either the Rural Operator Credit or the New Entrant Credit would be required to meet any and all FCC mandated interim performance requirements before sale of the relevant spectrum license. Should an entity sell its licenses acquired with bidding credits prior to the interim construction benchmark, that entity would be subject to full forfeiture of any bidding credit associated with that license.

17 Moreover, the Rural Coalition supports an exception for commercial banking entities. DEs should be able to receive arms-length commercial financing from a lender of their choice, and lenders should be permitted to provide financial support to more than one DE.
iv. DEs and Non-DEs Should be Prohibited From Entering into the Same Joint Bidding Arrangements

Joint bidding arrangements, bidding agreements and bidding consortia have proven essential to small companies trying to compete in spectrum auctions, especially in recent auctions where the FCC has offered fewer Cellular Market Area blocks to rural bidders. The Rural Coalition proposes that only those entities eligible for a bidding credit would be permitted to enter into a joint bidding arrangement or consortium with other DE eligible bidders. An applicant not eligible for a bidding credit would not be permitted to enter a joint bidding arrangement or consortium with an applicant that is eligible for a bidding credit. While this restriction on joint bidding arrangements will benefit entities eligible for a bidding credit looking to bid in geographic areas where multiple bidders may have separate service areas, it will also prevent the type of gamesmanship seen in Auction 97 where shell companies were permitted to bid against one another in the same market in order to retain bidding eligibility longer than entities that were not gaming the rules. The Rural Coalition cautions, however, that should the Commission not adopt its Rural Operator Credit, it must continue to allow legitimate small businesses, whether they qualify for DE status or not, to continue to enter into joint bidding arrangements.

III. CONCLUSION

For the foregoing reasons, the Rural Coalition respectfully requests that the Commission adopt a new approach to its old DE program, by creating a 25 percent Rural Operator Credit and a 25 percent New Entrant Credit. Capping all bidding credits at $10...
million per eligible bidder will provide the adequate safeguards to curb further gaming of the DE program. Not only will these reforms deter abuse and gaming of the DE rules, but they will also allow for legitimate and robust participation by small businesses, rural telephone and wireless companies and new entrants in future spectrum auctions.

Respectfully submitted,

Rural-26 DE Coalition

By: _______________________

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Its Counsel

May 14, 2015
ATTACHMENT A

Rural-26 DE Coalition

FTC Management Group, Inc.  
Arctic Slope Telephone Association Cooperative, Inc.  
Atlantic Seawinds Communications, LLC  
Bug Tussel Wireless, LLC  
Chariton Valley Communications Corporation, Inc.  
Chester Telephone Company  
Comporium Wireless, LLC  
Cordova Wireless Communications, Inc.  
Horry Telephone Cooperative, Inc.  
KanOkla Telephone Association, Inc.  
Leaco Rural Telephone Cooperative, Inc.  
MobiNet LLC  
Northeastern Iowa Telephone Company  
Northwest Missouri Cellular Limited Partnership  
Palmetto Rural Telephone Cooperative, Inc.  
Paul Bunyan Rural Telephone Cooperative  
Piedmont Rural Telephone Cooperative, Inc.  
Plateau Telecommunications, Inc.  
RSA 1 Limited Partnership d/b/a Chat Mobility  
Iowa RSA 2 Limited Partnership d/b/a Chat Mobility  
Sandhill Communications, LLC  
Totelcom Networks LLC  
Texas RSA 7B3, L.P. d/b/a Peoples Wireless Services  
Public Service Wireless, Inc.  
VTel Wireless, Inc.  
West Carolina Rural Telephone Cooperative, Inc.  
XIT Telecommunication & Technology, LTD
AW-CMA218-G : Wilmington, NC

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<td>21</td>
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* = Provisional Winning Bidder

Legend:
- Blue: Full Bid
- Red: Net Bid