Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

WT Docket No. 14-170

GN Docket No. 12-268

RM-11395

WT Docket No. 05-211

REPLY COMMENTS OF KING STREET WIRELESS, L.P.

King Street Wireless, L.P. (“King Street”), by counsel, hereby provides its reply comments in the captioned proceeding.

I. Background

As most parties anticipated would be the case, the commenters in this proceeding are sharply divided regarding what changes to the Commission’s designated entity (“DE”) rules are appropriate. That said, there are a number of issues over which no disagreement has been presented. Chief among these are the following:

1. The Commission has an unqualified statutory mandate to implement a DE program. See, e.g., CCA Comments, at 5; King Street Comments, at 4; Council Tree Comments, at 6; NTCA Comments, at 6.
2. The statute mandates that the following groups of entities be included in the DE program: rural telephone companies; women; minorities; and small businesses. See, e.g. Council Tree Comments, at 7.

3. Prior to the conduct of the first major broadband auction, the U.S. Supreme Court issued a ruling\(^1\) that vastly complicated the Commission’s ability to provide special assistance to minority groups, and later it did the same with respect to women.\(^2\)

4. In light of those rulings, the Commission re-focused its efforts on small business protection, and affirmatively determined that as most women and minorities are also small businesses, the focus on small business would permit the Commission to protect three of the five protected classes specified in the statute: minorities, women and small businesses. *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, 15 FCC Rcd 15293, 15318 (2000).

Notwithstanding a general consensus on all of the above, the commenting parties divided sharply on the issue of how the auction bidding process generally, and the DE program more specifically, should be modified. King Street and certain others focused on what happened in Auction No. 97 (the “Auction”),\(^3\) and how to rectify that. Others focused almost inclusively on the risks of unjust enrichment, either real or imagined, associated with the Commission’s DE program.

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\(^3\) Which is what the Commission asked commenting parties to do. See *Request for Further Comment on Issues Related to Competitive Bidding Proceeding: Updating Part I Competitive Bidding Rules*, FCC 15-49 (Rel. April 17, 2015, at 3).
II. How the Commission’s Competitive Bidding and DE Rules Should and Should Not Be Modified

By these Reply Comments, King Street submits a white paper report produced by the regulatory, economic and financial consulting firm of Wood & Wood. King Street retained Wood & Wood to obtain expert written testing on the controversial bidding activity surrounding the Auction and resulting proposals to revise the DE program. The Report’s findings are based on the substantial first-hand experience of its author, which are set forth in the Report itself. In its Report, Wood & Wood explained that:

- Per the Verizon analysis of bidding activity of certain related parties who were bidding pursuant to a joint bidding agreement, it is clear that the bidding irregularities that raised so much concern in the Auction were the result of collusive bidding, and had nothing to do with the DE status of certain of the involved entities. (Report, at 6)

- The impact of certain of the proposed restrictions, if adopted, on the existing DE program (i.e. increasing attribution when non-controlling entities have substantial equity investment and requiring qualified DE entities to have increased equity positions) is clear, and would present a clear threat to the Commission’s DE program. (Report, at 7)

- The impact of many of the proposals on small businesses is clear: reductions in the level of bidding credits would make it more difficult for small businesses to successfully bid against a larger, well-financed carriers, and extending a mandatory holding period will hamstring small businesses in their ability to attract capital and make market-driven network deployment and upgrade decisions as technology changes over a shorter time horizon. (Report, at 7)

- Constraining the total bid credit effectively limits the value of licenses that a Designated Entity could successfully acquire in a given auction. With a 25% bidding credit and a cap of $10 million, a given Designated Entity would be limited to licenses with a total value of $40 million. “At best, this is an attempt by large carriers to keep small businesses small by limiting their participation in a given auction and placing a hard cap on the size of their operations.” (Report, at 7)

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4 See Exhibit I hereto, which is a copy of the expert report of Wood & Wood, dated May 20, 2015 entitled “An Evaluation of Proposed Changes to the Commission’s Part 1 Competitive Bidding Rules” (the “Report”).

5 Exhibit B sets forth the input qualifications of Don J. Wood, the principal author of the Wood & Wood report.

6 Verizon ex parte of April 24, 2015 in the captioned proceeding. As King Street stated in its Comments, King Street makes no independent assessment or comment on the facts involved in the bidding patterns in the Auction, but merely comments on what other entities have reported to the Commission.
• The scale economies of the industry makes the consequences of capping bid credits far greater. Proposed caps on bid credits could drive small businesses out of the market. Such a consequence, whether intended or unintended by the proponents of a cap on bid credits, would have implications for market concentration and competition (and therefore for the consumers of wireless services) going forward. (Report, at 7)

• The acquisition cost of telecommunications equipment is a direct function of the size and scale of the purchaser. Since 1996, network costs have been examined in detail during negotiations, arbitrations, and contested proceedings related to the pricing of Unbundled Network Elements (“UNEs”), the calculation of universal service subsidies, the calculation of inter-carrier compensation, and the Commission’s analysis of competitors’ level of impairment without access to certain UNEs. Whether wireline or wireless, larger carriers consistently pay less – and often substantially less – for the same equipment. (Report, at 8)

• The standard practice is for telecommunications equipment to be offered at a list price, but to be sold at varying discounts off that list price. For switching equipment, a review of vendor contracts revealed that smaller carriers and new entrants have historically received a modest discount, while the largest carriers have received much more substantial discounts (in the range of 50 – 60% or more, depending on configuration and vendor). (Report, at 8)

• In telecommunications, the historic lessons are clear: Large carriers pay substantially less than small carriers, and large projects are less costly (per unit) to equip than smaller projects. In order to compete with large established carriers, a small business must be able to enter and operate at a sufficient scale so that this equipment cost penalty is not too great to allow it to compete. (Report, at 8)

• In order to qualify for universal service support, wireless ETCs are required to engage in an accelerated network buildout in order to meet all reasonable requests for service. Without exception, vendor bids for larger buildout projects reflected a more discounted price for equipment than bids for smaller projects. (Report, at 8)

• The costs for backhaul facilities are also fully consistent with this pattern. The regulations for the Broadband Initiatives Program (“BIP”) and Broadband Technology Opportunities Program (“BTOP”) require an applicant to negotiate all necessary agreements for the construction or lease of all network capabilities, including backhaul facilities, prior to the submission of the application. Real world experience revealed that whether built or leased, high-volume backhaul facilities were less costly than lower volume backhaul facilities. (Report, at 8)

• The lessons for any entity seeking to compete in the provisioning of wireless services are inescapable: in order to compete on a cost basis with established carriers, the entity and its projects must be of sufficient scale. For a small business, this means that it must be able to acquire a sufficient number of licenses of a sufficient size, otherwise its cost to acquire necessary equipment and facilities will be substantially higher than that of its competitors. (Report, at 8)
• The availability of equipment is also a potential issue that is directly related to scale. The availability (and timing of delivery) of a vendor’s equipment depends very much on the size of the customer. (Report, at 9)

• Operations costs are also directly impacted by scale. The size of a carrier directly determines the terms, and being larger enabled a carrier to obtain better terms. This experience may be driven by traffic volumes that are sufficient to permit a more efficient network arrangement, may reflect the fact that larger size results in greater negotiating leverage, or both. (Report, at 9)

• Scale directly impacts a carrier’s access to capital. Wireless programs generally require a network buildout on a limited timescale, and applications were required to include a detailed network construction plan and corresponding capital acquisition plan, including commitments from the providers of the necessary capital. Even in a scenario in which a substantial part of the construction costs would be recovered through program grants, the ability of a regional wireless carrier (even one with sound credit and record of profitable operation) to acquire commitments for the necessary capital was extremely difficult. This experience underscores the need for Designated Entities to be able to acquire capital from other industry participants. In order to do so, the Designated Entity must be able to pursue projects of sufficient size and scale. (Report, at 9)

III. Conclusion

In view of the above, King Street renews its urgings that the Commission (a) focus on the real problem with the Auction – collusion – and fix that; (b) not adopt that laundry test of DE modification proposals, crafted largely by nationwide carriers, that would serve only to miniaturize the Commission’s already too-small DE program; and (c) increase DE revenue eligibility and bid credit levels.

Respectfully submitted,

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