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

 COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

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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### SUMMARY

- **I. EXPANDING BIDDING CREDIT CATEGORIES TO ENCOURAGE PARTICIPATION BY SMALL AND RURAL CARRIERS WOULD ADVANCE THE GOALS OF SECTION 309(J) OF THE ACT**
  - a. Rural Telephone Companies and Their Subsidiaries Should Be Eligible for Bidding Credits
  - b. For the Purpose of Determining Rural Telco Bidding Credit Eligibility, Independent Rural Wireless Carriers That Would Otherwise Qualify as Rural Telephone Companies Should Be Eligible
  - c. If the Commission Declines to Adopt a Rural Telephone Company Bidding Credit, It Should Award Additional Bidding Credits to Carriers Meeting Certain Public Interest Criteria
  - d. The Commission Should Further Increase the Small Business Credit Revenue Thresholds

- **II. THE COMMISSION SHOULD RETAIN THE FIVE YEAR UNJUST ENRICHMENT PERIOD**

- **III. THE COMMISSION SHOULD REPEAL THE ANNUAL DE REPORTING REQUIREMENT**

- **IV. THE COMMISSION SHOULD RETAIN CURRENT JOIN BIDDING ARRANGEMENT RULES FOR NON-NATIONWIDE WIRELESS PROVIDERS**

- **V. THE COMMISSION SHOULD CAREFULLY CONSIDER CHANGES TO THE ATTRIBUTABLE MATERIAL RELATIONSHIP RULE**

- **VI. CONCLUSION**
Summary

The Rural Wireless Association, Inc. (“RWA”) files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking that seeks comment on proposals regarding its designated entity (“DE”) and competitive bidding rules. RWA urges the Commission to adopt DE and competitive bidding rules that promote deployment of advanced wireless services to consumers living, working and traveling in rural areas and encourage auction participation by the small rural carriers that serve those consumers.

One of the primary means by which the Commission fulfills its statutory mandate to avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants is by awarding spectrum auction bidding credits to eligible small businesses. The current bidding credit rules targeted at small businesses are insufficient to provide meaningful opportunities for small, rural wireless carriers because many of these carriers do not meet the eligibility requirements. To address these flaws, the Commission should also offer a bidding credit to entities that qualify as a “rural telephone company” under its rules, or to a qualified rural telephone company’s subsidiary or affiliate. For the purpose of determining rural telco bidding credit eligibility, independent rural wireless carriers that would otherwise qualify as rural telephone companies should also be eligible.

If the Commission decides against offering a rural telco bidding credit, RWA urges the adoption of bidding credits that would promote participation and competition by wireless carriers in future spectrum auctions. Specifically, the Commission should award bidding credits to carriers that meet certain public interest objectives associated with delivering mobile broadband to rural areas.
RWA supports the Commission’s proposal to increase the small business credit revenue thresholds, and recommends that the Commission further modify the third tier to provide a 15% bidding credit to entities with average annual gross revenues of less than $100 million. Increasing the threshold from $55 to $100 million would incentivize auction participation and help these slightly larger small and rural telephone companies to compete for spectrum with nationwide carriers on a more level playing field.

RWA believes that a five-year unjust enrichment period remains an appropriate length of time, and nicely balances the competing goals of preventing unjust enrichment to ineligible entities with small and rural carriers’ need for flexibility and access to capital. RWA supports the Commission’s proposal to repeal the annual DE reporting requirement, and agrees that the required information is duplicative of information that DEs have already disclosed in their auction and license applications. RWA also supports the Commission’s conclusion that retaining its current rules governing joint bidding arrangements among non-nationwide providers is in the public interest. While not practical for all rural carriers, joint bidding arrangements can provide some small and rural wireless carriers with opportunities that might otherwise be unavailable due to limited financial resources. This is particularly true in the wake of past Commission decisions to use geographic license areas larger than Cellular Market Areas and the rising price of spectrum.

The Commission seeks comment regarding its proposal to eliminate the bright line Attributable Material Relationship (“AMR”) rule, and instead determine eligibility for small business bidding credits by using a two-pronged test to determine whether: (1) an applicant meets the applicable small business size standard, and (2) an applicant retains control over the spectrum associated with the licenses for which it seeks small business benefits. RWA supports
changes that will offer its members more flexibility, but, in light of Auction 97 results, believes that the Commission should carefully consider any changes to the AMR.
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In the Matter of

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Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

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Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules And Procedures

To: The Commission

COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)\(^1\) hereby files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking in the above-captioned proceedings.\(^2\) The DE NPRM proposes a number

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\(^1\) 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 to 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 carrier member companies serves fewer than 100,000 subscribers.

\(^2\) 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
of changes to the Commission’s designated entity (“DE”) and competitive bidding rules, and seeks comment on many related issues. The Commission has an obligation under Section 309(j) of the Communications Act of 1934, as amended (“Act”) to seek to promote the deployment of services “for the benefit of the public, including those residing in rural areas.” The Commission should adopt DE and competitive bidding rules that promote deployment of advanced wireless services to consumers living, working and traveling in rural areas and encourage auction participation by the small rural carriers that serve those consumers.

I. EXPANDING BIDDING CREDIT CATEGORIES TO ENCOURAGE PARTICIPATION BY SMALL AND RURAL CARRIERS WOULD ADVANCE THE GOALS OF SECTION 309(J) OF THE ACT.

In the DE NPRM, the Commission recognizes its mandate under Section 309(j)(3)(B) of the 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….“ One of the principal means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses. While bidding credits are certainly not a silver bullet for all small and rural carriers competing in an auction, bidding credits and other mechanisms can help small, rural carriers garner spectrum in (or adjacent to) their own service territory. The evolution of the wireless marketplace from mobile voice to mobile broadband has led to an increased need for spectrum,
which means that bidding credits are more important to small and rural service providers than ever before.

a. Rural Telephone Companies and Their Subsidiaries Should Be Eligible for Bidding Credits.

The Commission’s rules require a winning bidder to qualify as a small business in order to be eligible for bidding credits. To qualify as a small business, an applicant must report its revenues, as well as the revenues of its various controlling interests and affiliates, as required by the revenue attribution rules. The Commission seeks comment regarding whether the current small business provisions are sufficient to promote participation in the provision of spectrum-based services by rural telephone companies.

RWA believes that the current bidding credit rules targeted at small businesses are insufficient to provide meaningful opportunities for the nation’s small, rural wireless companies. To remedy this, the Commission should also offer a bidding credit to entities that qualify as a “rural telephone company” under Section 1.2110(c)(4) of its rules, or a subsidiary or affiliate of a qualified rural telephone company. A credit equivalent to the average credit available to small businesses – currently 25% – would be appropriate. This rural telco bidding credit and any small business bidding credit for which a rural telephone company may be eligible should be independent and cumulative of each other. As discussed below, many rural telephone companies do not qualify for the small business bidding credit. Applicants that qualify for both credits should receive them, given their status as both a truly small business and a truly rural service

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6 47 C.F.R. § 1.2110(f)(2).
7 DE NPRM ¶ 66.
8 47 C.F.R. §§ 1.2110(c)(4), 51.5; see also 47 U.S.C. § 153(44).
A rural telco bidding credit would advance the aim of Section 309(j)(3), which 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…” 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…” Neither Section 309(j), nor the Commission’s rules, lump rural telephone companies in with small businesses generally. Instead, each receives separate and equal mention. There is simply no textual basis to suggest that rural telephone companies must also be small businesses in order to be DEs eligible for bidding credits.

In addition to there being a solid statutory foundation for such action, providing a rural telco bidding credit makes common sense. It would help the Commission to better target resources to all bona fide DEs – companies that actually need bidding credits to have a hope of competing with nationwide carriers for spectrum at auction. Quite plainly, an entity cannot “fake” being a rural telephone company or subsidiary. By statute, an entity either is or it isn’t.

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9 Of course, the fact that a bidder is eligible for bidding credits does not guarantee that the bidder will win spectrum at auction. Only 15 out of 37 bidding credit-eligible Auction 97 bidders won spectrum licenses.
11 47 C.F.R. §309(j)(4)(D) (emphasis added)
12 47 U.S.C. 1.2110(a) (defining “designated entities” as “small businesses…and rural telephone companies”) (emphasis added).
Further, a rural telco bidding credit would clearly serve the public interest. Rural telephone companies have been serving their communities and license areas for years. These companies built out wireless networks in areas that no other entity would at the time. Their services generated economic growth and improved public safety in rural and remote parts of the nation that would have languished for years with insufficient, or nonexistent, wireless service.

It is possible that some view “small businesses” as a surrogate for “rural telephone companies,” under the Commission’s rules and believe that a rural telco bidding credit is not necessary. Such a view is mistaken. RWA’s carrier members are the smallest wireless service providers in the country. Each serves fewer than 100,000 subscribers, and the vast majority of them serve fewer than 10,000. By most considerations, RWA members are small businesses—however, many RWA members do not qualify for “small business” bidding credits. In fact, by virtue of the Commission’s revenue attribution rules, half of the RWA members that participated in the recently concluded AWS-3 auction were not eligible for small business bidding credits.

b. For the Purpose of Determining Rural Telco Bidding Credit Eligibility, Independent Rural Wireless Carriers That Would Otherwise Qualify as Rural Telephone Companies Should Be Eligible.

In addition to those rural wireless carriers that are subsidiaries of, or affiliated with, rural telephone companies, there are some truly independent rural wireless companies not affiliated with rural telephone companies that serve rural consumers. These entities would not usually be considered rural telephone companies under the Act but, for the purposes of determining rural telco bidding credit eligibility—the Commission should make an exception. The Act defines “rural telephone company” as:

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 the date of enactment of the Telecommunications Act of 1996.\(^{13}\)

The same statute section excludes those entities engaged in the provision of a commercial mobile service from the definition of “local exchange carrier,” except “to the extent that the Commission finds that such service should be included in the definition of such term.”\(^{14}\) As required by Section 309(j), the Commission must promote “the development and rapid deployment of new technologies, products, and services” and “ensure prompt delivery of service” in rural areas.\(^{15}\) As such, solely for the purposes of determining rural telco bidding credit eligibility, the term “local exchange carrier” should include providers of commercial mobile radio service, and independent rural wireless carriers that would otherwise qualify as rural telephone companies under the Act should be eligible for the credit.

c. If the Commission Declines to Adopt a Rural Telephone Company Bidding Credit, It Should Award Additional Bidding Credits to Carriers Meeting Certain Public Interest Criteria.

If the Commission decides against offering a rural telco bidding credit, RWA urges the adoption of additional public interest bidding credits that would promote participation and competition by small and rural wireless carriers in future spectrum auctions. Specifically, the Commission should award bidding credits to carriers that meet certain public interest objectives associated with delivering mobile broadband to rural areas. In addition to the currently

\(^{13}\) 47 U.S.C. § 153 (44).


\(^{15}\) 47 U.S.C §§ 309(j)(3)(A), (4)(B).
employed revenue-based bidding credits, RWA supports the award of additional bidding credits to small carriers that currently provide mobile wireless service to rural areas and have a history of offering telecommunications services to rural markets. For example, bidding credits could be awarded as follows:

- **Small Carrier Credit.** Bidding credits should be awarded to small wireless carriers. For example, wireless carriers with fewer than 100 employees would receive a larger bidding credit than businesses with 100-500 employees. Carriers with over 500 employees would receive no credits. As previously discussed, not all small and rural wireless carriers are considered “small businesses” for the purpose of receiving the currently-available bidding credits. A small carrier credit would allow the Commission to better target bidding credit resources.

- **Rural Subscriber Coverage Credit.** Bidding credits should be awarded to small carriers already providing mobile wireless service to rural communities. The size of the credit should increase with the proportion of rural coverage area (e.g., 100% rural, 75-99% rural, 51-74% rural).\(^{16}\)

- **Rural Service Dedication Bidding Credit.** Bidding credits should be awarded to small carriers with a history of offering telecommunications services to rural markets. The size of the credit would increase based on the number of years of service (e.g., 5% bidding credit for 1-5 years of service, 10% bidding credit for 6-10 years of service).

Consistent with the mandate to disseminate licenses to small business and rural telephone companies, the Commission should permit spectrum auction participants to use any and all of these public interest bidding credits that apply, while placing a reasonable cap placed on the amount of available bidding credits any one carrier is eligible to receive. Bidding credits based on the above criteria will reward carriers that have already made a long-term commitment to serving some of the most high-cost areas of the nation. Further, such credits will allow small, rural carriers to outbid better-financed carriers who have not previously made a commitment

\(^{16}\) For example, under the Broadband Initiatives Program, the Rural Utilities Service’s last mile and middle mile projects were evaluated using systematic criteria that assigned point values for serving rural residents in unserved areas. For every 10 percent of unserved households compared to the total households to be served that would receive broadband service through the proposed project, RUS awarded one point up to a maximum of 10 points. See U.S. Dept. of Agriculture, Rural Utilities Service, Broadband Initiatives Program, *Second Round Notice of Funds Availability*, Sec. VI., A, 1-3.
with their own resources and have no “skin in the game.” The longer the period of time a carrier has served an area, the larger the credit that should be awarded because this demonstrates a long-term commitment to ensuring the economic viability and development of the rural area. The Commission should incentivize auction participation by rural carriers with the proven desire and expertise to serve customers who live, work and travel in rural communities.

**d. The Commission Should Further Increase the Small Business Credit Revenue Thresholds.**

The Commission proposes to increase the gross revenue thresholds defining the three tiers of small businesses based on a 36.4 percent increase in the U.S. Gross Domestic price index between 1997 (the small business definitions and corresponding bidding preferences were adopted in that year) and 2013.  

Specifically:

- 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.

RWA supports this proposal and also urges the Commission to further facilitate spectrum licensing to small businesses and rural telephone companies by modifying the third tier. As discussed above, RWA’s carrier members are extremely small, with each serving 100,000 or fewer subscribers. In fact, most RWA carrier members serve no more than 10,000 subscribers. Many RWA members are affiliated with a rural telephone company or have companies with affiliates that would contribute to the overall gross revenues when determining whether the company qualifies as a small business under the FCC’s traditional small business bidding credit rules used in spectrum auctions. The annual average gross revenues of these companies (including affiliates) typically range from $11 million to $65 million. Because some

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17 *DE NPRM* at ¶¶ 50, 56.
rural carriers’ revenues are higher than $55 million annually and to allow for growth, RWA believes that the revenue threshold for the third tier should be increased to average annual gross revenues not exceeding $100 million for the preceding three years.

Expanding bidding credit eligibility to carriers with average annual gross revenues not exceeding $100 million for the preceding three years would further the goals of Section 309(j) by facilitating the acquisition of wireless spectrum by small, but more established and profitable, businesses and rural telephone companies, and by reducing excessive concentration of licenses by large, nationwide carriers. Under the FCC’s proposal, small and rural telephone companies with average gross revenues above $55 million would be afforded no bidding credit opportunities and forced to compete for spectrum with nationwide carriers flush with cash. Even at 15%, the expanded bidding credit proposed by RWA would incentivize auction participation and help these slightly larger small and rural telephone companies to compete for spectrum with nationwide carriers on a more level playing field. Congress has instructed the Commission under Section 309(j) of the Act to structure spectrum auctions that promote the dissemination of licenses to small businesses and rural telephone companies. RWA members understand what it means to provide service to rural areas, and are ready and willing to do so. The Commission can further promote competition and economic opportunity for small wireless service providers by offering bidding credits to small business categories as discussed herein.

II. THE COMMISSION SHOULD RETAIN THE FIVE YEAR UNJUST ENRICHMENT PERIOD

The Commission relies on its unjust enrichment rules to ensure that DE benefits flow only to those entities that are eligible for them. The rules require a DE to repay the bidding credit value (or a portion thereof) if the DE obtains authority to transfer control of a license to an
entity ineligible for bidding credits. No payment is required if the license is transferred or assigned more than five years after its initial issuance.18

The Commission seeks comment on whether its five-year unjust enrichment payment schedule is appropriate, and on whether it should consider adopting a ten-year schedule instead. RWA supports retaining the five-year schedule, and would oppose any efforts to increase the unjust enrichment time period. Further, RWA agrees with the Commission’s stated concern that extending the length of the unjust enrichment payment schedule could restrict small and rural carriers’ access to capital and limit their ability to participate in the provision of spectrum-based services, contrary to the aims of this proceeding.19

RWA understands (and shares) the Commission’s desire to prevent ineligible entities from receiving DE benefits, but believes that a ten-year unjust enrichment period is simply too long. As the Commission noted, a great deal can change in a decade20 – and this is especially true in the technology-fueled, innovation-driven mobile wireless market. Consolidation of small and regional mobile wireless service providers and spectrum aggregation by nationwide carriers has changed the face of the competitive wireless marketplace. Small and rural carriers must be able to respond to rapid industry changes, changing business needs, and capital demands. Continued use of the five-year unjust enrichment schedule allows for necessary flexibility, whereas an increase to ten years could lock these providers into business plans whose times will have come and gone in that period. RWA believes that a five-year unjust enrichment period remains an appropriate length of time, and nicely balances the competing goals of preventing

18 47 C.F.R. § 1.2111.
19 DE NPRM at ¶ 45.
20 Id. at ¶ 6 (noting that the number of small and regional mobile wireless service providers has significantly decreased in the last decade, and that the costs of spectrum and network deployment for small and new market entrants has increased in the last 20 years).
unjust enrichment to ineligible entities with small and rural carriers’ need for flexibility and access to capital.

III. THE COMMISSION SHOULD REPEAL THE ANNUAL DE REPORTING REQUIREMENT

RWA supports the Commission’s proposal to repeal the annual DE reporting requirement, and agrees that the required information is duplicative of information that DEs have already disclosed in their auction and license applications. RWA agrees with the Commission’s tentative conclusion that the report’s information value is outweighed by the reporting burden imposed on DEs. As the Commission noted, because the annual report is not due on a particular date but instead on the anniversary of a license grant, the annual filing requirement poses additional difficulty for DEs with multiple licenses. RWA members are small businesses with limited staff resources. This one reporting requirement translates into multiple filing deadlines for entities that can least afford additional regulatory hoops. RWA appreciates the Commission’s plan to reduce its members’ regulatory burden and associated legal and/or consultant costs.

IV. THE COMMISSION SHOULD RETAIN CURRENT JOINT BIDDING ARRANGEMENT RULES FOR NON-NATIONWIDE WIRELESS PROVIDERS.

The Commission has proposed prohibiting joint bidding arrangements among nationwide providers, but has tentatively concluded that it is in the public interest to retain the current rules governing joint bidding arrangements among non-nationwide providers. RWA supports this conclusion. As the DE NPRM states, joint bidding arrangements can encourage competition if they: (1) enable participation in auctions by those otherwise without sufficient financial resources to bid; (2) otherwise reduce entry costs into a geographic area; or (3) enable
the joint bidders to compete more robustly against other competitors in the marketplace.\textsuperscript{21} Each of these factors applies to RWA members.

To be clear, like bidding credits, joint bidding arrangements are not a silver bullet. Small and rural wireless carriers that may be interested in a joint bidding arrangement may serve distinct geographic areas situated very far apart from one another – a distance that can make a joint bidding arrangement useless. Even in situations where carriers’ geographic service areas make a joint bidding arrangement useful, coordination is still difficult.\textsuperscript{22} For instance, joint bidding arrangements do not facilitate nimble behavior in auctions where multiple timed bidding rounds are held each day and bidding strategies might change after each round. In situations where a joint bidding arrangement is successful at auction, the post-auction long form and partition/disaggregation processes can be extremely complicated. Auction participation as part of a joint bidding arrangement requires more legal and strategic resources than an individual company would expend if it qualified to bid in the auction on its own.

Nonetheless, as the Commission notes, joint bidding agreements allow for the pooling of capital resources that can allow smaller providers to benefit from financial economies of scale.\textsuperscript{23} For certain carriers in certain locations, joint bidding arrangements have been a useful – and necessary – tool. This is especially true in the wake of Commission decisions to use the larger Economic Area (EA), rather than Cellular Market Area (CMA), geographic license area in past auctions. EAs often include densely populated urban areas and cover larger geographical areas than the rural areas than RWA members serve. Even some Partial Economic Areas

\textsuperscript{21} \textit{DE NPRM} at ¶125.
\textsuperscript{23} \textit{DE NPRM} at ¶125.
(PEAs), though they are a vast improvement over EAs, would be large enough to preclude auction participation by rural carriers if they were unable to form joint bidding entities.

Joint bidding arrangements will also be important in light of the recently-concluded Auction 97. AWS-3 auction bidding far surpassed industry expectations. Demand for spectrum is at an all-time high, and it is clear that the game has changed. In many areas, even the largest bidding credits may not be enough for rural wireless carriers to be winning bidders on their own. RWA members have benefitted from joint bidding arrangements in the past, and are currently exploring these options for the 600 MHz Broadcast Incentive Auction.

V. THE COMMISSION SHOULD CAREFULLY CONSIDER CHANGES TO THE ATTRIBUTABLE MATERIAL RELATIONSHIP RULE

The Commission has tentatively concluded that it should eliminate the Attributable Material Relationship ("AMR"). The AMR rule currently requires a small business applicant or licensee to automatically attribute to itself the gross revenues of any entity with which it has one or more agreements for the lease or resale of more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee.24 The Commission seeks comment regarding its proposal to eliminate the AMR rule, and instead determine eligibility for small business bidding credits by using a two-pronged test to determine whether: (1) an applicant meets the applicable small business size standard, and (2) an applicant retains control over the spectrum associated with the licenses for which it seeks small business benefits.25 RWA supports changes that will offer its members more flexibility, but, in light of Auction 97 results, believes that the Commission should carefully consider any changes to the AMR.

RWA understands the Commission’s challenge of balancing the competing goals of: (1) affording DEs flexibility to obtain necessary capital; and (2) preventing the unjust enrichment

24 DE NPRM at ¶ 15.
25 Id. at ¶ 28.
of ineligible entities, and it recognizes the need for rules to prevent large companies from using small businesses as fronts to obtain bidding credits and unfairly compete for spectrum at auction. Indeed, RWA has long supported the Commission’s efforts to limit bidding credits and other DE benefits to bona fide small and very small businesses. Specifically, RWA supported efforts to prohibit the award of DE benefits to entities that have a significant relationship with large or national incumbent wireless service providers – and thereby prohibit large carriers from taking advantage of DE benefits. However, this support was conditioned on the caveat that any rules imposed must not inadvertently exclude “genuine” DEs from effectively participating in spectrum auctions, exercising DE benefits, or from raising the capital necessary to actively participate in an evolving marketplace.\(^26\) As discussed below, AMR rules ultimately adopted by the Commission failed to prevent this inadvertent exclusion.

When the Commission examined this issue in 2006 and adopted the bright line AMR rule, RWA expressed its concern that the new DE rules were overbroad, restrictive, and had the unintended effect of harming the small and rural businesses that they were meant to help.\(^27\) RWA noted that the “material relationship rules…unnecessarily severely limit how a legitimate DE uses its licenses,” and “have the effect of rescinding the secondary markets rules for all DEs.”\(^28\) Some current DE licensees are unable to utilize the Commission’s spectrum leasing rules to lease existing spectrum to another DE without becoming ineligible for DE benefits. The

\(^{26}\) *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Comments of the Rural Telecommunications Group, Inc. and the Organizations for the Promotion and Advancement of Small Telecommunications Companies, WT Docket No. 05-211 (Feb. 24, 2006).

\(^{27}\) *Ex Parte* Letter from Caressa D. Bennet and Gregory W. Whiteaker, Rural Telecommunications Group, Inc., to The Honorable Kevin Martin, Chairman, Federal Communications Commission, ET Docket No. 05-211, AU Docket No. 06-30 (May 26, 2006).

\(^{28}\) *Id.*
current rule can prevent certain strategic relationships between rural carriers – an illogical result.

Although RWA has expressed frustration regarding the AMR’s lack of flexibility, RWA is also concerned about the effect that eliminating the AMR could have on the forthcoming Incentive Auction results. Auction 97 recently concluded, and total bids amounted to nearly $45 billion – an incredible figure that surpassed all initial predictions. Despite Auction 97’s overall financial success, rural carriers did not fare well. Out of 70 qualified bidders, 31 won 1,611 licenses. Total gross bids equaled approximately $44.9 billion. Once adjusted to reflect approximately $3.57 billion in bidding credits, net bids equaled approximately $41.3 billion. 11 of the winners were rural entities, but they won only 25 (or 1.55%) of the licenses – and only five of those entities were eligible to receive bidding credits. In fact, rural entities received less than $1 million of $3.57 billion bidding credits. Approximately $3.3 billion of the remaining bidding credits have been claimed by two “small businesses” in which DISH Network Corp. holds 85% ownership.

RWA is concerned that eliminating the AMR Rule as proposed could yield similar (or worse) results in the Incentive Auction. While additional flexibility is necessary, too much flexibility can encourage DE program abuse and unjust enrichment. RWA encourages the Commission to carefully consider changes to the AMR rule, and stands ready to work with the Commission and relevant stakeholders as this process moves forward.

VI. CONCLUSION.

RWA and its members thank the Commission for this opportunity to comment on its DE/Competitive Bidding proposals and urge the adoption of 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 areas and encourage auction participation by small rural carriers that serve those consumers.

Respectfully submitted,

RURAL WIRELESS ASSOCIATION, INC.

By: /s/ Daryl A. Zakov

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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