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 KING STREET WIRELESS, L.P.

King Street Wireless, L.P. (“King Street”), by counsel, hereby provides its comments (“Comments”) with respect to the captioned proceeding. ¹

I. INTRODUCTORY STATEMENT AND SUMMARY

By these Comments, King Street urges the Commission to increase the level of bidding credits available to designated entities (“DEs”) so that qualified DEs will be eligible to obtain credits of up to forty (40) percent. King Street is supportive of many other of the pro-DE

proposals included in the NPRM, but submits that this change in DE bidding credits is both the most critical change that can be made, and one that can most certainly be adopted quickly and implemented in the upcoming incentive auction.

II. KING STREET’S INTEREST AND UNIQUELY QUALIFIED PERSPECTIVE

As the Commission’s records reflect, King Street (and its present and prior affiliates) has a long and rich history of participating successfully as a DE in multiple wireless auctions. Through Carroll Wireless, LP, sixteen licenses were acquired in Auction No. 58; through Barat Wireless, L.P., seventeen licenses were acquired in Auction No. 66; through Aquinas Wireless, L.P., five licenses were acquired in Auction No. 78; and through King Street itself, one hundred fifty-two licenses were acquired in Auction No. 73. Collectively, these entities acquired nearly 200 licenses; paid the U.S. government (on time and in full) nearly $500,000,000.00; built and operated more than 150 licenses; and continue to hold more than 150 licenses. No other DE can match this rich history of successful auction participation.

Yet, King Street’s contributions do not end there. King Street played a key role in initiating the Commission’s efforts to provide for interoperability relief for 700 MHz Block A licensees, and was primary contributor throughout the proceeding that culminated with the Commission’s mandatory interoperability relief.2

These experiences combine to make King Street uniquely qualified to comment on reform and expansion of the Commission’s DE program.

III. DISCUSSION

A. The Commission Must Adopt an Auction Design that Complies with the Commission’s Governing Statute

First and foremost, the Commission must comply with the Statute3 as it designs all aspects of its Incentive Auction program, including bidding credits. There are two over-arching

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3 The Communications Act of 1934, as amended, 47 U.S.C. § 1 et seq. (the “Act”).
mandates that are particularly applicable here. The first set forth in Section 309(j)(4)(C) of the Act, provides that the Commission shall:

consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services.


The second over-arching mandate is set forth in Section 309(j)(4)(D) of the Act and provides that the 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 consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service.

47 U.S.C. § 309(j)(4)(D). Notably, these are mandates in the truest sense of the word, as Congress carefully prescribed these as things that the Commission “shall” (not “should”, or “may” or “should try to”) do.

The Commission’s vast experience with auctions demonstrates that (a) the Commission must utilize every available design tool that is available in order to comply with these mandates and (b) enhancing available bid credits is a primary means to achieve these mandated ends. Witness Auction No. 73, where nearly 90% of licenses (measured on a value basis as reflected by winning bid amounts) went to only two bidders, thereby leaving a paltry 10% to be shared by all other bidders⁴. This concentration level was not radically new or different, but merely continued a disturbing trend of upward concentration of auction awards from other wireless

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⁴ See Reply Comments of the 700 MHz Block A Good Faith Purchaser’s Alliance, filed April 30, 2010, at 25, in RM No. 11592.
auctions. More to the point, these auction results demonstrate that the Commission is already perilously close not to complying with Congressional mandates that are effectively the *sine quo non* for the Commission receiving and maintaining authority to conduct auctions.

There can be no genuine dispute regarding the fact that increasing the size of available bid credits would facilitate Commission compliance with its statutory mandates. Enhanced bid credits permit DEs to stretch their bidding dollars, therefore making more licenses available to cash-strapped smaller bidders.

**B. The Commission Should Increase the Level of DE Bid Credits**

When the Commission commenced its auction program, 35% bid credits were routinely available for qualified entities. And licensee participation by women and minorities, while never adequate, was better than what has transpired in recent years. Not coincidentally, those most recent large scale wireless auctions provided only for lower levels of bid credits (15% or 25%).

King Street has previously urged the Commission to utilize higher bid credit percentage, such as 35%. (See King Street *ex parte* submission of March 20, 2014 in GN Docket Nos. 12-268 and 13-185). King Street has also expressed support for the bid credit changes recommended by the Minority Media and Telecommunications Counsel in its white paper report submitted to the Commission on February 25, 2014.

A 40% bid credit will not itself permit DEs to compete on a fully level playing field. But it will help considerably. It will address the very issue (lack of access to capital) that the Commission has long-recognized to be the chief stumbling block to small business entry.

Equally important, enhanced bid credits will provide a needed incentive for larger companies to work with, and make capital available to, small business entities.

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5 See results of Auction No. 58, where the top five bidders accounted for nearly 70% of the winnings, and Auction 66, where the top five bidders accounted for nearly 60% of all winnings.

6 The Commission has repeatedly recognized that lack of access to capital is primary impediment to successful auction participation by smaller bidders and for women and minority-owned entities.
IV. CONCLUSION

King Street is a DE that has repeatedly demonstrated its ability to succeed in a wireless auction, and then to build out timely its license winnings. Based upon that experience, and other information presented herein, King Street understands and appreciates the vital role that bidding credits can play for DEs. Those bid credits should be increased to 40%. That would provide critically needed help to a DE program that needs it. It is, in short, what the authors of the competitive bidding provisions of the Act envisioned, and what the Act itself requires.

For all of these reasons, King Street urges the Commission to increase the size of available bid credits as set forth herein.

Respectfully submitted,

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