November 13, 2007

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Former Defaulter Rule, RM-11395, 700 MHz Auction, AU Docket No. 07-157

Consistent with our June 8, 2007 waiver petition, DIRECTV Group, Inc. and EchoStar Satellite L.L.C. requests that the Federal Communications Commission more narrowly tailor the application of the former defaulter provisions (47 C.F.R. §§ 1.2105(a)(2)(xi) and 1.2106(a)) for the upcoming 700 MHz auction.⁠¹ AT&T and the 4G Coalition support the requested relief, and there is no opposition.² Chairman Kevin Martin has reflected that the 700 MHz auction represents “the single most important opportunity … to achieve” a third national broadband pipe.³ As such, the Commission should ensure that all interested bidders participate fully by eliminating potential roadblocks to active participation and auction activity. Requiring a 50 percent former defaulter tax on organizations that are not auction risks under any objective measure – yet fall under the overly broad former default rule – would jeopardize unnecessarily the ultimate success of the 700 MHz auction. Indeed, the credit crunch on Wall Street further evidences the need for immediate action for this upcoming auction; there is less capital available for interested bidders, which can have a disproportionate effect on new entrants.⁴

The former defaulter rule should be modified to exclude any former defaults and delinquencies that (1) occurred more than three years prior to December 3, 2007, the deadline for filing FCC

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¹ Petition for Expedited Rule Making and/or For Interim Conditional Waiver of DIRECTV Group, Inc. and EchoStar LLC, RM-11395 (June 8, 2007)
² Comment in Support of Petition for Expedited Rule Making and/or For Interim Conditional Waiver, RM-11395 (Sept. 21, 2007); Comments of the 4G Coalition, WT Docket No. 07-157, 4-6 (Aug. 31, 2007).
³ Testimony of Chairman Kevin Martin to the U.S. House of Representatives, Committee on Energy and Commerce (July 24, 2007)
⁴ See, e.g., Washington Telecom, Media, and Tech Insider, Stifel Nicolaus (Aug 24, 2007) (noting recent problems in the capital markets and the corresponding effect on the 700 MHz auction).
Form 175 applications to participate in the 700 MHz Auction; (2) relate to a personal obligation of an officer or director of an entity that is not the auction applicant (i.e., officers/directors of parent entities); or (3) total less than the lesser of 0.1% of the average annual gross revenues attributable to the auction applicant (using the attribution rules of Section 1.2110 of the Commission’s rules), or One Hundred Thousand Dollars ($100,000.00).

AT&T concurs that these modifications would “more rationally tailor [the former defaulter rule] to its intended purpose without sacrificing the Commission’s ability to ensure that bidders are capable of meeting their financial commitments in FCC auctions.” AT&T at 3. Further, these modifications would ensure that serious applicants who can satisfy the financial obligations arising from their auction participation would not be discouraged from participating in this auction, and will be able to maximize their auction eligibility.

We urge the Commission to act expeditiously on our waiver request to target more efficiently the scope of the former defaulter provision for the upcoming auction.

Respectfully submitted,

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