April 23, 2015

Via ECFS

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

RE: Notice of Ex Parte Presentation

Updating Part 1 Competitive Bidding Rules, WT Docket No. 14-170;
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268;
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211

Dear Ms. Dortch:

On April 21, 2015, the undersigned, along with James Lednicky of Rainbow Telecommunications Association, Inc. (“Rainbow”), Steve Lysne of SRT Communications, and Remi Sun of Nemont Telephone Cooperative, Inc. (together, “Rural Telcos”) met with Renee Gregory, Wireless Legal Advisor to FCC Chairman Tom Wheeler. During the meeting, the Rural Telcos discussed their concerns regarding Auction 97 results for rural bidders and consumers and their support for a Rural Telephone Company Bidding Credit (“Rural Telco Bidding Credit”) in the forthcoming 600 MHz Broadcast Incentive Auction (“Incentive Auction”).

Despite being a financial success, and significant participation by rural carriers, Auction 97 yielded dismal results for rural bidders and their subscribers. Of the 70 qualified bidders in the auction, over half (38 or 54.3%) were rural telcos or rural telco affiliates (including both Rainbow and Sagebrush Cellular, Inc., a subsidiary of Nemont Telephone Cooperative, Inc.), yet only 28.9% of these rural entities were successful in winning any licenses. Many rural bidders were completely shut out, and those that were successful won only 25 of 1,611 licenses (1.55%). In addition to competing against nationwide carriers with unlimited resources, rural bidders also competed against what have been called “Special Purpose Designated Entities” – shell companies created by giant corporations solely to game the system and secure small business bidding credits at auction. Less than half of the successful rural telco bidders in Auction 97 were able to qualify under the Commission’s designated entity rules as small businesses, and at the
close of the auction rural bidders accounted for less than $1 million ($871,350 or 0.024%) of the total $3.57 billion in bidding credits awarded.

To prevent similar results in the upcoming Incentive Auction and ensure that the Commission meets its statutory obligation to ensure that rural telephone companies have the opportunity to meaningfully participate in the provision of spectrum-based services, the Rural Telcos support the adoption of a Rural Telco Bidding Credit. Specifically, the Rural Telcos support the recent joint proposal made by the Rural Wireless Association, Inc., NTCA – The Rural Broadband Association, and the Blooston Rural Carriers that the Commission offer a 25% bidding credit – equal to the average credit available to small businesses – to all rural telephone company bidders and their subsidiaries/affiliates in future spectrum auctions. This credit would allow a qualified rural telephone company to take a 25% reduction in the gross winning bid for any geographic licenses that overlap the rural carrier’s wireline or wireless service area. The Rural Telco Bidding Credit would be independent of, and cumulative with, any small business bidding credits for which a rural telephone company bidder may be eligible.

The Rural Telcos explained that a Rural Telco Bidding Credit is especially important for rural wireless carriers that participate in the Incentive Auction because the Partial Economic Areas that will be in use for that auction are larger than the Cellular Market Areas that have traditionally been used for spectrum licenses. Without a Rural Telco Bidding Credit, these large geographic license areas with greater “pops” are likely to be out of reach for many rural carriers. Further, a Rural Telco Bid Credit will ensure that all rural telcos are eligible for DE benefits, as Congress intended. The term “small business” is simply not a surrogate for “rural telephone company.” In Auction 97, 6 of the 11 winning rural bidders did not receive small business bidding credits. Unlike “Special Purpose Designated Entities,” rural telcos are long-standing businesses, with facilities-based networks and historic revenues. It is not feasible for them to restructure their operations and ownership just to qualify for small business bidding credits. Given that the telecommunications industry is very capital intensive and that the nature of the wireless industry has changed significantly since the small business bidding credit was created, the Rural Telcos support increasing the small business bidding credit revenue thresholds. However, the Rural Telcos cautioned that simply increasing the revenue thresholds is not a silver bullet. While some rural telephone companies may become eligible for the small business bidding credit, many will remain ineligible under the modest increases proposed in the Part 1 NPRM.

1 See 47 U.S.C. 309(j).
Because “rural telephone company” is a statutory term, and a term defined in the Commission’s rules, the Rural Telco Bidding Credit could be targeted to bona fide DEs. The Commission and the wireless industry learned some very important lessons from Auction 97. For example, Rainbow was the provisionally winning bidder for one license that would have allowed it to provide fixed wireless broadband services to underserved areas in parts of Northeast Kansas, but it was outbid by a DISH-controlled entity claiming a small business bidding credit. As a result, it did not win a single license in the auction. Rainbow has gross annual revenues under $14 million, which are 1,025 times less than DISH’s.\(^4\) The FCC’s DE rules must be revised to prevent this type of abuse, but any revisions should not harm legitimate DEs. The Rural Telcos oppose the imposition of additional buildout/reporting requirements on DEs. The rules should prevent DE program abuse before the licenses are granted, not impose additional regulatory burdens on bona fide DEs – rural telephone companies that can least afford them.

Pursuant to Section 1.1206 of the FCC’s rules, this ex parte presentation is being filed electronically with the Commission using the electronic comment filing system.

Respectfully submitted,

/s/ Erin P. Fitzgerald

By:

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