June 1, 2015

VIA ECFS

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

Re: Notice of Ex Parte
WT Docket No. 14-170, Updating Part 1 Competitive Bidding Rules
GN Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum
Through Incentive Auctions
RM-11395, 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 Interim
Conditional Waiver
WT Docket No. 05-211, Implementation of the Commercial Spectrum Enhancement Act and
Modernization of the Commission’s Competitive Bidding Rules and Procedures

Dear Ms. Dortch:

On May 28, 2015, Jim Fleming and Monish Kundra of Columbia Capital, LLC (“Columbia”)¹ and the undersigned met with Louis Peraertz, Senior Legal Advisor to Commissioner Mignon Clyburn. The purpose of the meeting was to discuss certain issues in the above-captioned proceedings, including efforts to “find a reasonable balance between the competing goals of affording [designated] entities reasonable flexibility to obtain the capital necessary to participate in the provision of spectrum-based services and

¹ Columbia is a venture capital firm based in Alexandria, Virginia. Columbia invests in leading entrepreneurs and innovators to help build communications, media and technology companies. Columbia currently manages approximately $2.5 billion dollars and is actively investing its fifth fund. Columbia’s typical equity investments range from $15 million to $40 million. Over the past 25 years, Columbia has invested in more than 150 companies, many of which have redefined or created new industries, including BroadSoft, ICG Communications, MetroPCS, Millennial Media, Mobile Satellite Ventures, Nextel Communications, Ocular Networks, XM Satellite Radio, and Zayo. Columbia’s equity investments have included several entities that have participated as designated entities in Commission spectrum auctions.
effectively preventing the unjust enrichment of ineligible entities,” and “enabl[ing] the [designated entity] program to remain a viable mechanism for small businesses to gain flexibility to access capital, compete in auctions, and participate in new and innovative ways to provision services in a mature wireless industry.”

Columbia stated that it supports rules that encourage the investment of “innovation capital” in designated entities (“DEs”) who seek to acquire spectrum rights in order to execute innovative business models. Columbia noted that spectrum is a scarce resource that must be used wisely, and that the rising costs of spectrum acquisition is a primary obstacle to capital formation for small businesses. Columbia therefore generally supports the proposals in the Part 1 NPRM, which recognize that “small businesses need greater opportunities to gain access to capital so that they may have an opportunity to participate in the provision of spectrum-based services in today’s communications marketplace.”

We discussed various proposals put forth in this proceeding that would, if adopted, circumscribe DE participation in auctions, including limiting the number of licenses or geographic areas that a DE may obtain at auction, or limiting the amount of bidding credits that a DE may receive on its winning bids. Columbia urged that such proposals be rejected because they foreclose the ability to achieve economies of scale that are critical, in today’s communications and technology marketplace, to both entrepreneurial business plans and potential investors’ willingness to invest in such plans. Columbia observed that had DE benefits been limited to smaller markets at the time Columbia invested in MetroPCS, the company would have been unable to purchase a major market license, and that without even the possibility of acquiring a major market license at auction, MetroPCS would have been unable to execute its business plan. Columbia further noted that scale has become ever-more important as spectrum scarcity demands greater efficiency of use across all bands.

Columbia opposes other proposals that apparently have as their motivation a limit on competitive bidding by indirectly limiting capital formation. For example, attributing the revenues of any ten percent or greater investor in a DE applicant would limit DEs’ ability to obtain capital because it would exclude equity investments by any but the smallest venture capital funds whose revenues would not cause the applicant to exceed applicable thresholds.

Columbia also urged that the rules provide DEs flexibility to innovate and to implement their business plans. In particular, provided that a DE remains in control of the licensee, the Commission should permit

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3 See Part 1 NPRM at ¶¶ 36, 47, 50, 127.

4 Id. at ¶ 11.

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DEs to enter into spectrum leasing and other capacity and use arrangements, without loss of eligibility for DE benefits. Similarly, the Commission should not impose unreasonable or discriminatory buildout requirements on DEs, but rather should give innovative companies adequate time to prove out their business models, many of which may be new and untested, and roll them out on a measured basis as the business model is executed and capital is raised on the heels of successful growth.

Finally, Columbia stated that it opposes any extension of the five-year period during which a bidding credit must be repaid by a DE seeking Commission approval to assign or transfer control of a license to a non-DE. Columbia explained that its funds, like most venture capital and private equity funds, have a ten-year duration, with investments typically occurring in years one through five and average realization periods of three to seven years from the time of initial investment. Columbia noted that, given fundamental investment norms for venture capital funds, limiting a DE’s flexibility to transfer or assign licenses during the entire license term likely would rule out investments in DEs by such funds – an outcome that would be inconsistent with the Commission’s goal of expanding opportunities to gain access to capital and thereby participate in the provision of spectrum-based services.

This letter is being filed with your office electronically in accordance with Section 1.1206(b) of the Commission’s rules. Please do not hesitate to contact me with any questions.

Respectfully submitted,

/s/ E. Ashton Johnston
E. Ashton Johnston
of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

cc: Louis Peraertz (by e-mail)