Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Updating Part 1 Competitive Bidding Rules

WT Docket No. 14-170

Comments of

MediaFreedom.org

MediaFreedom.org¹ has long-argued against Federal Communications Commission (FCC) rules that create opportunities for regulatory arbitrage and/or give strategically placed entities the “legal” tools to shortchange U.S. taxpayers and the markets that serve them. As the FCC seeks to update its Part 1 competitive bidding rules (NPRM),² especially as they pertain to the designated entity (DE) program, the FCC must maintain fidelity to Congress’ purpose and intent for the program, ensuring it is not easily gamed by those clearly undeserving of the DE designation and incentives. MediaFreedom, however, does not believe the NPRM properly achieves this, and thus urges against its proposed changes which subvert congressional intent of the DE program.

MediaFreedom.org would like to briefly outline its concerns as they relate to the DE program noted within the NPRM:

1. The FCC’s current DE program broadens the base of spectrum licenses obtained by parties, looking in particular to help small businesses, rural telephone companies, and businesses owned by minority groups and women. The program’s primary aim – guided by congressional directives – is to promote facilities-based competition in rural and underserved areas. To that end, the program allows bidding credits of up to 25% off of auctioned spectrum for parties that meet certain DE criteria. Key to the program is the requirement that designated entities actually operate as facilities-based providers with significant involvement and ownership in that operation, and “not merely [with] passive ownership of a license to spectrum used by others to provide service.”³ Importantly, this requirement, which prevents unjust enrichment and gaming

¹ MediaFreedom.org is a free market-oriented 501(c)(3) nonprofit, which works to minimize the Federal Communications Commission’s regulatory imprint on U.S. communications policy. MediaFreedom urges policymakers to more confidently rely on today’s technological evolution, industry best practices and peer group policing, consumer education and transparency tools, marketplace competition, and presently available enforcement laws to protect consumers from actual, not conjectured, harm. We believe that this approach better serves the marketplace than do new laws or regulations when addressing most marketplace issues that arise. For more information, please go to: www.mediafreedom.org.


of DE incentives, seeks to remove speculating middlemen and others whom Congress did not intend to qualify for DE status; it works to eliminate the temptation for DE and non-DE parties to collude to cheat the system. In doing so, it further ensures that Congress' goal of promoting independent, facilities-based competition by small providers to rural and underserved areas actually occurs.

2. Recent actions by the FCC's Wireless Bureau illustrate how the program can be captured by arbitrageurs, casting the legitimacy of the entire DE program into doubt. In January, the Bureau disclosed that two DE companies in which multi-billion dollar DISH Network has an 85% stake purchased over $13 billion of spectrum in the AWS-3 auction. Making matters worse, the two DISH-backed designated entities expect the American taxpayer to fork over more than $3 billion in credits to help the purchase go through. This flagrant, in-your-face action harms the U.S. taxpayer because the full value of the spectrum will not be realized here. Adding salt to this wound, the deal also offends traditional notions of fair play, perversely amounting to a $3 billion taxpayer subsidy to the well-healed, $32 billion DISH Network – a large company that is the very antithesis of what a DE is, or should be; a company that reportedly now has 81 MHz of spectrum but with no plans for a network. As FCC Commissioner Ajit Pai notes, the deal "makes a mockery of the DE program." Loopholes, which allow the world's largest companies like DISH Network to unjustly enrich themselves with billions in taxpayer subsidies, are a rip-off and just plain wrong. Sadly, the NPRM does little to stop this abuse.

3. Instead of working to better limit DE program abuse, certain proposals within the NPRM actually seem to promote it. More specifically, the NPRM would allow a 35% taxpayer-funded discount for designated entities, and it would permit designated entities that obtained spectrum to lease 100% of that to large, non-DE corporations instead of offering service to the public themselves. Consequently, if these proposals are adopted, they will act like catnip to spectrum opportunists who are less interested in serving underserved areas than with getting rich quick at the public's expense. Collusion between DE and non-DE parties to game the system will become commonplace or business as usual – a practice which would be clearly in opposition to the congressional intent of the program. As former Commissioner Michael Copps once noted, a gamed DE program means "that spectrum goes to those most willing and able to manipulate the rules of the game, rather than to the entities Congress actually intended to benefit."4 Not only will this lead to a windfall for the speculators, "designated entities" and their partners, it shortchanges U.S. taxpayers in forgone revenue. Moreover, it subverts market dynamics by denying additional, small carrier competition envisioned by Congress. MediaFreedom believes Congress could not have meant for this to occur, and further, that the FCC lacks the authority to move contrary to Congress' will on this very policy, which the NPRM seemingly does. Accordingly, the FCC should not adopt these changes – which will actually promote collusion and other abuses – to the DE program.

MediaFreedom believes the congressional policy that fostered the present DE program remains tenable. That said, loopholes should be closed and safeguards be improved to better help true DE entities, as well as the communities they serve, to benefit from the program. Unfortunately, the NPRM moves in

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the opposite direction. If adopted, DISH-like shenanigans or worse will become the norm, and the goals which the DE program sought to bring about will be undermined by regulatory arbitrage and “legal” theft approved by the FCC. The Commission should reject these changes to the DE program.

Respectfully submitted,

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