

HERMAN & WHITEAKER, LLC

DONALD L. HERMAN, JR
GREGORY W. WHITEAKER
KENNETH C. JOHNSON[†]
ROBIN E. TUTTLE^{††}
CARRIE L. DEVIER^{†††}
SUSAN C. GOLDHAR ORNSTEIN
SARAH L. J. ACEVES^{††††}

[†]Admitted in DC and VA only

^{††}Admitted in DC, SC and FL only

^{†††}Admitted in SC only

^{††††}Admitted in DC only

TEL 202-600-7272

FAX 202-706-6056

3204 TOWER OAKS BLVD, STE 180
ROCKVILLE, MD 20852

July 10, 2015

Via ECFS

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

Re: EX PARTE NOTICE

Updating Part 1 Competitive Bidding Rules, et al.

WT Docket No. 14-170; GN Docket No. 12-268; RM-11395; WT Docket No. 05-211

Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

On Thursday, July 9, 2015, F. Bradley Erwin, CEO of FTC Management Group, Inc. (“FTC”), and former member of Congress Robin Tallon for FTC, Roger Cox, COO and General Manager of Atlantic Seawinds Communications, LLC (“Atlantic”), Tom Harper, Vice President – Administrative and Regulatory Affairs of Chester Telephone Company, Stephen Morris, Director – Wireless Planning and Development and Jack Holladay, Executive VP of Technology & Facilities, both of Comporium Wireless, LLC, Keith Oliver, Senior Vice President – Corporate Operations of Home Telephone Company, Inc. (“Home Telephone”), Michael F. Hagg, CEO of Horry Telephone Cooperative, Inc., Jason Dandridge, CEO of Palmetto Rural Telephone Cooperative, Inc., Randy Lis, General Manager of Piedmont Rural Telephone Cooperative, Inc., Lee Chambers, CEO of Sandhill Communications, LLC (“Sandhill”), Jeff Wilson, CEO of West Carolina Rural Telephone Cooperative, Inc., Greg Whiteaker, Sarah Aceves and the undersigned, of Herman & Whiteaker, LLC, all on behalf of the Rural-26 DE Coalition (“Rural-26”) met with Commissioner Clyburn and David Strickland, Legal Adviser to the Commissioner, via telephone conference, to discuss proposed changes to the Federal Communications Commission (“FCC” or “Commission”) Designated Entity (“DE”) program.

Rural-26 expressed strong support for the proposed institution of a bifurcated cap on bidding credits. Specifically, Rural-26 discussed the importance of the implementation of a \$10 million cap on bidding credits awarded to any qualified bidder in Partial Economic Areas (“PEAs”) with a population of less than 500,000. This approach will help afford small facilities-based telecommunications providers, including rural telephone companies, to compete for spectrum licenses in the rural markets that they serve and desire to serve. The proposed caps also will help protect bona fide DEs and rural telecommunications providers from potential abuse of the DE program.

Rural-26 also supports the adoption of a bidding credit for small, facilities-based telecommunications providers. Rural-26 remains concerned, however, that the currently proposed 15% small provider bidding credit still gives spectrum speculators with shell DEs backed by deep-pocketed companies a financial advantage over legitimate facilities-based small telecommunications providers. To illustrate these concerns, Atlantic explained that during Auction 97, it placed bids in the Wilmington, NC CMA218-G market. Since Atlantic’s yearly gross revenues exceed that for which companies can currently qualify as a DE, Atlantic was not eligible to receive bidding credits. Atlantic was the provisional winning bidder in Round 29 of the auction for a price of \$4,236,000. In round 30, Atlantic was outbid by a large carrier’s DE, which received a 25% bidding credit, resulting in Atlantic no longer being able to afford to continue bidding in the auction. Once bidding credits were applied to the winning bid for CMA218-G, the final net winning bid amount was \$3.724 million -- well below the amount Atlantic was willing to pay for critical spectrum in its home service area. In order to level the playing field and reduce the incentive for arbitrage and abuse, Rural-26 urged the Commission to adopt a 25% non-revenue-based rural communications company bidding credit in addition to a 25% revenue-based small business bidding credit. Two equal, non-cumulative 25% bidding credits will close the gap between large and small auction participants and further the comprehensive goal to minimize opportunities to abuse the DE program.

The participants also discussed how a \$10 million bidding credit cap and rural company bidding credit would facilitate the deployment of advanced networks in Persistent Poverty Counties (“PPCs”), where many rural and small telecommunications companies provide service or have attempted to provide service. Sandhill explained that it provides service in PPC Marlboro via 700 MHz spectrum it won during Auction 73. Sandhill also bid on spectrum in PPC Dillon during Auction 97, for which it was the winning bidder. Sandhill explained that, given how closely the 600 MHz band ties in with the existing 700 MHz band, it is critical that small, rural carriers who aim to provide fixed wireless in rural areas to customers who need it most be given an equal opportunity to do so during the incentive auction. Attachment A lists the PPCs in South Carolina in which Rural-26 members already provide service. Providing further incentive in future auctions to rural providers in markets where the need for broadband service is crucial will lead to better deployment, more jobs, and more opportunities in those communities.

Home Telephone noted that under currently proposed models for Universal Service reform, carriers in the southeast, and particularly in South Carolina, may receive insufficient funding to deploy broadband services. Home explained that participating in the Incentive Auction and obtaining desirable 600 MHz spectrum will likely serve as the last best avenue for rural telephone companies to be in a position to efficiently deploy broadband services in rural areas. Rural-26 explained that the favorable propagation characteristics of the 600 MHz

spectrum make it well suited to provide mobile and fixed wireless broadband services efficiently in rural markets.

Rural-26 also expressed its concerns regarding possible elimination of joint bidding arrangements and bidding agreements and the negative effect it would have on rural telecommunications companies in future auctions. While elimination of such arrangements will not be as harmful in the incentive auction for which uniform PEA licenses will be offered, it will be problematic in any future auctions that offer licenses on the basis of more than one sized license area, such as Economic Areas (“EAs”) and Cellular Market Areas. Those companies that wish to enter into joint bidding agreements and/or consortia, including members of the Rural-26, in order to obtain spectrum in larger markets like EAs that cover the service areas of multiple rural providers, will be unable to compete in said areas if joint bidding arrangements and bidding agreements are eliminated. Moreover, Rural-26 explained that the use of bidding consortia would not be a viable alternative due to the fact that various rural companies may not qualify for the same level of bidding credit in future auctions.

Rural-26 also urged the Commission to adopt an exception for existing rural wireless partnerships, specifically for cellular “settlement” partnerships and their successors-in-interest, to the extent the Commission adopts limitations on common ownership of auction applicants. These entities were formed as a result of Commission licensing policies for cellular service, and not for the purpose of manipulating the auction process. In the long history of Commission auctions, there is no suggestion of abuse by these rural partnerships. Creating a narrow exception to limitations on common ownership will help ensure that small wireless partnerships and their partners are not blocked from participating in the 600 MHz spectrum auction, and thereby hampered in the provision of future advanced services to rural areas.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission’s Rules.

Sincerely,



Donald L. Herman, Jr.
Counsel for the Rural-26

Attachment

CC: Commissioner Clyburn
Louis Peraertz
David Strickland

ATTACHMENT A

Persistent Poverty Counties in South Carolina Served by Rural-26 Members¹

1. Bamberg
2. Clarendon
3. Colleton
4. Hampton
5. Lee
6. Marlboro
7. Orangeburg
8. Williamsburg

¹ Horry Telephone Cooperative, Inc. bid on spectrum in PPC Marion during Auction 97, but was ultimately outbid by a large nationwide carrier. Sandhill Communications, LLC bid on spectrum in PPC Dillon during Auction 97, for which it was the winning bidder.