

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

In the Matter of)
)
Auction of H Block Licenses in the) AU Docket No. 13-178
1915-1920 MHz and 1995-2000 MHz Bands)
)

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, hereby files these comments in response to the Federal Communications Commission (“FCC” or “Commission”) Wireless Telecommunications Bureau (“Bureau”) *Public Notice* seeking comment on procedures to be used for the auction of the 1915-1920 MHz and 1995-2000 MHz bands (“H Block”) in Auction 96.² In the *H Block Report and Order*, the Commission established that H Block licenses would be awarded on an Economic Area (“EA”) basis in all areas, and that Auction 96 will offer one license for each of the 176 EAs.³ In the *H Block Auction Public Notice*, the Bureau proposed under its delegated authority to adopt an auction design that implements a form of package bidding known as hierarchical package bidding (“HPB”). For the reasons set forth

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG’s members have joined together to speed delivery of new, efficient, and innovative communications technologies to the populations of remote and underserved sections of the country. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG’s members serves fewer than 100,000 subscribers.

² *Auction of H Block Licenses in the 1915-1920 MHz And 1995-2000 MHz Bands; Comment Sought On Competitive Bidding Procedures For Auction 96*, AU Docket No. 13-178, Public Notice, DA 13-1540 (rel. July 14, 2013) (“*H Block Auction Public Notice*”).

³ *Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357, Report and Order, FCC 13-88 at ¶ 42 (rel. June 27, 2013).

below, RTG strongly opposes the Bureau's proposed use of HPB, or any form of package bidding, in Auction 96.

The Bureau proposes implementing HPB in Auction 96 using predefined packages according to a non-overlapping hierarchical structure of up to four possible tiers using (i) an initial tier consisting of individual EA licenses; (ii) a second tier adding Major Economic Area ("MEA") packages; (iii) a third tier adding Regional Economic Area Grouping ("REAG") packages; and (iv) a fourth tier adding a nationwide package that would include the contiguous 48 states. The Bureau indicates that all of the above-referenced tiers would nest accordingly (i.e., EAs nest into MEAs, MEAs nest into REAGs, and REAGs nest into the national package).

The Commission's decision to license the H Block on an EA basis is itself harmful to consumers in rural and remote areas because the rural carriers that serve these rural consumers will be handicapped in their ability to acquire the spectrum at auction and economically deploy a network to serve an entire EA. The Bureau's proposal to add package bidding, particularly HPB with a possible nationwide package, would only compound this harm to rural consumers. As described below, implementing package bidding in Auction 96 would facilitate the acquisition of most or all of the available H Block spectrum by one or a few large carriers in violation of Section 309(j) of the Communications Act of 1934, as amended ("Act").⁴ Consequently, rural and remote communities nationwide would remain overlooked and underserved as the large carrier or carriers proceed to focus their H Block deployments on the most profitable and densely populated areas of the country. Because of the harm that would befall rural consumers, the Bureau should refrain from adopting package bidding in Auction 96.

⁴ 47 U.S.C. § 309(j).

I. Implementing Package Bidding, Including HPB, Would Violate Section 309(j) of the Act.

Section 309(j)(3) of the Act requires the Commission to adopt a methodology of competitive bidding that includes “safeguards to protect the public interest in the use of the spectrum” and seeks to promote objectives that include: (A) the development and *rapid deployment* of new technologies, products, and services for the benefit of the public, *including those residing in rural areas*, without administrative or judicial delays; and (B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by *avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies*, and businesses owned by members of minority groups and women.⁵ The use of package bidding in Auction 96 would run counter to these mandates of Section 309(j) by delaying deployment to those residing in rural areas, promoting excessive concentration of licenses and preventing dissemination of licenses to small businesses and rural telephone companies.

When the Commission implemented Section 309(j) of the Act, it carefully analyzed the statute and related legislative records. The Commission indicated that to advance its statutory goals, it adopted measures to award licenses through a competitive bidding system that will, among other things, promote competition *among a diverse group of service providers*.⁶ The Commission also shared the objective of the House Committee on the Budget that “adoption of

⁵ 47 U.S.C. § 309(j)(3) (emphasis added). In its *Adarand* and subsequent *VMI* decisions, the Supreme Court struck down preferential treatment of minorities and women. *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227-30 (1995) (“*Adarand*”) and *United States v. Virginia*, 518 U.S. 515, 531-34 (1996) (“*VMI*”).

⁶ *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, 9 FCC Rcd 2348 at ¶ 4 Second Report and Order (1994) (“*309(j) Second R&O*”).

competitive bidding should not have the effect of ‘excluding’ small businesses from the Commission’s licensing procedures” and that the Commission should ensure that small businesses would “continue to have opportunities to become licensees.”⁷ The Commission also shared the House Committee’s concern that “unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries.”⁸ As detailed below, the inclusion of HPB in Auction 96 will reduce the number of carriers that can win H Block licenses by systematically encouraging and facilitating only a few large carriers, rather than a diverse group of carriers, to acquire the spectrum. Small businesses would be effectively excluded from participating.

Regrettably, the Commission has already determined that it will license the H Block on an EA basis. This determination alone harms rural Americans by making it difficult for the carriers that historically have served them to acquire H Block spectrum. EAs, which generally contain metropolitan or similar areas as well as surrounding counties, are generally unaffordable to small and rural carriers and too vast to be served economically by such carriers. EA license holders are often able to satisfy performance requirements at a low cost by serving densely concentrated populations in urban and suburban areas with a small number of sites. Conversely, serving populations that are spread out among rural and remote areas to the satisfaction of the Commission’s performance requirements is costlier. Accordingly, consumers in rural markets would benefit from the adoption of smaller license areas in spectrum auctions.⁹ RTG laments

⁷ 309(j) *Second R&O* at ¶ 235, (citing H.R. Rep. No. 111, 103d Cong., 1st Sess. 253 at. 254 (“House Report”).

⁸ *Id.* (citing House Report at p. 254).

⁹ The Commission previously held that “smaller spectrum block sizes, combined with the ability to aggregate and disaggregate spectrum blocks and service areas, will allow carriers to devise

the recent trend of adopting or proposing the adoption of only EA-based licenses, as it plans to do in Auction 96 and proposes to do again in the upcoming AWS-3 auction. By refusing to adopt smaller license areas such as Cellular Market Areas (“CMAs”), the Commission is denying carriers opportunities to devise spectrum configurations most appropriate for them to serve customers in their rural markets.

For those EAs that are small enough to be feasibly served by small or rural carriers, implementing HPB in Auction 96 will make it difficult for such carriers to compete for those licenses. Small and rural carriers participating in Auction 96 will target and budget for those high-cost EAs that cover the communities that they serve or intend to serve. In order to win an individual EA license, the bid for the individual license would have to exceed all other carriers’ bids for that license, including packaged bids and single license bids.¹⁰ Larger and nationwide carriers, however, will be inclined to seek large, regional licenses or even a nationwide license if available, and such carriers can afford to spread their auction costs across groupings of high- and low-cost EAs (or MEAs, REAGs or even all markets in the 48 contiguous United States). The Commission had previously indicated that “combinatorial [i.e., package] bidding appears to bias auction results in favor of the combination bid.”¹¹ Small and rural carriers will be resigned to hoping that no large carrier has any interest in the EA license(s) containing their rural markets.

If HPB is included in Auction 96, the H Block spectrum will end up concentrated in the hands of

spectrum configurations most appropriate for different markets.” *See Service Rules for the Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, Order on Reconsideration*, 20 FCC Rcd 14058 at ¶ 15 (Aug. 15, 2005) (revising the AWS-1 band plan to include smaller license areas in Auction 66, which included CMA-based licenses).

¹⁰ The Commission notes in the *H Block Auction Public Notice* that, under the four-tier HBP format, a winning set of bids could potentially include individual licenses, MEA packages and REAG packages, as long as the value of all of these individual and package bids exceeds a bid on a nationwide package. *See H Block Auction Public Notice* at ¶ 20.

¹¹ 309(j) *Second R&O* at ¶ 101.

one or a few large carriers. Because large carriers can deploy H Block spectrum in well-populated non-rural areas more cheaply and easily than in rural areas, they will have no incentive to serve rural areas, and consumers in the rural portions of these EAs will be brushed aside. Few licenses, or possibly none, will be disseminated among the small businesses and rural telephone companies that actually serve rural areas. Instead, small and rural carriers will simply have to wait out the auction until they are able to negotiate secondary market arrangements with the holders of EA licenses containing their rural markets, assuming that such license holders are willing to part with their H Block spectrum at reasonable prices. Waiting on the secondary market transactions, however, will only cause undue delay in H Block deployments reaching consumers in rural areas and there is no guarantee that the secondary market will even develop, especially since the FCC's build-out requirements are population based rather than geographic based. These buildout requirements allow the H Block auction winner to hold the rural areas hostage by warehousing spectrum in rural markets. Ultimately, it is rural consumers that will be harmed in clear contravention of Section 309(j) of the Act because the only carriers that have historically chosen to serve them—small and rural carriers—will be deprived of the opportunity to become H Block licensees. RTG urges the Commission to revisit its obligations under Section 309(j) to ensure that its auction rules provide the competitive safeguards required by the Act.

II. Prior Spectrum Auctions Demonstrate That The Harms of Package Bidding Outweigh the Potential Benefits.

Small and rural carriers effectively cannot compete against large deep-pocket companies seeking regional or nationwide licenses in an auction that is specifically geared toward encouraging nationwide licensing with no alternative for small companies. Small carrier business plans based on providing service to sparsely populated rural areas are incongruent to

large carrier business plans based on providing service to largely populated areas on a nationwide basis.

The FCC recognized the incongruence of these business plans when it adopted rules for Auction 73, which offered 700 MHz band licenses for the A, B, D and E Blocks *without* package bidding and the C Block *with* package bidding. When adopting rules for Auction 73, the Commission concluded “that using package bidding solely with respect to the licenses in the Upper 700 MHz Band C Block (and not with respect to licenses in the other 700 MHz Band spectrum blocks) will assist bidders that are seeking to create a nationwide footprint without, at the same time, imposing disadvantages on parties that wish to bid on individual licenses comprising the nationwide footprint.”¹² The Commission also found that “limiting package bidding to licenses for C Block spectrum will prevent package bidding from deterring participation by bidders, if any, that for any reason are completely unwilling to compete against package bids. The variety of blocks and licenses not subject to package bidding provides bidders unwilling to compete with package bids with a wide array of opportunities.”¹³ As a result, the Commission directed the Bureau to propose an auction design that “include[ed] package bidding for the C Block licenses to facilitate the entry of a new nationwide competitor in that block, while not introducing undue difficulties for bidders on licenses in that block that do not desire a nationwide license.”¹⁴ The Commission recognized that package bidding imposed disadvantages on parties seeking individual non-nationwide licenses. As a result, the Commission adopted a design that allowed for packaged bidding but only because it also provided alternative smaller

¹² *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd 15289 at ¶ 291 (rel. Aug. 10, 2007).

¹³ *Id.* at ¶ 291.

¹⁴ *Id.* at ¶ 292.

license allocations to ensure that small businesses and rural carriers were able to effectively obtain licenses through the auction process.

The Commission indicates that offering predefined packages might allow for significant economies of scale that may correspond to a variety of business plans. Yet, carriers that wish to enjoy such economies of scale by assembling extensive footprints of licensed areas still may do so in Auction 96 without the assistance of package bidding. T-Mobile and SpectrumCo were able to do so in Auction 66 as well as Frontier Wireless in the E Block of Auction 73.¹⁵ Though Auction 73 offered four other licensing opportunities for small businesses and rural carriers, Auction 96 will offer only one 10-megahertz license per EA. Accordingly, Auction 96 is not suited to package bidding since only a single license is being offered and there are no licensing alternatives for small businesses and rural carriers. Adopting an auction design with package bidding will create an artificial barrier to entry that will prevent small businesses and rural carriers from participating in the auction in contravention of Section 309(j). Therefore, the FCC should decline to adopt an auction design that includes package bidding.

The Commission declined to adopt package bidding for the AWS-1 auction, noting that a “[simultaneous multiple-round] auction of the AWS-1 licenses, which includes several large regional area blocks, will provide opportunities for bidders to aggregate licenses in order to obtain nationwide coverage.”¹⁶ As with the AWS-1 auction, the Commission does not need to adopt package bidding to provide opportunities for bidders to aggregate licenses for nationwide coverage. However, package bidding will assuredly preclude smaller bidders from obtaining

¹⁵ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150; PS Docket No. 06-229, Comments of United States Cellular Corporation on Third Further Notice of Proposed Rulemaking (November 3, 2008).

¹⁶ *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, FCC 06-47, Public Notice, AU Docket No. 06-30 (rel. April 12, 2006).

individual licenses in violation of Section 309(j). Accordingly, the Bureau should allow Auction 96 to proceed along its natural course using standard simultaneous multiple-round procedures without implementing package bidding provisions.

III. Conclusion.

Under Section 309(j) of the Act, Congress has mandated the Commission to structure spectrum auctions that promote rapid deployments to those residing in rural areas and to avoid excessive concentrations of licenses and disseminate licenses to small businesses and rural telephone companies, among others. Including HPB or any form of package bidding in Auction 96 risks stalling H Block deployments to rural consumers, and wholly excluding participation by the small and rural telephone companies that serve rural consumers.

Respectfully submitted,

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