

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the matter of)	
)	
Updating Competitive Bidding Rules)	WT Docket No. 14-170
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	
Petition of DIRECTV Group, Inc. and)	RM-11395
EchoStar LLC for Expedited Rulemaking to)	
Amend Section 1.2105(a)(2)(xi) and 1.2106(a))	
of the Commission's Rules and/or for Interim)	
Conditional Waiver)	
)	
Implementation of the Commercial Spectrum)	WT Docket No. 05-211
Enhancement Act and Modernization of the)	
Commission's Competitive Bidding Rules and)	
Procedures)	

Comments of
Thomas A. Schatz
President
Citizens Against Government Waste

February 20, 2015

On behalf of the more than 1.2 million members and supporters of Citizens Against Government Waste (CAGW), I submit the following comments relating to the spectrum auction, and the use of designated entities in the purchase of spectrum.

In the 1980s, the FCC gave portions of the spectrum away in a lottery system. Participants filled out complicated applications and handed over a \$155 fee for the chance to win the right to broadcast on spectrum. Those who won the spectrum would often resell their winnings for millions of dollars, which could have gone into federal coffers and been used to pay down the debt, lower taxes, or provide additional public services. Instead, some of it went to companies with enough time and legal expertise to complete the complex lottery application but who had no intention to use it for its intended purposes.

In 1993, the FCC began to auction off parts of the spectrum instead of simply giving it away. The first auctions of the 800 MHz band brought the government \$15 billion in revenue.

The result was a wellspring of innovative products and services such as text messaging and Caller ID.¹

In an effort to address ongoing problems with interoperability, in February 2012, Congress included provisions in the Middle Class Tax Relief and Jobs Act (Jobs Act) to provide for a first responder public safety network (FirstNet). The law also authorized broadcaster spectrum incentive auctions to free up more spectrum for mobile use and provide funding from the proceeds to pay for FirstNet. The Jobs Act provides \$7 billion in funding to deploy the FirstNet network, as well as \$135 million for a new State and Local Implementation Grant Program.² It is expected that FirstNet will use long-term evolution wireless technology to provide public-safety grade coverage, capacity, connectivity, cybersecurity and resiliency to public safety first responders across the nation.

In addition to the broadcaster incentive auctions, the Federal Communications Commission commenced competitive bidding for licenses previously held by federal agencies in the Advanced Wireless Services spectrum in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz bands (AWS-3) in November 2014.³ The Commercial Spectrum Enhancement Act (CSEA) provides a process for eligible federal agencies to recover a portion of their relocation or sharing costs from the proceeds of the auction.

When the auction ended in January 2015, the results of the AWS-3 spectrum auction appeared to be a resounding success, providing much-needed spectrum to the wireless community and generating nearly \$45 billion for the federal government to fund the FirstNet first responder network, expanding much needed spectrum for mobile use, as well as providing cash for debt reduction. However, CAGW is concerned about how designated entities (DE) were used.

While the purpose of the DE program is to enable small and minority-owned businesses to enter and expand their footprint in the telecommunications arena, it may be subject to misuse by companies seeking to obtain steep discounts on spectrum at taxpayer expense. Current regulations prohibit a DE from leasing more than 25 percent of the capacity of its spectrum holdings to any one entity. The NPRM would eliminate this restriction. In his dissenting statement on October 10, 2014, Commissioner Ajit Pai stated “The NPRM proposes to permit small businesses (known as “designated entities” or “DEs”) to obtain taxpayer-funded discounts and then turn around and lease 100% of their spectrum to the world’s largest corporations.”⁴

¹ Martha McKay, “Auctioning the Airwaves,” North Jersey Media Group, October 1, 2007, <http://www.northjersey.com/page.php?qstr=eXJpcnk3ZjcxN2Y3dnFIZUVFeXkyJmZnYmVsN2Y3dnFIZUVFeXk2OTY0MTE1>.

² “Public Safety,” National Telecommunications & Information Administration, U.S. Department of Commerce, viewed October 22, 2013, <http://www.ntia.doc.gov/category/public-safety>.

³ AWS-3 Transition, National Telecommunications & Information Administration, U.S. Department of Commerce, November 2014, <http://www.ntia.doc.gov/category/aws-3-transition>.

⁴ Statement of Commissioner Ajit Pai, Concurring in Part, Dissenting in Part, In the Matter of 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; 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 for Interim Conditional Waiver, RM-11395; Implementation of the Commercial Spectrum Enhancement Act and

While a DE should have the option to lease the spectrum, it should not be able to enjoy the discount if it chooses to do so.

For example, in the AWS-3 auctions, DISH Network Corporation utilized three of its affiliated companies, SNR Wireless LicenseCo LLC, Northstar Wireless, and American AWS-3 Wireless I LLC to purchase more than \$13.3 billion of spectrum, potentially qualifying for \$3.3 billion in taxpayer-funded discounts through the AWS-3 auction.⁵ Two of the three companies affiliated with Dish Network did not exist until a few months prior to the auction and reported to the FCC that they did not have any gross revenues. Yet, they were able to place more bids than T-Mobile, U.S. Cellular, and Verizon combined.⁶

The NPRM proposes to increase the discount for the DE program from 25 percent to 35 percent, while loosening the restrictions imposed by Section 309(j), which currently require DEs to offer service to the public. Increasing the discount could lead to even more questionable affiliations among large and small companies. By allowing non-facilities-based entities to qualify for the DE discounts, smaller facilities-based carriers will find it more difficult to obtain the necessary spectrum required to expand their coverage and service.

Smaller carrier bids do not always lead to increased competition in the marketplace, particularly if a less experienced company wins a large segment of spectrum in the auctions. In addition, allowing non-facilities-based entities to bid on spectrum at a discounted price does nothing to increase competition. In May 2000, Winstar Communications was awarded 931 spectrum licenses in the FCC's closed 39 GHz auction #30 to provide wireless broadband services.⁷ However, the company was unable to generate enough sales to cover its large capital infrastructure build-outs and filed for Chapter 11 bankruptcy protection in 2001.⁸ CAGW encourages the commission to retain the current discount and strengthen the facilities-based requirements.

Currently, FCC rules do not restrict joint bidding arrangements between DEs and other entities, including coordinated bidding, agreeing not to bid in particular markets, or other potentially collusive conduct between large and small businesses. These arrangements convert what is supposed to be a program to help boost small businesses into a taxpayer-funded subsidy for larger companies, who can bid through the DEs and reap the benefits of bidding discounts. The FCC should both prohibit joint bidding agreements between DEs and non-DEs and ensure that bidders are not proxies for larger entities that would otherwise fail to qualify for the discounts.

Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, Federal Communications Commission, October 10, 2014, https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-146A3.pdf.

⁵ Thomas Gryta and Ryan Knutson, "Behind Dish Network's Race for Wireless Spectrum," *The Wall Street Journal*, February 12, 2015, <http://www.wsj.com/articles/behind-dish-networks-race-for-wireless-spectrum-1423786487>.

⁶ Kelly Ayotte and Ajit Pai, "Ending Welfare for Telecom Giants," *The Wall Street Journal*, February 4, 2015, <http://www.wsj.com/articles/kelly-ayotte-and-ajit-pai-ending-welfare-for-telecom-giants-1423095287>.

⁷ Federal Communications Commission, "FCC 'Closed' 39 GHz Auction #30," May 8, 2000, <http://wireless.fcc.gov/auctions/30/charts/30cls2.pdf>.

⁸ Melanie Austria Farmer, "Winstar Files for Bankruptcy, Sues Lucent," CNET News, April 5, 2001, http://news.cnet.com/Winstar-files-for-bankruptcy,-sues-Lucent/2100-1033_3-256005.html.