



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

February 27, 2015

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Pallone:

Thank you for your letter requesting that the Commission revisit its small business bidding rules in advance of next year's incentive auction. I remain committed to providing bona fide small businesses a meaningful opportunity to participate in that auction while protecting the integrity of the FCC auction program.

Congress tasked us with achieving these important goals when it granted the Commission auction authority. In landmark 1993 legislation, Congress instructed the Commission to create a competitive bidding system that promotes economic opportunity and competition 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. At the same time, Congress charged the Commission with deploying a competitive bidding system that, among other things, recovers for the public a portion of the value of public spectrum resources made available for commercial use and avoids unjust enrichment.

Our competitive bidding rules must achieve the balance of objectives Congress established and reflect today's wireless marketplace realities. On a bipartisan basis, the Commission initiated a proceeding last October to revisit our competitive bidding rules prior to next year's historic incentive auction. The Notice of Proposed Rulemaking (NPRM) recognizes that the wireless industry has changed significantly since the Commission last comprehensively updated its competitive bidding rules in 2006 during the Bush Administration. The NPRM's proposals specifically address the challenges new entrants face today, including raising capital to compete in an auction; finding a revenue stream to support network construction and business expansion; and developing a business model based on market needs. The NPRM also recognizes the challenge of entering the wireless marketplace, in which today more than 95 percent of existing customers are served by the top four providers, which combined serve approximately 300 million consumers.

At the same time, our rules must preserve the integrity of the Commission's auction process and ensure that bidding credits are available only to eligible entities. The NPRM

therefore seeks comment on a broad range of questions about the efficacy of both our existing and proposed new rules intended to safeguard the award of small business benefits.

We are keenly aware that we must also look to “lessons learned” from Auction 97, the recently-concluded AWS-3 auction. Public input, in addition to ongoing staff review of bidding data from that auction, will inform any changes to our current rules that I may present to my fellow Commissioners for consideration in the coming months, and before the incentive auction commences. We extended the Competitive Bidding NPRM comment deadline three times so that interested parties could take into account lessons learned from Auction 97 as they advocate for maintaining or modifying rules that will apply in future auctions, including the incentive auction. Initial comments were due on February 20, and replies will be due March 6. If necessary, we will solicit additional public input after we receive reply comments to ensure that we have a strong record on which to base our conclusions.

FCC staff is also reviewing the applications submitted by winning bidders in Auction 97. Although it would be inappropriate to comment specifically on any of the pending applications at this time, I assure you that we take seriously concerns that parties may seek to capitalize on our rules in order to receive benefits intended for small businesses or to game the auction process. As you point out in your letter, and as adopted unanimously last March by the Commission in the AWS-3 Report & Order, we conducted Auction 97 in accordance with competitive bidding rules that were last comprehensively updated in 2006. We will not grant licenses to any party that does not strictly adhere to those rules and precedents.

Prior to issuing licenses to winning bidders in Auction 97, we will thoroughly review and scrutinize each application to ensure that granting each license is in the public interest and that each applicant has complied with the Commission’s rules, including those related to bidding credits. FCC staff’s first task is to undertake a preliminary review of all the applications to ensure that they are complete. During this process, staff frequently requests additional, specific information from winning bidders to address questions about applicable business relationships and agreements.

Once the applications are complete, staff will make the applications public, and there will be an opportunity for interested parties to submit Petitions to Deny if they believe we should not grant certain applications, including any requests for bidding credits. This step is an important part of our standard process. Not only does the FCC staff review applications, but competitors and anyone else who may not like the outcome of the auction are invited to tell us why, under the rules, we should not grant a license. We will carefully consider any such petitions as part of our application review.

Again, I am committed to providing innovative, bona fide small businesses the opportunity to participate meaningfully in the incentive auction, and to spur additional competition, investment and consumer choice in the wireless marketplace. I also share your belief that our competitive bidding rules must be carefully crafted and vigorously enforced to

Page 3—The Honorable Frank Pallone

protect the integrity of our auction program. We will review our Competitive Bidding NPRM proposals and the public comments we receive with these goals in mind.

Thank you again for attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler", written in a cursive style.

Tom Wheeler