

FACT SHEET: FCC ADOPTS COMPETITIVE BIDDING REPORT & ORDER TO REFORM AUCTION RULES AND SAFEGUARD SMALL BUSINESS BENEFITS

Reforms Will Prevent Abuse; Empower Rural Carriers to Compete in Spectrum Auctions

Today, the FCC voted to adopt balanced rules that will modernize the Commission's approach to small business participation in wireless spectrum auctions, also known as the competitive bidding rules. The Commission initiated a [proceeding](#) in October 2014 to revisit its competitive bidding rules, last updated in 2006, prior to next year's historic Incentive Auction. In response to today's wireless marketplace, the new common-sense reforms will provide more flexibility for bona fide small businesses, including women- and minority-owned businesses and rural carriers. At the same time, the reforms will increase transparency and efficiency to prevent abuse as well as protect the integrity of the Commission auction process.

Changes in the wireless marketplace and experience require the FCC to reform the current rules:

- In the last decade, consumer demand has exploded, data usage has grown exponentially, and faster 4G networks enable even more data services.
- Today, 98% of mobile devices are served by the top four national providers. In contrast, the top four national providers served approximately 82% of the market in 2006. Small businesses and rural carriers need an on-ramp into a mature wireless industry.
- The competitive bidding rules were last updated in 2006. Today, women- and minority-owned small businesses face an uphill battle in competing for spectrum.
- Ahead of upcoming spectrum auctions – including the incentive auction – the Commission must utilize a competitive bidding system that promotes economic opportunity and competition.

New reforms will ensure large corporations can't game the system, bidding credits flow to small businesses and rural carriers – while revamping outdated policies that no longer serve today's wireless marketplace, including:

- Establishment of the first-ever cap on the total value of bidding credits a small business or rural provider is eligible to receive in any one spectrum auction:
 - Cap will vary on a service-by-service basis based on the capital requirements of the service and the inventory of licenses to be auctioned.
 - For the incentive auction, there is a \$150 million cap for small businesses; \$10 million cap for rural service providers.
 - In addition, there is a \$10 million ceiling on the amount of bidding credits that any entity can use in smaller markets.
 - Collectively, these provisions will provide flexibility for small businesses to pursue a variety of business plans, while ensuring that small businesses and rural providers can compete on equal footing in smaller markets.
 - A \$150 million cap for the Incentive Auction is also reasonable and consistent with the amount bid and credits awarded to DEs in past major auctions.
 - The \$150 million cap also takes into account the value of the 600 MHz spectrum that will be auctioned next year. The Commission has acknowledged on numerous occasions the significant advantages of low-band spectrum, which increases the value of the spectrum.
 - Applying Auction 97 prices to 10-megahertz PEA licenses (the same configuration as in the Incentive Auction), a \$150 million cap would not affect a designated entity with a 15% or 25% bidding credit discount from bidding on an individual license except in the top two markets (NY and LA).
 - With a 25% bidding credit, a designated entity could spend up to \$600 million and

receive the full discount under the cap. With a 15% bidding credit, a designated entity could spend up to a \$1 billion and receive the full discount under the cap.

- For other future auctions, the cap will be determined on an auction-by-auction basis with a \$25 million floor for eligible small businesses and a \$10 million floor for eligible rural service providers.
- Prevention of unjust enrichment of ineligible entities by strengthening attribution rules:
 - Retaining the existing 5-year unjust enrichment period and graduated repayment schedule.
 - The record strongly indicates that increasing the unjust enrichment period will hurt the ability of designated entities to access capital and participate in auctions.
 - The balanced approach adopted in the Report & Order means that the reforms must be examined collectively. By adopting other safeguards, such as capping the value of the bidding credits and strengthening the attribution rules, we address those concerns regarding unjust enrichment to ineligible entities.
 - Limiting the amount of spectrum that non-controlling disclosable interest holders of a designated entity – such as investors – can use during the unjust enrichment period.
 - Putting designated entities on notice regarding the types of investor agreements that raise concerns about who’s “calling the shots”.
 - The totality-of-the-circumstances approach adopted in the Report & Order provides the Commission with the opportunity to determine if an entity with a non-controlling interest in more than one designated entity has created the type of relationship with the designated entities to warrant attributing the non-controlling interest’s revenue to the designated entities.
- Elimination of Joint Bidding Agreements and other reforms:
 - Prohibiting joint bidding agreements that involve a shared strategy for bidding at auction, but permitting arrangements that are solely operational (e.g., roaming, leasing, etc.), provided they are disclosed.
 - Permitting designated entities – that is, *bona fide* small businesses and rural service providers eligible to receive bidding credits – to participate in consortia with other designated entities, resulting in a single bidder.
 - Permitting non-nationwide providers to participate in joint ventures with other non-nationwide providers, resulting in a single bidder.
 - Prohibiting multiple applications by one party and by parties with common controlling interests subject to certain exceptions.

A new rural business bidding credit will enable fair competition for small businesses to acquire new spectrum licenses to serve rural America:

- A rural carrier will qualify for a 15% bidding credit if it has 250,000 subscribers or fewer and serves primarily rural areas.
- The bidding credit to rural service providers will incentivize participation in future spectrum auctions, help rural carriers to compete more effectively for spectrum and provide consumers in rural areas with competitive offerings, especially in underserved areas.

New reforms will provide flexibility to *bona fide* small businesses and rural carriers, including the:

- Modernization of the Commission’s rules to reflect today’s wireless market:
 - The wireless industry has evolved since DE rules were first adopted. And even the rules adopted in 2006 could not have envisioned the changes to the industry in the last decade.

- The order removes the policy that requires small businesses to provide facilities-based service in order to qualify for bidding credits.
 - The order also eliminates the assumption that a lease of more than 25% of the spectrum capacity of any one license to a large business requires revenue attribution to a small business. This change will free small businesses to make business decisions that work for them.
 - Instead, the reforms will evaluate eligibility for small business bidding credits on a license-by-license basis to ensure small businesses are the ones “running the show.”
- Increase in the revenue threshold to qualify as a small business:
 - Current revenue thresholds: \$3 million (35% credit), \$15 million (25% credit), and \$40 million (15% credit).
 - New revenue thresholds: \$4 million (35% credit), \$20 million (25% credit), and \$55 million (15% credit).
 - The increases account for inflation since our small business size thresholds were first established in 1997.

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