



Federal Communications Commission
Washington, D.C. 20554

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DA 16-935

Via Certified Mail, Return Receipt Requested

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Re: RWA, Inc. and NTCA – The Rural Broadband Association – Request to Suspend
Bidding in the Forward Auction of the Broadcast Incentive Auction

Dear Ms. Bennet et al.,

This letter responds to the informal request for Commission action filed on August 12, 2016, by the Rural Wireless Association, Inc. (RWA) and NTCA—The Rural Broadband Association (NTCA) (collectively, Associations).¹ The Associations seek to suspend bidding in the forward auction of the broadcast incentive auction (Auction 1002) or, alternatively, reduce bidding to one round per day, during two three-day periods when the Associations will be holding their fall conferences and meetings.² For the reasons set forth below, we deny the request.

The Associations assert that their members “have limited personnel to dedicate to auction participation,” and, in many cases, the leaders of those member companies that attend industry events are also their company’s authorized bidders for Auction 1002.³ The Associations maintain that travel to and from these events and participation in event meetings will disrupt their members’ ability to timely bid in the auction, and that “travel arrangements were booked long in advance of the FCC revealing its auction

¹ See Informal Request for Commission Action of the Rural Wireless Association, Inc. and NTCA – The Rural Broadband Association, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269 (filed Aug. 12, 2016) (*RWA/NTCA Request*).

² Specifically, from September 7-9, 2016, RWA will be holding its Rural Wireless Summit co-located with CTIA’s Super Mobility 2016 conference, and from September 26-28, 2016, NTCA will be holding its Fall Conference and RWA will be holding its Annual Meeting. *See id.* at 1-2.

³ The Associations claim that more than half of the qualified bidders in Auction 1002 are members, or are affiliated with a member. *RWA/NTCA Request* at 2.

schedule.”⁴ They also argue that the process of changing authorized bidders “is of little use to qualified bidders with very small management teams,” and that “the lack of activity waivers further necessitates suspension [of bidding] in Auction 1002.”⁵

The Wireless Telecommunications Bureau has been delegated authority to administer Commission auctions and, as part of that authority, may, in its discretion, delay, suspend, or cancel an auction for reasons that affects the fair and efficient conduct of the competitive bidding.⁶ However, suspending or reducing the bidding schedule for six full days could undermine our goal of promoting an efficient and successful auction process, and we therefore need to be sure that there is a compelling reason to delay an auction upon the request of any participant or group of participants. In light of all the circumstances here, we find that allowing for attendance at the Associations’ September conferences and meetings does not justify suspending or reducing the Auction 1002 bidding schedule.⁷

The FCC has devoted considerable time and resources since the enactment of the Spectrum Act four years ago to implementing the incentive auction in order to realize its important goals as rapidly as possible.⁸ As the Commission has emphasized, “[s]peed is critical to the successful implementation of the incentive auction.”⁹ Unlike any past auctions, the incentive auction is a two-sided auction, with interdependent reverse and forward auctions that affect multiple sectors of the telecommunications industry, including television broadcasters, wireless telecommunications carriers, and other companies that have made significant investments, secured financing, and delayed other business proposals based on the current auction schedule.¹⁰ Nevertheless, the Commission cannot control exactly how long the

⁴ See *id.* at 3.

⁵ See *id.* at 3-4.

⁶ See 47 CFR §§ 0.131(c), 0.331; *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Technical Formulas for Competitive Bidding*, Public Notice, 30 FCC Rcd 11034, 11043, para. 21 (WTB 2015) (*Application Procedures Public Notice*); see also 47 CFR § 1.2203(d).

⁷ See, e.g., *Auction of FM Broadcast Construction Permits Rescheduled for April 23, 2013; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and other Procedures for Auction 94*, Public Notice, 27 FCC Rcd 14299, 14314-15, para. 47 (WTB 2012) (rescheduling the start date for bidding to avoid conflicts with a widely-attended industry convention and widely-observed religious holidays).

⁸ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Order Denying Stay Motion, 31 FCC Rcd 1857, 1862-63, para. 12 (MB 2016) (declining to stay the start of the incentive auction pending resolution of a petition for review in the United States Court of Appeals for the District of Columbia Circuit) (*Incentive Auction Stay Denial Order*). The FCC adopted bidding procedures for the auction over a year ago, and application procedures over 10 months ago. See *Broadcast Incentive Auction Scheduled to Begin March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd 8975 (2015); see also *Application Procedures Public Notice*, 30 FCC Rcd 11034. Applications were due on January 12, 2016, and February 10, 2016, for the reverse and forward auctions, respectively. Bidding began with the deadline for reverse auction initial commitments on March 29, 2016, and will continue for an unknown period of time.

⁹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6618, para. 111 (2014) (*Incentive Auction Report & Order*).

¹⁰ See generally *id.* at 6708-15, paras. 325-346; *Incentive Auction Stay Denial Order*, 31 FCC Rcd at 1862-63, para. 12. As long as the auction continues, the quiet period that is in effect for both the reverse and forward auctions limits the types of discussions that would otherwise take place between and among broadcasters and forward auction

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auction will take, due to the interdependent nature of the reverse and forward auctions and the auction's stage structure for determining the greatest amount of spectrum that can be cleared while satisfying the final stage rule.¹¹ For all of these reasons, we will not exercise our delegated authority to delay, suspend, or cancel bidding in the incentive auction without a compelling justification for doing so.

While we have sympathy for the resource constraints of smaller bidders, we are unpersuaded by the Associations' argument that the process of changing authorized bidders is of little benefit to its members, and that the lack of activity waivers further necessitates the suspension or reduction of bidding. We have emphasized that bidders should develop comprehensive contingency plans, which includes arrangements for accessing and placing bids in the Forward Auction Bidding System from one or more alternative locations.¹² Additionally, each bidder is solely responsible for anticipating and overcoming problems such as unavailability of its authorized bidders, among other things.¹³ We believe that the Associations' concerns can be addressed by developing and implementing such plans in advance of a conflicting event.¹⁴

We therefore conclude that the Associations have not provided a compelling reason for us to suspend, delay, or limit bidding in Auction 1002 during their fall conferences and meetings.

Sincerely,

Margaret W. Wiener
Chief
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

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bidders. *Incentive Auction Stay Denial Order*, 31 FCC Rcd at 1862-63, para. 12; see 47 CFR §§ 1.2105(c), 1.2205(c); *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015).

¹¹ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6710-12, paras. 331-38.

¹² See *62 Applicants Qualified to Bid in the Forward Auction (Auction 1002) of the Broadcast Television Incentive Auction; Clock Phase Bidding to Begin on August 16, 2016*, Public Notice, DA 16-796, at 4-5, paras. 15-18 (WTB July 15, 2016).

¹³ See *id.*

¹⁴ Indeed—and as the Associations' have acknowledged—a bidder can designate multiple authorized bidders and can change their authorized bidders as often as necessary to address scheduling other bidding conflicts. *RWA/NTCA Request* at 3.