



NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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STATEMENT OF COMMISSIONER AJIT PAI ON HOW ABUSE OF THE FCC'S SMALL BUSINESS PROGRAM HURTS SMALL BUSINESSES

Last month, the FCC's Wireless Telecommunications Bureau disclosed that two companies in which DISH Network Corp. has an 85% ownership stake are claiming over \$3 billion in taxpayer-funded discounts on licenses they won during the AWS-3 spectrum auction. As I said then, allowing DISH, which has annual revenues of approximately \$14 billion and a market capitalization of over \$34 billion, to obtain billions of dollars in taxpayer subsidies would make a mockery of the small business program.¹

The evidence of abuse continues to mount. DISH recently disclosed that it made approximately \$8.504 billion in loans and \$1.274 billion in equity contributions to those two companies—hardly a sign that they were “very small businesses” that lacked access to deep pockets.² Moreover, we now know that DISH's abuse of the program had an enormous impact on actual small businesses serving actual customers. Here are just a few examples:

- Glenwood Telephone Membership Corp. provides communications services to rural parts of Nebraska. Glenwood was the provisionally winning bidder for two licenses that would have allowed it to serve parts of Nebraska, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction. Glenwood has gross annual revenues of just over \$13 million, which are **1,052 times less than DISH's**.
- Rainbow Telecommunications Association, Inc. provides communications services to rural parts of Kansas. Rainbow was the provisionally winning bidder for one license that would have allowed it to serve parts of Kansas, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction. Rainbow has gross annual revenues under \$14 million, which are **1,025 times less than DISH's**.
- Pioneer Telephone Cooperative, Inc. provides communications services in rural parts of Oklahoma. Although Pioneer won three licenses in Oklahoma and Kansas, it was outbid by a DISH entity claiming a taxpayer subsidy for another license that it could have used to serve other parts of Oklahoma. Pioneer has gross annual revenues under \$15 million, which are **933 times less than DISH's**.
- Geneseo Communications Services, Inc. provides communications services to rural parts of Illinois. Although Geneseo won two licenses in Illinois, it was outbid by DISH entities claiming taxpayer subsidies for four other licenses that Geneseo could have used to serve different parts of

¹ See Statement of Commissioner Ajit Pai on Abuse of the Designated Entity Program, <http://go.usa.gov/h4ER> (Feb. 2, 2015).

² See DISH DBS Corp., 2104 Annual Report (SEC Form 10-K) (Mar. 6, 2015), available at <http://bit.ly/1EpWjaz>.

Illinois. Geneseo has annual gross revenues under \$16 million, which are **894 times less than DISH's**.

- VTel Wireless, Inc. provides communications services to consumers in rural parts of Vermont. VTel was the provisionally winning bidder for one license that would have allowed it to serve parts of Vermont, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction. VTel has gross annual revenues under \$27 million, which are **515 times less than DISH's**.

In every one of these cases, the DISH entities outbid small businesses that claimed either no discounts or a lower discount than those sought by DISH.

These examples are just part of a much broader story. There were over 440 licenses in the auction for which the DISH entities outbid smaller companies or ones that were not providers of nationwide service that had been winning the licenses. That's *more than three times* as often as those smaller providers were outbid by AT&T, Verizon, and T-Mobile *combined*.

These auction results are spurring a bipartisan chorus against anticompetitive arbitrage and corporate welfare. For instance, Senator Kelly Ayotte (R-NH) agreed that the FCC must “do a top-to-bottom review of policies that aid billion-dollar interests at the expense of entrepreneurs” because “[i]ndustry giants are claiming those taxpayer-funded discounts for themselves and using them to outbid smaller, would-be competitors.”³ Senator Claire McCaskill (D-MO) was “especially troubled by reports” that DISH used “two shell companies” to receive billions in discounts and stated that “Dish was not the first multibillion dollar telecommunications provider to take advantage of the designated entity program but the Commission should act to ensure it is the last.”⁴ Similarly, Representative Frank Pallone (D-NJ), Ranking Member of the U.S. House of Representatives Committee on Energy and Commerce, was “deeply concerned . . . by reports that major corporations have been able to game certain FCC rules designed to aid small businesses,” and he spoke out against rules that “may result in small businesses being boxed out of the telecommunications market.”⁵

Most recently, the Communications Workers of America and the NAACP called on the FCC to “reject DISH’s attempt to” claim these discounts.⁶ They explained that big businesses are now abusing the program “to drive out” legitimate small and minority-owned businesses. Likewise, Americans for Tax Reform joined others in stating that DISH “flouted the FCC’s DE rules” and that “reform efforts should focus . . . on making sure that any taxpayer-funded discounts on spectrum are enjoyed only by actual small businesses, not shell corporations that serve as a pass-through to conglomerates.”⁷

Right now, the DISH applications are pending before the FCC. If it turns out that the DISH entities did not comply with the FCC’s rules, the agency must, at a minimum, deny them any small business discounts. And whether or not they violated our rules, the FCC must take immediate action to ensure that this abuse never happens again.

³ See Senator Kelly Ayotte and FCC Commissioner Ajit Pai, Ending Welfare for Telecom Giants, *The Wall Street Journal* (Feb. 4, 2015), available at <http://on.wsj.com/1DAYt5f>.

⁴ See Letter from Senator Claire McCaskill, to Hon. Tom Wheeler, Chairman, FCC, <http://go.usa.gov/3CTp5> (Feb. 26, 2015).

⁵ See Letter from Representative Frank Pallone, Jr., to Hon. Tom Wheeler, Chairman, FCC, <http://go.usa.gov/3CTpj> (Feb. 19, 2015).

⁶ See Letter from Larry Cohen, President, Communications Workers of America, and Hilary O. Shelton, Director, NAACP Washington Bureau, to Hon. Tom Wheeler, Chairman, FCC, <http://go.usa.gov/3CTpx> (Mar. 12, 2015).

⁷ Americans for Tax Reform, Center for Individual Freedom, National Taxpayers Union, & Taxpayers Protection Alliance Comments at 4, 5 (Feb. 20, 2015), available at <http://go.usa.gov/3CTVe>; see also Citizens Against Government Waste Comments (Feb. 20, 2015), available at <http://go.usa.gov/3CbmG>.