

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *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 Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211.

Congress recognized more than 20 years ago that advanced telecommunications services and wireless technologies had the potential to create tremendous opportunities in our Nation. Though smartphones, tablets, millions of mobile broadband apps and the Internet of everything may not have been part of their predictions back then, lawmakers knew that in order for all communities to benefit from technological innovation, the FCC's obligation to allocate spectrum in the public interest should be guided by key enduring principles. Most relevant are the ones which affirm that all consumers should have access to affordable service, entrepreneurs and small businesses should have a reasonable opportunity to own and provide communications services, and that vigorous competition can promote both of those policy goals.

So when Congress amended the Communications Act in the 1990s giving the Commission the authority to conduct spectrum auctions, it specifically mandated that we design them to "promot[e] economic opportunity and competition," "ensur[e] that new and innovative technologies are readily accessible to the American people," "avoid[] excessive concentration of licenses[,]...disseminat[e] licenses among a wide variety of applicants, including small businesses," and deter unjust enrichment.

In implementing these mandates, the Commission has attempted to promote small business participation in the wireless industry, primarily by awarding auction bidding credits through its Designated Entity (DE) program.

And these efforts have led to some inspiring successes. Take Leap Wireless. It defined an entirely new strategy in the wireless industry through a simple, affordable and worry-free service. Priced competitively with traditional home phone service, Cricket let customers make and receive virtually unlimited phone calls in their local service area. It achieved strong penetration and brand awareness in its first two markets of Chattanooga and Nashville, and the company quickly set in motion plans to launch service in eight more markets by the end of 2000. By the close of 2001 they offered service in 35 markets.

In late 2000, Leap actively sought to acquire additional wireless operating licenses across the country. They participated in the FCC's re-auction of "Entrepreneur's Block" PCS operating licenses – a program that was also designed to help small business compete for spectrum, just like the DE program. Leap's then-CEO and Chairman credited this "Entrepreneur's Block" with allowing them to expand aggressively. Leap went on to sell their Cricket service to AT&T in 2014, but not before becoming a staple in the prepaid wireless market, serving more than four and a half million customers nationally.

The Leap story is one of a small, innovative company identifying an underserved market, developing an inventive business model, growing into a significant market player, and – in the process – providing competition and innovation in a dynamic marketplace. This is exactly the kind of story the Designated Entity Program is designed to make possible. The challenge for this Commission, however, has been to find the proper balance between allowing small businesses to acquire spectrum through DE credits on the one hand, and preventing parties from circumventing the purpose of those rules and being

unjustly enriched on the other. However, between 2004 and 2006, our policy changes actually shifted this balance and it impacted small business participation tremendously... and not for the better.

A number of parties told us that the current rules are actually having an adverse effect on small businesses, right at a time when these entities are facing increased challenges to compete effectively in the commercial wireless industry and serve their target markets. That is why, since 2010, I have been calling on the Commission to consider creative and legally sustainable approaches to promote greater participation by small businesses in the communications industry.¹

I applaud Chairman Wheeler today for presenting us with an Order which contains comprehensive reforms to the Commission's competitive bidding rules that will enable small businesses to compete more effectively. At the top of the list are the elimination of the Attributable Material Relationship rule and the policy that DEs must use the licenses they win with DE credits to provide facilities-based retail service. As I mentioned at the start of this proceeding, there is absolutely nothing in the statute or the legislative history that requires us to adopt those policies.

But what we do have is the authority to change policies when it is evident that consolidation in the wireless industry, and other circumstances, warrant giving small businesses greater ability to raise capital and effectively compete.

I am also pleased that we are adopting a rural bidding credit for non-DEs with 250,000 or fewer subscribers. In last year's Notice I was particularly pleased that we sought comment on bidding credits to winning bidders that deploy facilities to persistent poverty counties. According to the United States Department of Agriculture, a county is persistently poor if 20 percent or more of its population has been living in poverty over the last 30 years or more. Currently, there are approximately 353 such counties in this country. Although the record did not provide sufficient comment on how we should design a credit to promote deployment in these counties, as the Order explains, the rural bidding credit covers 90 percent of these counties. The wireless industry often talks about how deployment of their networks creates jobs and spurs economic growth. So I hope this credit will create incentives to deploy more networks in these communities.

While I fully support most of the rule changes in the Order, our decision, for the first time, to impose a cap on the amount of bidding credits that a DE may claim at auction does still concern me. I recognize that the intent of this cap is to deter some of the alleged activity that people have criticized in the AWS-3 auction. But I am confident that the other rule changes we adopt today are sufficient to remedy those concerns.

Most notably, we are prohibiting DEs from entering into bidding arrangements with other entities. We are also informing parties that some agreements that restrict the ability of DEs to make certain operational decisions could lead us to find that the DE does not control its license. The timing for the first cap in the history of the DE program also causes me concern because AWS-3 resulted in a record setting \$41.3 billion, and since spectrum below 1 GHz is more valuable, it is reasonable to surmise that

¹ Statement of FCC Commissioner Mignon L. Clyburn, Statement on Public Notice Seeking Comment on Proposal to create an "Overcoming Disadvantage" category for its current Designated Entity rules (December 3, 2010); Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers for Entrepreneurs and other Small Businesses, *Report*, 26 FCC Rcd 2909, 2969-70 (2011) (Separate Statement of FCC Commissioner Mignon L. Clyburn); Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, *Notice of Proposed Rulemaking*, 27 FCC Rcd 12357, 12368 (2012) (Separate Statement of FCC Commissioner Mignon L. Clyburn).

the total provisionally winning bids for the incentive auction could be higher. That means DEs will need access to more capital to win licenses.

That said, the rules we adopt today will give more flexibility to small businesses to enter into business models that should allow them to acquire licenses and thrive in the commercial wireless industry.

Therefore, I am voting to approve.

I wish to thank Roger Sherman, Jean Kiddoo, Sue McNeil and the team in the Wireless Telecommunications Bureau, and my lead advisor Louis Peraertz, along with David Strickland, for their terrific work throughout this proceeding.