**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

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.

It's no secret that the FCC's Designated Entity (DE) program has been plagued by abuse. You don't need to look any further than our most recent spectrum auction to see that large corporations routinely try to game the system and gain access to discounted spectrum.[1] The ones that bear the cost of this abuse? Legitimate small businesses across the country—businesses that are actually building networks and serving their communities, like Glenwood Telephone in Nebraska and Rainbow Telecommunications in my home state of Kansas. American taxpayers also take a hit since we all pay the price when corporate giants snag discounts Congress never intended them to have.

So the last thing one would expect when the Designated Entity program has once again been rocked by corporate gamesmanship is for the FCC to reopen loopholes it closed on a bipartisan basis years ago—loopholes that led to wide-ranging abuses in past auctions. Yet here we are. We were promised FCC action to close loopholes exploited by slick lawyers.[2] Instead, we have the FCC's blessing of new loopholes through which even a minimally competent attorney could drive a truck.

In particular, this *Order* paves the way for DEs to obtain a 35%, taxpayer-funded discount on auctioned spectrum and then turn around and lease 100% of that spectrum to AT&T, Verizon, Sprint, or T-Mobile.

Will it further the public interest to allow a "small business" with no plan beyond regulatory arbitrage to purchase discounted spectrum and then flip it to our nation's largest wireless carriers? Let's see.

Will that large wireless carrier face increased competition when it leases the spectrum? No. Will it face competitive pressure on its pricing? No. Will consumers, including those in rural areas, have a new competitive alternative to choose from? No. Will eliminating the safeguard "reserve the DE program for companies that actually intend to use their spectrum to serve customers," as former

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[1] *See, e.g.*, Statement of Commissioner Ajit Pai on Abuse of the Designated Entity Program, Press Release, http://go.usa.gov/3fcXj (Feb. 2, 2015); Senator Kelly Ayotte and Commissioner Ajit Pai, Ending Welfare for Telecom Giants, *The Wall Street Journal* (Feb. 4, 2015), *available at* http://on.wsj.com/18OXcyl; Statement of Commissioner Ajit Pai on How Abuse of the FCC's Small Business Program Hurts Small Businesses, Press Release, http://go.usa.gov/3fcXH (Mar. 16, 2015); Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the U.S. House of Representatives Committee on Energy and Commerce, http://go.usa.gov/3fcXh (Mar. 19, 2015); Statement of Commissioner Ajit Pai Before the Senate Appropriations Subcommittee on Financial Services and General Government, http://go.usa.gov/3fc54 (May 12, 2015); Statement of FCC Commissioner Ajit Pai on Proposal to Create More Loopholes for Abuse of Designated Entity Program, Press Release, http://go.usa.gov/3fc5k (June 25, 2015); *Request for Further Comment on Issues Related to Competitive Bidding Proceeding*, WT Docket No. 14-170 *et al.*, Public Notice, 30 FCC Rcd. 4153, 4179-80, http://go.usa.gov/3G359 (2015) (Statement of Commissioner Ajit Pai).

[2] Testimony of FCC Chairman Tom Wheeler Before the U.S. Senate Committee on Commerce, Science, and Transportation, http://cs.pn/1GmANBh (Mar. 18, 2005).

Commissioner Michael Copps put it when he and his fellow Commissioners established these rules?[3] Quite the opposite.

But I don't want to be accused of focusing solely on what today's decision won't do. So let me shift gears and discuss what voting in favor of 100% leasing will do. Will it increase concentration in the wireless market? Yes. Will it mean that large companies can access discounted spectrum (rather than purchasing it at full price)? Yes. Will it make the politically well-connected owners of shell DEs very wealthy? Yes. And will it create new incentives for companies to continue to try to game the system? Absolutely.

For these reasons, I respectfully dissent.

I.

The Commission's decision to eliminate the facilities-based requirement is yet another example of the agency rejecting a long-standing, bipartisan consensus. As I mentioned, Commissioner Copps and his colleagues put many of these protections in place. Commissioner Copps spoke eloquently against abuse of the Designated Entity program. He noted that Congress created the program to promote competition by small businesses *against* larger, established providers—competition that would spur the deployment of new services to the public, including in rural and underserved areas.[4] Commissioner Copps saw the tendency of companies with "deep pockets [to] help themselves to discounts they were never meant to enjoy" and to "twist the rules in order to gain unwarranted entry into these programs."[5] He observed that the abuse "means that spectrum goes to those most willing and able to manipulate the rules of the game, rather than to the entities Congress actually intended to benefit."[6]

So Commissioner Copps proposed ways to end it. In his words, the FCC "strengthen[ed] our unjust enrichment rules . .. [and took] away the incentive for speculators to try to masquerade as legitimate DEs." It "discourage[d] sham buyers from participating." And, "most importantly," the FCC "reserve[d] the DE program for companies that actually intend to use their spectrum to serve customers."[7]

How did our predecessors do this? They barred DEs from leasing 100% of their discounted spectrum to large corporations. They did so to help give legitimate small businesses a "fighting chance to

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[3] *See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Second Report and Order and Second Further Notice of Proposed Rulemaking, 21 FCC Rcd 4753, 4808 (2006) (Statement of Commissioner Michael J. Copps) (*CSEA/Part I Second Report and Order*).

[4] *Id.* at 4808 (Statement of Commissioner Michael J. Copps) ("In this age when telecommunications companies seem only to grow larger and larger, it is important to have programs that encourage competition from smaller entrepreneurs. This is exactly what the Designated Entity (DE) program is all about and it is why we must do everything we can to make this program perform as intended.").

[5] *Id.* (Statement of Commissioner Michael J. Copps).

[6] *Id*. (Statement of Commissioner Michael J. Copps). Commissioner Adelstein took a similar position. He believed that the Commission should close "loophole[s]" in the DE program, not open them up. *Id.* at 4810 (Statement of Commissioner Jonathan Adelstein Approving in Part, Dissenting in Part). He expressed serious concern about "large wireless carriers gain[ing] indirect access to bidding credits." *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Further Notice of Proposed Rulemaking, 21 FCC Rcd 1753, 1772 (2006) (Statement of Commissioner Jonathan Adelstein).

[7] *CSEA/Part I Second Report and Order*, 21 FCC Rcd at 4808 (Statement of Commissioner Michael J. Copps).

compete with industry giants," as Commissioner Copps put it.[8] But today, the Commission decides on a party-line vote to jettison the very safeguard that Commissioner Copps pioneered.

This will invite more abuse. Just look at the record. Public interest advocates explained that allowing 100% leasing "would do little to discourage a DE from acquiring spectrum at a taxpayer-funded discount and flipping it to someone else at full market value."[9] They explained that "it would likely create huge incentives for DEs to engage in this type of behavior, increasing the chances that future auctions would proceed in much the same way as the AWS-3 auction played out. That would be terrible for taxpayers, who would be underwriting corporate welfare, and for consumers, who would not see valuable spectrum put to its most productive uses."[10] T-Mobile said that allowing 100% leasing "effectively would gut the purpose of the designated entity program"[11] and "increas[e] the likelihood that designated entity benefits unfairly flow to ineligible entities or to speculators that acquire or warehouse spectrum at the expense of actual service providers that need it."[12] Still others remarked that allowing these leasing arrangements "will act like catnip to spectrum opportunists who are less interested in serving underserved areas than with getting rich quick at the public's expense."[13] Dozens of smaller and rural providers echoed these same concerns and urged the Commission not to eliminate the facilities-based requirement.[14] Yet down the drain it goes.

The *Order*'s defense is the Commission's "predictive judgment that DEs will not be able to build viable, competitive wireless businesses" unless they are allowed to lease all of their spectrum to large, nationwide carriers.[15] Putting aside the question of who the DE is actually competing against when it leases all of its spectrum to an incumbent provider, I will concede that it's hard to argue with predictive judgments. Except when they run contrary to actual facts. DEs like Vtel in Vermont, Buggs Island Telephone in Virginia, Chariton Valley in Missouri, and Sandhill Communications in South Carolina, as well as many other facilities-based providers across the country, can certainly be forgiven if they don't agree with the FCC that their businesses are "not . . . viable."

Nor do the *Order*'s statements about consolidation in the wireless industry counsel in favor of eliminating the facilities-based requirement. Ditching the rule only *increases* market concentration since, as I noted, spectrum will be flipped from smaller providers to the largest wireless carriers in the country.

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[8] *Id.* (Statement of Commissioner Michael J. Copps).

[9] Comments of Americans for Tax Reform, Center for Individual Freedom, National Taxpayers Union, and Taxpayers Protection Alliance at 9–10, http://go.usa.gov/3G3dj.

[10] *Id.*

[11] T-Mobile Comments at 3, http://go.usa.gov/3G3d5.

[12] T-Mobile Comments at 13, http://go.usa.gov/3G3dV.

[13] MediaFreedom.org Comments at 2, http://go.usa.gov/3G3dH.

[14] *See, e.g.*, Cellular South d/b/a C Spire Reply at 2, http://go.usa.gov/3G3dh (urging the Commission to "promote acquisition of spectrum for development of facilities-based wireless service by new providers or by small, existing providers seeking to expand their current service capacity or footprint"); Blooston Rural Carriers Comments at 5, http://go.usa.gov/3G3v4 ("[A]bandoning the AMR rule at this time would be a serious misstep."); Rural Wireless Association Comments at 15, http://go.usa.gov/3G3vk (stating that rural carriers did not fare well in Auction 97 and explaining that "RWA is concerned that eliminating the AMR Rule as proposed could yield similar (or worse) results in the Incentive Auction").

[15] *Order* at para. 24.

II.

Prohibiting DEs from leasing 100% of their spectrum is not just sound policy. It also happens to be the law. Section 309(j) of the Communications Act authorizes the Commission to use bidding credits to give DEs "the opportunity to participate in the provision of spectrum-based services."[16] And Congress passed this provision "to deter speculation and participation in the licensing process by those who have no intention of offering service to the public."[17]

It's no surprise, then, that the Commission has consistently read the Communications Act to require that the DE program benefit facilities-based operators, not passive speculators. When the FCC first confronted the question in 1994, it interpreted the statute to require DEs to actually "provide telecommunications services"[18] and adopted unjust enrichment rules to "deter speculation and participation in the licensing process by those who do not intend to offer service to the public."[19]

When the FCC returned to the issue in 2004, it found that "Congress specifically intended that, in order to prevent unjust enrichment, the licensee receiving designated entity benefits actually provide facilities-based services as authorized by its license"[20] and stated that "the licensee cannot make spectrum leasing its primary business and must . . . continue to provide facilities-based network services under its licenses."[21]

And when the FCC rejoined the issue in 2006, it stated that Congress' statutory directive means that "every recipient of our designated entity benefits [must be] an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public."[22] Later that year, it made clear that "Section 309(j)(4)(D) directs the Commission to issue regulations to 'ensure' that designated entities 'are given the opportunity to participate in the provision of spectrum-based services.'"[23] The Commission added that "the word 'participate' in this directive contemplates significant involvement in the provision of services to the public, *not merely passive ownership of a license to spectrum used by others to provide service*."[24]

Notably, the consensus that the Communications Act limits DE benefits to facilities-based providers was bipartisan and unanimous. A Democratic Congress passed section 309(j)(4)(D), and a Democratic President signed it into law. Democratic Chairman Reed Hundt led his fellow commissioners in first interpreting that section to require that DEs be facilities-based providers, and Republican Chairmen Michael Powell and Kevin Martin followed suit. Indeed, Democratic Commissioner Copps

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[16] 47 U.S.C. § 309(j)(4)(D).

[17] H.R. Rep. No. 103-111, at 257–58 (1993).

[18] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, Second Report and Order, 9 FCC Rcd 2348, 2394, para. 258 (1994) (*Competitive Bidding Second Report and Order*).

[19] *Id.* at 2394, para. 259.

[20] *Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503, 17544, para. 82 (2004) (*Secondary Markets Second Report and Order*).

[21] *Id.* at 17541, para. 76.

[22] *CSEA/Part I Second Report and Order*, 21 FCC Rcd at 4760, para. 15.

[23] *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Order on Reconsideration, 21 FCC Rcd 6703, 6705, n.8 (2006) (*CSEA/Part I Order on Reconsideration*).

[24] *Id*. (emphasis added).

took an even stricter view, arguing that there was "no legal justification" for permitting DEs (or any other provider) to lease *any* of their spectrum without specific Commission approval of each such lease.[25]

Until today. The decades-long, bipartisan consensus on the law is turned aside in one short paragraph by the *Order* on the theory that all of those prior Commissioners—Democrat and Republican alike—simply placed undue weight on certain legislative history.[26] But even a cursory reading of our precedents makes clear that the Commission's bipartisan reading of the Communications Act was grounded in the plain language of the statute, not on tea leaves from the *Congressional Record*.[27]

The *Order* does not—and cannot—reconcile Congress' directive that DEs participate in the provision of spectrum-based services with the FCC's decision to allow DEs to offer *no* spectrum-based services themselves and instead simply profit from wholesale leasing. As it is unlawful, I cannot support it.

III.

To be sure, the *Order* does take some stabs at reform. Yes, we should prohibit a company from bidding through multiple auction participants. Yes, we should prevent an individual from serving as an authorized bidder for more than one applicant. And yes, we should require an applicant to certify that it is not involved in any way in the bidding strategy of more than one bidder. But we shouldn't pat ourselves on the back for prohibiting collusive conduct already subject to the criminal provisions of antitrust law. These fruits don't hang much lower.

For me, this proceeding has never been about ending certain types of abuse while opening up avenues for new types of abuse to flourish. Commissioner Copps put it best: "[O]ur job is to deny wealthy companies or individuals *any* opportunity to misuse the DE discount to outbid small carriers—the very carriers the DE program is meant to protect."[28] The *Order* fails that test. So what would real reform look like?

First, real reform would mean putting meaningful limits on the discounts that any company can obtain. But the *Order*'s $150 million cap is not a serious measure. Remember, to get DE bidding credits,

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[25] *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17649 (Dissenting Statement of Commissioner Michael J. Copps).

[26] *See Order* at para. 25. The *Order* argues that Congress never intended that designated entities be limited to providing primarily facilities-based service because Congress referenced the facilities-based requirement in the portion of section 309(j)'s legislative history that describes the FCC's obligation to guard against unjust enrichment, rather than the portion that describes the FCC's authority to use bidding credits. *See Order* at n.88. But this misses the point. Among other things, Congress put section 309(j)'s unjust enrichment provision in place to require the FCC to guard against misuse of bidding credits, which, as explained above, is precisely what occurs when a company obtains spectrum at a 35% taxpayer-funded discount and then immediately leases 100% to one of the country's largest wireless providers. *See, e.g.*, H.R. Rep. No. 103-111, at 257 (1993) (stating that "to the extent" the Commission uses its authority to achieve goals that benefit small businesses, the unjust enrichment provision ensures that DEs are "not . . . permitted to frustrate that goal").

[27] *See, e.g.*, *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2394, paras. 258–59 (reading section 309(j) as requiring the FCC to ensure that DE benefits flow only to entities that actually "provide telecommunication services"); *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17544, para. 82 (rejecting any reading of Section 309(j) that says DEs "need not be limited to constructing and operating a facilities-based network"); *CSEA/Part I Second Report and Order*, 21 FCC Rcd at 4760, para. 15 (discussing section 309(j) and "Congress's directives" to ensure that every DE "uses its licenses to directly provide facilities-based telecommunications service"); *CSEA/Part I Order on Reconsideration*, 21 FCC Rcd at 6705, n.8 (interpreting the word "participate" in section 309(j)(4)(D)).

[28] *CSEA/Part I Second Report and Order*, 21 FCC Rcd at 4808 (Statement of Commissioner Michael J. Copps) (emphasis added).

a "very small business" can have no more than $20 million in annual revenues. Yet the FCC foresees that very small business bidding up to *$600 million* in order to receive the maximum bidding credit. A "small business" spending that massive a multiple of its revenues at a single auction is not really a small business, any more than a family earning $20,000 per year but spending $600,000 in one go is financially responsible. Indeed, members of Congress have weighed in on this point, stating that "real small businesses who are building mobile broadband to serve their communities do not have deep pockets, and placing too high a cap on bidding credits is only likely to encourage speculators and others more interested in profiting from this government program rather than deploying new broadband infrastructure and creating real competition."[29]

Our experience shows that the *Order*'s cap is a reform in name only. Just look at the last three major spectrum auctions. Putting aside the cases where petitions to deny are pending, a $150 million cap would not have affected a single qualified DE. Even a $50 million cap, which I was willing to support in the interest of reaching a compromise, would have impacted less than 2% of DEs (and the $10 million cap I initially proposed would have only affected 3.52%). And remember, these figures include data from the auction of below-1 GHz spectrum and licenses that covered much larger areas than the upcoming incentive auction. So any argument that imposing meaningful caps would end the Designated Entity program rather than mend it doesn't line up with reality.

The *Order* tries to defend its approach by noting that a lower, $10 million cap will apply to some markets in the incentive auction. But the $150 million cap covers nearly 80% of the U.S. population. And in those areas where the lower cap does apply, the playing field is tilted. A shell DE—which can and probably will have a major corporate backer—will get a percentage discount significantly larger than even the smallest facilities-based provider qualifying only for the rural service credit. Moreover, that DE can bid without needing to raise and spend the capital necessary to actually deploy and maintain a network that serves consumers. Finally, I don't take much comfort in the *Order*'s suggestion that a future FCC might decide to impose a $25 million cap in a future auction; predictive difficulties aside,[30] recent experience suggests that politics, not practicalities, will inform that determination.

Second, real reform would mean putting a bright-line rule in place that prohibits large companies from setting up multiple DEs and using them to get multiple bites at the $150 million discount.[31] After all, what's the use of a cap if any large company can avoid it by setting up more than one shell DE? So I proposed that we allow a company to invest the maximum amount permitted by our rules in one DE, but that we prohibit it from holding more than a 40% stake in a second DE, regardless of whether it claims a controlling or non-controlling interest in the DEs. I thought this would be a straightforward way of promoting access to capital while ensuring that large companies don't circumvent our cap by reserving majority interests in multiple DEs. But the *Order* fails to do that.

Third, real reform would mean strengthening our unjust enrichment rules to ensure that a shell DE can't just flip its spectrum to one of our nation's largest wireless carriers. The Competitive Carrier Association, T-Mobile, and others all called on the FCC to extend our existing requirements.[32] In my

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[29] Letter from Hon. Marsha Blackburn and Hon. Robert E. Latta to Hon. Tom Wheeler, Chairman, FCC (June 26, 2015).

[30] *See* Yoda, *Star Wars Episode V: The Empire Strikes Back* (Lucasfilm 1980) ("Difficult to see. Always in motion is the future.").

[31] *See, e.g.*, Spectrum Financial Partners, LLC Reply at 3, http://go.usa.gov/3G3H9 (stating that "[c]ross ownership of multiple bidding entities is clearly . . . tantamount to collusion" and that "rules for future auctions ought to limit joint ownership to much less than controlling interest, certainly less than 50%").

[32] *See, e.g.*, Competitive Carrier Association Comments at 11, http://go.usa.gov/3G3sF ("Extending the unjust enrichment period beyond five years would increase the deterrent against DE discounts being used by ineligible entities to acquire spectrum licenses at below-market rates."); T-Mobile Comments at 17, http://go.usa.gov/3G3H3

view, we should lengthen the unjust enrichment period to ten years. But the *Order* doesn't do that either. It allows DEs to sell their licenses in as little as three years without having to repay the full amount of the taxpayer-funded discount. This is particularly strange since the Commission eliminates the facilities-based requirement—which means that DEs will no longer need to spend capital constructing or maintaining a network (and hence the need for a quick exit strategy becomes less not more compelling).

Fourth, real reform would mean preventing deep pockets from standing up shell companies simply to siphon the taxpayer-funded discount.[33] I offered a straightforward way of doing this: I proposed to attribute a large company's revenues to a DE if it owns a majority of the business. But the *Order* rejects this safeguard from corporate capture, instead allowing a large company to own up to 99% of a designated entity.

Fifth, real reform would mean prohibiting any big company that owns a DE from leasing the designated entity's discounted spectrum. These types of lease-back arrangements present opportunities ripe for abuse. But the *Order* does not adopt this reform. Instead, it leaves the door open to a large carrier that owns 99% of a DE—and is itself too large to qualify for any small business discount—to use up to 25% of its DE's discounted spectrum. And that's just during the unjust enrichment period. After that, the large carrier can use every last megahertz of the DE's spectrum.

Sixth, real reform would mean treating the revenues of Alaska Native Corporations the same as revenues from any other qualifying DE.[34] But the *Order* instead opts for preferential treatment and will give ANCs millions in discounts even if they are otherwise too large to qualify as small businesses.

Seventh, real reform would mean preventing individuals who make more than $55 million a year from holding a controlling interest in a qualifying DE. This is a common sense way to prevent hedge-fund millionaires from getting taxpayer-funded discounts. But the *Order* rolls out the red carpet.

In sum, the *Order* rejects fact-based, common-sense, and widely supported reforms that would restore public confidence in our Designated Entity program. These reforms would have met the test of "deny[ing] wealthy companies or individuals *any* opportunity to misuse the DE discount to outbid small carriers."[35] But they'll have to wait for another day.

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Finally, a note about process. I was under no illusion that today's *Order* would adopt every one of my suggestions. But I thought there was enough common ground that we could still reach a compromise. After all, we were able to work together on the April Public Notice and tee up a wide range of proposals.[36]

In that spirit, I gave my colleagues all of my requests weeks ago, within days of receiving the draft. And I rolled up my sleeves, ready to get to work finding a consensus. I understood early on that retaining the attributable material relationship rule would be a red line for some. Preserving this

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("[T]he Commission should consider an unjust enrichment obligation that requires full repayment, plus interest, until the end of a standard 10-year lease term.").

[33] *See, e.g.*, Cellular South d/b/a C Spire Reply at 2–3, http://go.usa.gov/3G3dh.

[34] *See, e.g.*, Letter from Sen. Claire McCaskill to Hon. Tom Wheeler, Chairman, FCC (Feb. 26, 2015), http://go.usa.gov/3G3HT.

[35] *CSEA/Part I Second Report and Order*, 21 FCC Rcd at 4808 (Statement of Commissioner Michael J. Copps) (emphasis added).

[36] *See Request for Further Comment on Issues Related to Competitive Bidding Proceeding, Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170 *et al*., Public Notice, 30 FCC Rcd 4153 (2015), http://go.usa.gov/3fuGe; *see also id*. at 4179-80 (Statement of Commissioner Ajit Pai).

safeguard was important to me, but I was willing to compromise and support its elimination if the Commission adopted other safeguards that would prevent unjust enrichment and faithfully implement the Communications Act's requirements.

Unfortunately, it was not until three days ago that the Chairman's Office responded to my proposal. Despite repeated assurances that the draft *Order* was only an opening offer and that there was room to negotiate, the reality turned out to be far different.[37] It was the take-it-or-leave-it proposition that has been too common around here. On this issue, the American people are tired of taking it. So I will leave it. And I will respectfully dissent.

[37] Let me just give one example. When I was initially briefed on the item, I was told that the cap on bidding credits would be $125 million. But when the item was circulated, the cap had somehow magically grown to $150 million. Then, after I proposed a lower number of $10 million, I was told that the cap could be lowered back to $125 million in exchange for me abandoning most of my other proposals. *Cf.* Kramer, "The Raincoats," *Seinfeld*, Season 5, Episode 18 (Apr. 28, 1994), *available at* http://www.tubechop.com/watch/6435438.