PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES
www.phoenix-center.org

5335 Wisconsin Avenue, NW
Suite 440
Washington, D.C. 20015-0234
Tel: +1 (202) 274-0235
Fax: +1 (202) 318-4909
www.phoenix-center.org

Press Release

Contact: Lawrence J. Spiwak
Phone: +1 (202) 274-0235

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NEW PHOENIX CENTER ANALYSIS FINDS THAT FCC DENIAL OF DESIGNATED ENTITY BIDDING CREDITS IN AWS-3 AUCTION WILL IRREPARABLY HARM AGENCY CREDIBILITY

FCC Knew that Bidding Credits Reached $3 Billion within Seven Days of Auction Start But Did Nothing Until Post-Auction Political Outcry

WASHINGTON, D.C. – Auction 97 was the most financially successful U.S. spectrum auction to date. At the close of the auction in January 2015, gross bids totaled a whopping $45 billion for the mid-band AWS-3 spectrum, exceeding expectations more than two-fold. The Federal Communications Commission's final take was only $41.3 billion; the $3.6 billion difference was due to bidding credits granted to Designated Entities ("DEs"). Of particular note were bidding credits totaling $3.3 billion that went to two DEs, Northstar Wireless and SNR Wireless LicenseCo, in which DISH Network Corporation ("DISH") invested. Calls to deny the credits sought by Northstar and SNR soon followed. DISH, for its part, contends that it did nothing wrong and structured its relationships with the two DEs in strict accordance with the Commission's AWS-3 Auction rules.

In a new analysis released today entitled *Ugly is Only Skin Deep: An Analysis of the DE Program in Auction 97*, Phoenix Center Chief Economist Dr. George S. Ford and Phoenix Center Senior Fellow Professor Michael Stern demonstrate that any attempt to claw-back the credits from the two DEs post-auction—a possibility recently reported in the WALL STREET JOURNAL—is a bad idea from a policy perspective. The FCC rules at the time of the AWS-3 Auction did not prohibit the financial relationship between DISH and the two DEs; in fact, the rules in place at the time of the AWS-3 Auction were expressly designed to encourage large firm investment in DEs via arms-length financial roles.

To begin, the authors show that by historical standards, the taxpayer got off relatively cheaply in Auction 97. Across the history of FCC spectrum auctions, the average bidding credit was 14% of total gross bids. The bidding credits for Auction 97 summed to only 8%, well below the historical average. While $3.6 billion is a big number, it is a big number in the company of even bigger numbers.

Next, the authors demonstrate that while FCC officials appeared surprised by the bidding credits and DISH's involvement in the DE Program following the release of Auction 97's results, the timing of the outrage is suspect. Not only did the Commission review all applicable

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documents prior to the auction before it ruled that SNR and Northstar were both "Qualified Bidders" and eligible for DE bidding credits, but the Commission was aware that the bidding credits crossed the $3 billion threshold only 7 days into the 76-day auction. Despite direct knowledge of the size of the bidding credits (within the first week) and the authority of the FCC to halt the auction, Auction 97 proceeded without intervention in this regard. The Commission was unmoved by the large DE credits, at least until they became public knowledge.

Third, the authors' analysis of the auction results reveal that the two DE's involvement in the auction was pervasive, affecting prices for far more licenses than just those they won. If now, after the auction, the Commission finds SNR and Northstar (both qualified for the auction by the agency) ineligible for the bidding credits on which their bidding decisions were made but permitted them to bid anyway, then the results of the auction—*all of the results*— are in doubt. As such, disqualifying SNR and Northstar from the discounts might require an auction "do over," the consequence of which is likely to cost the U.S. Treasury far more than $3 billion and tarnish the Commission's reputation as a competent auctioneer and regulator.

Finally, the authors find that if the agency—after first approving the DEs' participation in the auction—reverses course post-auction, it will do great damage to its increasingly tattered credibility. Indeed, the Commission's recent decision to modify its DE rules in response to the AWS-3 Auction results represents a tacit admission by the agency that the negatively perceived results of the auction are not the fault of DISH, but of the rules in place at the time of the auction. Thus, the authors also observe, "If investors feel that the Commission will not honor its commitment if it doesn't like the outcome of its policies, then capital will find greener grass."

"Albeit under heavy constraint, the Commission's rules at the time of the AWS-3 Auction permitted large firms to supply capital to small firms for the purpose of acquiring spectrum licenses," says study co-author and Phoenix Center Chief Economist Dr. George Ford. "That's exactly what happened. No rule appears to have been broken or needed to be broken to produce the outcome of Auction 97: two small businesses acquired 702 licenses. The plan worked as it was designed to work."

"When regulated firms ignore the Commission's rules, there are enforcement options," added Phoenix Center President Lawrence J. Spiwak. "But what happens when the Commission refuses to follow its own rules and not respect its own precedent? History and economics tells us that we should expect to see capital flee the U.S. communications sector."

A full copy of the paper, PHOENIX CENTER POLICY PERSPECTIVE NO. 15-04, *Ugly is Only Skin Deep: An Analysis of the DE Program in Auction 97*, may be downloaded free from the Phoenix Center's web page at: http://www.phoenix-center.org/perspectives/Perspective15-04Final.pdf.

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