



October 18, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Written Ex Parte Communication*
GN Docket No. 18-122, *Expanding Flexible Use of the 3.7 GHz to 4.2 GHz Band*

Dear Ms. Dortch:

Competitive Carriers Association (“CCA”)¹ continues to support a transparent, FCC-led public auction consistent with Congressionally-authorized processes to assign terrestrial broadband rights in the C-band. Handing over to private parties the management of critical spectrum with an uncertain return to taxpayers is exceedingly difficult to reconcile with Congress’s instructions to the Commission in Section 309 of the Communications Act, and risks running afoul of any number of procedural and substantive requirements.²

A public auction would be on much more solid legal footing, and is also consistent with sound spectrum policy. CCA has joined many others in supporting a Commission-led public auction because a public auction achieves important public interest benefits for the United States and its taxpayers.³ Any auction will be judged by how well it satisfies the following core principles:

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents vendors and suppliers that provide products and services throughout the communications supply chain.

² See, e.g., Comments of Competitive Carriers Association, GN Docket No. 18-122 *et al.* (filed July 3, 2019) (“CCA July 3 Comments”).

³ See, e.g., Letter from Ross Lieberman, Senior Vice President, Government Affairs, ACA Connects – America’s Communications Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, Presentation at 2, 5, 7 (filed Oct. 7, 2019); Comments of T-Mobile USA, Inc., GN Docket No. 18-122, at 4 (filed Aug. 14, 2019); Comments of United States Cellular Corp., GN Docket No. 18-122, at 11 (filed Aug. 7, 2019); Comments of Frontier Communications Corporation and Windstream Services, LLC, GN

- **Transparency.** Transparency promotes accountability, deters unfair or corrupt practices, ensures due process and, ultimately, reinforces the nation’s faith in democracy and the rule of law.⁴ In this case, the open nature of a public auction would allow for a fair distribution of assets, encourage broad participation, and ensure market-based pricing for taxpayer assets.⁵ A public auction also would include the safeguards necessary for free and fair competitive bidding, including rules governing prohibited communications; a prohibition on joint bidding arrangements; ensuring that participants are duly-qualified bidders; clock-auction design considerations; policies governing bid stoppages, delays, suspensions and cancellations; minimum activity requirements; reserve prices; rules governing bid removals and bid withdrawals; and determining when winners must make final payments and what the penalties for bid withdrawal or default will be.⁶
- **Competition.** America’s global rivals have already allocated four times the amount of mid-band spectrum for 5G as the United States.⁷ Unleashing 370 megahertz of C-band spectrum would provide wireless operators and innovators with the tools necessary to deliver both wide-area coverage and data-carrying capacity.⁸ Auctioning at least 300 megahertz or more of C-band spectrum also would allow for the sale of multiple licenses to competing wireless operators, where each winner would have the large channel bandwidth necessary to achieve superior 5G performance. Any auction also should use sufficiently small license areas to provide competitors of all sizes, including those focused on serving rural Americans, niche markets, and other underserved segments of the population, with the opportunity to acquire the resources they need to compete.⁹

Docket No. 18-122 *et al.*, at 3 (filed Aug. 7, 2019); Comments of NTCA – The Rural Broadband Association, GN Docket No. 18-122 *et al.*, at 4 (filed Aug. 7, 2019).

⁴ See *Public Integrity A Strategy Against Corruption*, OECD, <http://www.oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf> (“Rendering information publicly available is not sufficient and should go hand in hand with effective scrutiny and accountability mechanisms.”) (last viewed Oct. 10, 2019).

⁵ See Reply Comments of ACA Connects – America’s Communications Association *et al.*, GN Docket No. 18-122 *et al.*, at 2, 5 (filed Aug. 14, 2019) (“ACA Reply Comments”); CCA July 3 Comments at 24; Reply Comments of CCA, GN Docket No. 18-122 *et al.*, at 8 (filed Dec. 11, 2018); Reply Comments of T-Mobile USA, Inc., GN Docket No. 18-122 *et al.*, at 6 (filed Aug. 7, 2019) (“[A]n FCC-led auction ‘ensures the disinfectant of sunlight, avoiding a secretive process.’”).

⁶ See CCA July 3 Comments at 8-9.

⁷ See Mike Dano, *Absence of Mid-Band Spectrum Clouds Trump’s 5G Proclamations*, Light Reading (Apr. 12, 2019), <https://www.lightreading.com/mobile/5g/absence-of-mid-band-spectrum-clouds-trumps-5g-proclamations-/d/d-id/750811>.

⁸ See ACA Reply Comments at 2.

⁹ See *Our Wireless Future: Building A Comprehensive Approach to Spectrum Policy Before the Subcomm. on Energy and Commerce Subcommittee on Communications and Technology*, 116th Cong. 3 (2019) (“CCA Testimony”).

- ***Simplicity.*** A single public auction is a simple, predictable, and proven process to make available U.S. taxpayer resources to the greatest number of interested parties. A set of sequential auctions, by comparison, could be complex and unpredictable. Among other things, sequential auctions would raise a serious exposure problem for bidders, especially for competitive carriers, small businesses, and new entrants. In a sequential auction, bidders must commit to buying licenses in the first auction before knowing whether or not they can acquire other, complementary licenses in the second auction. If bidders do not acquire the complementary licenses at reasonable prices, then the bidders are exposed to the risk of a potential loss.¹⁰ Larger bidders may have the resources to overcome this exposure problem more readily than smaller bidders and, indeed, can employ a wide set of auction strategies to use this advantage against smaller bidders, who—but for the exposure risk—might have paid more for the license than the larger bidders.¹¹ A bifurcated auction also may limit the possible repacking solutions for remaining incumbents. A single public auction eliminates the exposure risk that sequential auctions introduce, reduces the potential for strategic gaming among bidders, and promotes broad participation through straightforward, value-based bidding.¹²
- ***Truthful Bidding.*** A single, public auction also could put to rest questions of trust behind the interminable complexity of package bidding. In certain package bidding schemes, bidders may submit bids for many possible packages of licenses as well as individual licenses, but do not necessarily know the price of a winning bid at any given point in the auction. In theory, bidders would demand their most desired package at every stated price in the auction and then bid their true preferences in a final round. In practice, however, large bidders can use package bidding not only to conceal their true preferences for the licenses being sold, but also to raise their rivals' costs by placing expansive bids that have little or no risk of being accepted.¹³ A single, public auction

¹⁰ See Lonneke Mous *et al.*, *Using Priced Options to Solve the Exposure Problem in Sequential Auctions* in *Agent-Mediated Electronic Commerce and Trading Agent Design and Analysis* at 29-45 (2008).

¹¹ Sequential auctions also threaten to reduce auction revenue and, more important, the amount of mid-band spectrum available for 5G. See, e.g., Claudio Mezzetti *et al.*, *Sequential vs. Single-Round Uniform-Price Auctions*, University of Leicester at 1, https://www.le.ac.uk/economics/research/RePEc/lec/leecon/dp05-26.pdf?uol_r=d307e306 (last updated Apr. 2007) (“[A]uctioning objects in sequence generates a lowballing effect that reduces the first-round price. Total revenue is greater in a single-round, uniform auction [] than in a sequential uniform auction with no bid announcement.”). Compare also Letter from Ross Lieberman, Senior Vice President, Government Affairs, ACA Connects – America’s Communications Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 2 (filed July 2, 2019) (freeing at least 370 megahertz via a single auction) with Letter from Bill Tolpegin, Chief Executive Officer, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, (filed June 12, 2019) (proposing to clear only 200 megahertz in a sequential auction).

¹² See Letter from Steve B. Sharkey, Vice President, Government Affairs Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 5-6 (filed July 12, 2019) (“T-Mobile July 12 Letter”).

¹³ See Jonathan Levin *et al.*, *Properties of the Combinatorial Clock Auction*, *American Economic Review* 2528, 2529 (2016), <https://web.stanford.edu/~jdlevin/Papers/CCA.pdf>.

could be structured to encourage the kinds of truthful, straightforward bids that allocate spectrum resources to the parties who value them most highly for 5G deployment.

- **Consumer Choice.** Section 309(j)(3) of the Act requires the Commission to take licensing diversity into account as part of its auction design instead of pursuing pure profit-maximizing revenue schemes.¹⁴ Small businesses—and consumers—have fared better as a result of this statutory requirement. In Auctions 101 and 102, for example, nearly half of the winning bidders were small or rural companies.¹⁵ The success of small businesses and rural service providers owed much to an open and transparent process of auction design consistent with the Commission’s statutory obligations. Adopting policies that promote participation and competition in the competitive bidding process helps ensure that all competitors in the marketplace have a fair opportunity to acquire the spectrum they need to serve their customers. The design of a private auction, however, has no similar public scrutiny or broad-based public interest goals.
- **Taxpayer Benefits.** Commission-led auctions have produced more than \$120 billion dollars for the benefit of American taxpayers.¹⁶ With some analysts suggesting that a C-band spectrum auction could raise as much as \$50 billion, ensuring a return to the American taxpayer is essential.¹⁷ But any contributions that the Commission may extract from the satellite operators who conduct a private sale risks a judicial finding that the decision is arbitrary and capricious.¹⁸ Moreover, a privately-run spectrum auction,

¹⁴ See 47 U.S.C. § 309(j)(3); *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348 ¶¶ 2, 73 (1994) (“While Congress has charged us to recover a portion of the value of the public spectrum made available via competitive bidding, this does not amount to maximizing revenue, nor is it our sole objective. To the contrary, our goals are to encourage the rapid deployment of service, efficient use of the spectrum, and [] other goals [, including] disseminating licenses among a wide variety of applicants.”).

¹⁵ See *Auction 101 Bidder Summary*, FCC (Jan. 31, 2019), <https://docs.fcc.gov/public/attachments/DA-19-484A2.pdf>; *Auction 102 Bidder Summary*, FCC (June 3, 2019), <https://docs.fcc.gov/public/attachments/DA-19-485A2.pdf>.

¹⁶ See, e.g., Monica Allevan, *Taxpayer group tallies spectrum wins since 1994: \$121.7B*, Fierce Wireless (Apr. 22, 2019), [fiercewireless.com/wireless/taxpayer-group-tallies-spectrum-proceeds-since-1994-121-7b](https://www.fiercewireless.com/wireless/taxpayer-group-tallies-spectrum-proceeds-since-1994-121-7b) (citing Deborah Collier *et al.*, *The Race to 5G: Protecting Taxpayers through Spectrum Auctions*, Citizens Against Government Waste at 4, <https://www.cagw.org/reporting/race-to-5g> (last viewed Oct. 10, 2019)).

¹⁷ See Mike Dano, *FCC Preps for What Could Be Biggest Spectrum Auction Ever*, Light Reading (Sept. 25, 2019), <https://www.lightreading.com/mobile/5g/fcc-preps-for-what-could-be-biggest-spectrum-auction-ever/d/d-id/754386> (“A C-Band auction could raise at least \$50 billion in gross bids, according to a new calculation from the Wall Street analysts at New Street Research.”).

¹⁸ *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6668 (2016) (Dissenting Statement of Commissioner Ajit Pai); see also CCA July 3 Comments at 26-33. It is unclear what provision of the Communications Act authorizes the FCC either to privately auction the spectrum or to direct satellite companies to make a “voluntary” contribution to the U.S. Treasury. See, e.g., CCA July 3 Comments at 7-18.

designed and operated by entities that stand to profit from the outcome, would set a troubling precedent for taxpayer interests. Conducting a public auction, by comparison, offers a legally unassailable means of ensuring that taxpayers benefit from the sale of commercially vital U.S. spectrum resources.¹⁹

- **Interoperability.** Interoperability lowers consumer prices, reduces switching costs, enhances our international competitiveness, and can increase economies of scale for both network equipment and consumer devices.²⁰ When market failures arise, however, the FCC has had to use its oversight authority to intervene and prevent the kinds of band fragmentation that would raise the cost of doing business and diminish consumer choice.²¹ A single public auction subject to FCC oversight and review will ensure the kind of interoperability from the outset that allows operators to realize cost savings in developing, deploying, and operating their systems.²²

The C-Band Alliance's private auction proposal, Flexible Use and Efficient Licensing, or FUEL, violates most if not all of these principles.²³ CCA is also skeptical that any privately-run auction, particularly if run by entities with a financial stake in the outcome, could satisfy these principles. CCA, therefore, urges the Commission to adopt a single, public auction of spectrum in the 3.7-4.2 GHz band.

Respectfully submitted,

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¹⁹ See, e.g., *The Fiscal & Economic Impact*, Peter G. Peterson Foundation, <https://www.pgpf.org/the-fiscal-and-economic-challenge/fiscal-and-economic-impact> (stating a growing national debt lowers incomes, prevents American businesses from innovating, and makes it difficult for Americans to buy homes, finance homes, and pay for college) (last visited Oct. 16, 2019).

²⁰ See CCA Testimony at 3-4.

²¹ See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, et al., Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122 ¶ 13 (2013) (adopting voluntary industry standards to address interoperability issues in the Lower 700 MHz band).

²² See *id.* ¶¶ 1-2.

²³ See, e.g., T-Mobile July 12 Letter; Letter from Elizabeth Andron, Senior Vice President, Regulatory Affairs, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 *et al.* (filed Sept. 17, 2019).