

In the Matter of)
)
 Auction of Priority Access Licenses For) AU Docket No. 19-244
 the 3550-3650 MHz Band)
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the Public Notice, the Commission has requested comment on a proposal to introduce a new “CMA-level bidding” mechanism that would undermine the balance achieved in the *2018 Order* by effectively foreclosing the opportunity for smaller carriers, rural service providers, and private network operators to acquire PALs in many parts of the country. For those seeking to cover larger geographic areas, CMA-level bidding would restrict their ability to tailor their bids to their needs and could compel them to bid on, and pay for, licenses that they neither want nor need. And for all potential bidders regardless of size, CMA-level bidding introduces an unnecessary level of complexity to the PAL auction. The Commission should therefore reject the proposal to allow CMA-level bidding and should instead auction all PALs on a county basis nationwide.

I. INTRODUCTION

Southern Linc, a wholly owned subsidiary of Southern Company, operates a commercial digital 800 MHz ESMR system that uses an all-LTE platform to provide interconnected voice, dispatch, push-to-talk, text and picture messaging, internet access, and data transmission services over the same handset. Southern Linc provides these services over a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the Panhandle of Florida. Southern Linc offers comprehensive geographic coverage, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. Because of its expansive regional coverage and history of reliability, Southern Linc’s service is widely used by state and local public safety agencies, school districts, rural local governments, public utilities, and other emergency responders. It is also utilized by other commercial entities in both urban and rural areas.

As a subsidiary of Southern Company, Southern Linc also directly and indirectly supports the internal communications needs of its affiliated electric utility operating companies, which include not only mobile services but also fixed point-to-point and fixed point-to-

multipoint wireless services for a variety of applications that support the safe, reliable, and efficient delivery of essential electric utility services, such as monitoring, load management, protective relaying, and supervisory control and data acquisition (“SCADA”) systems.

As a provider of commercial mobile services, as well as a provider of private network services that support critical electric utility operations, Southern Linc has a strong interest in the CBRS band and the potential of using this band on a protected PAL basis, which would provide Southern Linc and other potential users with the opportunity to develop, implement, and deploy innovative services and network configurations supporting a wide variety of potential use cases – both commercial and private – all of which will ultimately benefit the public. Southern Linc actively participated in the proceeding that led to the *2018 Order*, both as a company and as a member of the *ad hoc* IIoT Coalition.⁴

For the reasons set forth below, Southern Linc urges the Commission to reject the proposal to allow CMA-level bidding and to instead auction PALs on a county basis nationwide.

II. CMA-LEVEL BIDDING EVISCERATES COUNTY LEVEL BIDDING WHERE IT APPLIES

A. CMA-Level Bidding Disincentivizes County Level Bidders and Makes It Impossible for Them to Obtain Any Blocks in the CMA

The *Report and Order* provided notice that the Commission would “seek comment in the pre-auction process on allowing package bids” for certain markets.⁵ Package bidding was first

⁴ / See, e.g., Comments of Southern Linc, GN Docket No. 17-258 (filed Dec. 28, 2017); Letter from David D. Rines, Lerman Senter, PLLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 17-258 (filed Sept. 7, 2018) (“IIoT Coalition *Ex Parte* Notice”).

⁵ / *2018 Order* at 10621.

applied by the Commission to an auction in 2000,⁶ and became a well understood mechanism for allowing bidders to price the value of groups of licenses taken as a whole, rather than as individual licenses. Package bidding as implemented by the Commission was an “all or nothing” proposition in which the bidder had to win all of the individual bids to win an entire package,⁷ but the Commission also allowed substantial flexibility:

During a bidding round, a bidder may submit individual bids for as many licenses as it wishes, subject to its eligibility; may submit bids on any packages it has designed, subject to its eligibility and a limit of bidding on twelve different packages throughout the auction; may renew bids it has previously made; may remove bids placed in that round before the round closes; may use an activity rule waiver, and may permanently reduce eligibility. Bidders may make certain mutually exclusive bids (i.e., overlapping bids) in a bidding round. For example, a bidder may place a bid on License A and a bid on a package consisting of Licenses A and B. The bids are mutually exclusive because it is not possible that both bids can become provisionally winning bids. Bidders have the option of making multiple submissions and removals in each bidding round.⁸

Package bidding undoubtedly provides a significant advantage to bidders with larger war chests that have an incentive to bid for larger areas in order to achieve economies of scale, and various new entrants and smaller bidders have criticized package bidding for limiting participation and thus competition for areas.⁹ The Commission has, in recent years, declined to allow package bidding in certain spectrum auctions because of the complexity such bidding adds to the process.¹⁰

⁶ / See *Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000*, Public Notice, 15 FCC Rcd 11526 (2000).

⁷ / See *id.* at 11530.

⁸ / *Id.* at 11555.

⁹ / See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6777 (2014) (“*Incentive Auction Order*”).

¹⁰ / See, e.g., *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services*, Public Notice, 33 FCC Rcd 7575, 7653 (2018) (declining to adopt package

As the Commission acknowledges, the CMA-level bidding proposed in the Public Notice is not package bidding.¹¹ In fact, it is almost incomprehensibly more complicated than the package bidding mechanism rejected by the Commission in recent auctions. The auction's Technical Guide provides extensive and complex details about:

- How CMA-level bids are defined;
- How CMA-level bids are processed as compared to county-level bids;
- How CMA-level bidders may decrease or increase demand and how their requests to decrease demand may be partially applied;
- How required activity and activity upper limit rules apply to CMA-level bidders;
- What prices might apply to CMA-level bids as opposed to county bids; and
- How clock price increments may vary depending on whether or not CMA-level bidding is allowed.¹²

These rules are so impenetrable, especially by comparison with earlier relatively straightforward package bidding rules, that there can be little doubt the rules alone will be sufficient to disincent new entrants and smaller bidders from competing in CMAs where CMA-level bidding is allowed.

But even if the Commission were to simplify the explanation of the bidding and processing rules, the inflexibility of CMA-level bidding would operate to moot county-level bidding in those CMAs. CMA-level bidding has nothing like the flexibility of traditional package bidding, as it requires bidders to make an irrevocable decision to use CMA-level

bidding for 24 and 28 GHz auctions); *Incentive Auction Order*, 29 FCC Rcd at 6777-78 (declining to adopt package bidding for 600 MHz broadcast incentive auction).

¹¹ / Public Notice at 10.

¹² / See *Auction 105 Technical Guide*, AU Docket No. 19-244 (rel. Sept. 27, 2019) at Section 3 (Bidding), Section 4 (Calculations for Bidding Information), Section 5 (Bid Processing), Section 7 (Setting Up the Next Round), available at <https://www.fcc.gov/auction/105/education> (“*Technical Guide*”).

bidding for specific CMAs before the auction, and then prohibits bidders from bidding at a county level for any counties in those CMAs.¹³ Moreover, CMA-level bidders bid for the number of blocks they want to acquire across the CMA, and must keep their demand consistent in every county in the CMA; for example, a bid for three blocks will apply to every county, as will a request to reduce demand by two blocks.¹⁴

This inflexibility, when combined with an aggregation limit of four blocks per county, results in it being impossible for any but the largest mobile broadband bidders to obtain any blocks in a CMA subject to CMA-level bidding. In the simplest case of a CMA with entirely urban counties,¹⁵ Verizon, AT&T and T-Mobile/Sprint will simply each bid for four blocks and, literally, wait out the clock until all other bidders drop out because they cannot afford to compete with the amounts of money each of these bidders will be willing to devote to an entire CMA. Invariably, the largest bidders will be the last bidders remaining in those counties until aggregate demand equals eight blocks (for two bidding carriers) or twelve blocks (for three), and only then will those carriers start to reduce their demand relative to each other until supply equals or exceeds demand.

The same result will apply in CMAs with a mix of urban and rural counties, and will work an even more obviously unfair result. The record underlying the *2018 Order* overwhelmingly demonstrates that there are numerous new entrants, rural providers, and other

¹³ / *See id.* at 2.

¹⁴ / *Id.* at 6-7, 15-17 (Examples 8-11).

¹⁵ / Defined as any county with a population density over 100 persons, as the Commission has defined “rural area” for the purpose of applying wireless radio service rules as a county with a population density of 100 persons or fewer per square mile. *See Facilitating the Provision of Spectrum-Based Services to Rural Areas, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19086-88 (2004).

potential users of the CBRS band with a strong interest in obtaining blocks in the significant number of rural counties located in CMAs subject to CMA-level bidding.¹⁶ But, under CMA-level bidding, this will make no difference whatsoever to the auction results. The largest carriers will refuse to reduce their demand in those rural counties because they would then be required to reduce their demand in the urban counties where they are competing with the other CMA-level bidders. If only county level bidding were to be allowed, then there might be blocks available to competitors because the largest carriers would not need to maintain the same demand across the entire CMA. But with CMA-level bidding, competitors will be forced to drop out well before the largest carriers carve up the blocks.

In a recent letter to the Commission, NCTA demonstrates persuasively that the likely result of CMA-level bidding will be that the auction will not be able to accommodate county level bidders.¹⁷ Southern Linc concurs in this assessment, and notes that the NCTA also demonstrates that, in the unlikely event county level bidders won any blocks in a county subject to CMA-level bidding, those blocks would likely be overpriced and might not even be sold at all due to idiosyncratic CMA-level bidding rules resulting in excess demand at prices above the point at which competing bidders have dropped out.¹⁸ Higher priced licenses and fallow spectrum blocks cut against the Communications Act's directives to the Commission that, in

¹⁶ / See, e.g., Comments of Southern Linc, GN Docket No. 17-258 (filed Dec. 28, 2017); Comments of the Wireless Internet Service Providers Association, GN Docket No. 17-258 (filed Dec. 28, 2017); Comments of the Utilities Technology Council, GN Docket No. 17-258 (filed Dec. 28, 2017); IIoT Coalition *Ex Parte* Notice, GN Docket No. 17-258 (filed Sept. 7, 2018).

¹⁷ / See Letter from Danielle Pineros, NCTA, to Marlene H. Dortch, FCC Secretary, AU Docket No. 19-244 (filed Oct. 15, 2019) ("NCTA Letter") at Attachment p.4.

¹⁸ / See *id.* at Attachment pp.5-6; see also *Technical Guide* at 15-16 (Example 8, showing the possibility that a CMA-level bidder reducing demand will result in excess demand in four out of five counties in a CMA).

designing auctions, it cannot simply seek to drive higher revenue to the U.S. Treasury, but “shall seek to promote,” among other things, “economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants” and to promote “efficient and intensive use of the electromagnetic spectrum.”¹⁹ The Commission recognized these very requirements as forming the foundation for the rule changes it adopted in 2018,²⁰ and should decline to adopt a new auction procedure that would effectively undercut them.

B. CMA-Level Bidding Undercuts the Balance Struck in the *2018 Order* and the Very Intent of the CBRS Band

In its *2018 Order*, the Commission found that county-based license areas appropriately balanced the interests of all stakeholders and potential users of – and use cases for – the CBRS band.²¹ In particular, the Commission found that:

- Counties “will service the needs of rural communities and will allow new and innovative services to reach underserved and unserved areas, consistent with the Act’s objectives.”²²
- Counties “will serve a variety of innovative use cases for urban, suburban, and rural deployments, including IoT deployments and those by new entrants.”²³
- Counties “are sufficiently small to support the small cell deployments and localized types of service we anticipate will be an important part of this band.”²⁴

¹⁹ / 47 U.S.C. §§ 309(j)(3), 309(j)(4).

²⁰ / See *2018 Order*, 33 FCC Rcd at 10601 (“Notably, Section 309(j) of the Communications Act asks us to weigh a number of statutory objectives advancing competition, diversity and the avoidance of excessive concentration of licenses.”).

²¹ / See *id.* at 10603-622.

²² / *Id.* at 10612.

²³ / *Id.* at 10613.

²⁴ / *Id.* at 10614.

- Counties are “small enough to allow licensees to target their deployments where they need capacity.”²⁵
- Counties “are the basic ‘building blocks’ of many geographic areas, making them suitable for aggregation for licensees that wish to operate over larger areas.”²⁶

While CMA-level bidding may facilitate mobile wireless deployment by the large carriers, it would not allow for meaningful access to PALs in counties subject to CMA-level bidding – which collectively cover almost two-thirds of the country’s population²⁷ – to support any of the other uses or use cases discussed above, such as rural deployment, IoT deployment, or the introduction of innovative services and new market entrants. Not only would CMA-level bidding therefore undercut the very balance that the Commission struck in 2018, it would undercut the very intent of the CBRS band to accommodate “a wide variety of users, deployment models, and business cases, including some solutions to market needs not adequately served by [the FCC’s] conventional licensed or unlicensed rules.”²⁸

The Commission cannot rely on partitioning, disaggregation, and secondary markets to retroactively address the barriers that CMA-level bidding would impose on meaningful access to PALs for smaller and rural service providers and private network operators. Secondary market

²⁵ / *Id.*

²⁶ / *Id.*

²⁷ / Based on the Commission’s total of 191,498,025 people in all of the counties of the 172 CMAs using 2010 census data, and a total resident population in the United States, Puerto Rico and Island Areas of 312,846,492 as reported by the 2010 census, yielding 61.2%. *See Proposed 172 CMA-Level Areas Data*, AU Docket No. 19-244 (rel. Sept. 27, 2019), *available at* <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/35-ghz-band/35-ghz-band-overview>; *United States Summary: 2010*, U.S. Dep’t of Commerce, U.S. Census Bureau, CPH-2-1 (issued Sept. 2012) at Table 1.

²⁸ / *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 3962 (2015).

transactions are entirely voluntary – there is no requirement for any licensee to lease, partition, or disaggregate a license. Secondary market transactions (to the extent they are even available) would also impose significant transaction costs that would serve as an economic barrier to smaller entities and endanger the economic viability of smaller-scale, localized deployments.

The fact that at least some CBRS spectrum may be available on a General Authorized Access (“GAA”) basis also fails to address the barriers that CMA-level bidding would impose on meaningful use of the band in many areas of the country. Although the use of spectrum on a GAA basis may be appropriate in some instances, many potential use cases for the band – such as data-intensive, low latency IIoT and critical infrastructure applications – will require the guarantees of access to spectrum and protection from interference that are provided by PALs.

III. CONCLUSION

For the reasons set forth above, Southern Linc urges the Commission to reject the proposal to allow CMA-level bidding and to instead auction PALs on a county basis nationwide. This will simplify the auction for all participants, provide potential users of all sizes a meaningful opportunity to acquire PAL, and preserve and promote the balance achieved in the *2018 Order*.

WHEREFORE, THE PREMISES CONSIDERED, Southern Linc respectfully
requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

SOUTHERN LINC

/s/ David D. Rines

David D. Rines
Jeffrey Carlisle
LERMAN SENTER PLLC
2001 L Street, N.W., Suite 400
Washington, D.C. 20036
T: 202.429.8970
F: 202.293.7783

Michael D. Rosenthal
Director of Legal and External Affairs
Southern Linc
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 678.443.1500

Kasey Chow
Attorney
Southern Linc
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 678.443.1500

Its Attorneys

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