

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Auction of Priority Access Licenses for)	AU Docket No. 19-244
The 3550-3650 MHz Band)	
Comment Sought on Competitive Bidding)	
Procedures for Auction 105)	
Bidding in Auction 105 Scheduled to Begin)	
June 25, 2020)	

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

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I. INTRODUCTION AND SUMMARY

NCTA – The Internet & Television Association (NCTA)¹ and its members are enthusiastic about the opportunities that the Commission’s innovative framework has made possible in the 3.5 GHz band. Auction 105 of Priority Access Licenses (PALs) beginning in June 2020 is a welcome next step in making additional mid-band spectrum available for multiple innovative uses, and NCTA generally supports the Commission’s proposed procedures for the auction presented in the Public Notice.² NCTA also continues to support the decision the Commission reached in its *2018 3.5 GHz Order* (Order) to designate counties as the geographic

¹ NCTA is the principal trade association of the cable television industry in the United States, which is a leading provider of residential broadband service to U.S. households. Its members include owners and operators of cable television systems serving nearly 80 percent of the nation’s cable television customers, as well as more than 200 cable program networks. Cable service providers have invested more than \$290 billion over the last two decades to deploy and continually upgrade networks and other infrastructure—including building some of the nation’s largest Wi-Fi networks.

² See *Auction of Priority Access Licenses for the 3550-3650 MHz Band; Comment Sought on Competitive Bidding Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020*, Public Notice, FCC 19-96, AU Docket No. 19-244 (Sept. 27, 2019) (Public Notice).

license areas for PALs.³ As NCTA has previously highlighted, “county-sized licenses for PALs strike an appropriate balance between enabling investment by larger operators with wide-area deployment plans and smaller operators seeking to cover only discrete areas.”⁴

At the same time, the Commission should decline to adopt its proposal to permit bidders to elect to bid at a Cellular Market Area (CMA) level for blocks in all of the counties comprising certain large CMAs. Permitting CMA-level bidding in Auction 105 would greatly increase complexity, introduce significant inefficiencies, and produce a host of unintended and detrimental consequences that could jeopardize the success of the auction, and the ultimate utilization of the 3.5 GHz band. Instead, the Commission should adopt a county-based clock auction without CMA-level bidding, which will result in a simple auction that is well-understood, low-risk, and proven to be successful.

II. COUNTIES ARE THE MOST SUITABLE GEOGRAPHIC UNITS FOR PRIORITY ACCESS LICENSES

A. The Commission Struck The Correct Balance When It Selected Counties As The Geographic License Area For PALs

Acting on a robust record, the Commission concluded in its *2018 3.5 GHz Order* that “[i]ncreasing the PAL license area slightly from census tracts to counties strikes a more appropriate balance and will more effectively support next generation mobile network deployments, while still retaining the ability to support small, targeted uses, included fixed uses.”⁵ The Commission identified multiple clear public interest benefits that would stem from

³ *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd. 10,598, ¶¶ 19-39 (2018) (2018 3.5 GHz Order).

⁴ Reply Comments of NCTA – The Internet & Television Association, GN Docket No. 17-258, at 2 (Jan. 29, 2018).

⁵ 2018 3.5 GHz Order ¶ 20.

adopting county-level licensing, including “support[ing] next generation wireless networks, including 5G,” “foster[ing] flexible and innovative use of the 3.5 GHz band in all areas,” “maximizing auction participation to ensure [the 3.5 GHz] band is put to its highest and best use,” and ensuring that PAL licensees can “take advantage of economies of scale, which will reduce deployment costs.”⁶ Permitting CMA-level bidding in Auction 105 would undermine these public interest benefits and disrupt the careful balance the Commission struck by adopting counties, ultimately leading to a complicated, less-than-successful auction and hindering future utilization of the band.

More specifically, in the *2018 3.5 GHz Order* the Commission found that “counties will serve a variety of innovative use cases for urban, suburban, and rural deployments, including IoT deployments and those by new entrants,”⁷ concluding that, “[l]icensing PALs by county will help foster flexible and innovative use of the 3.5 GHz band in all areas by providing a consistent, relatively small license size appropriate for a wide range of possible network deployments.”⁸ The Commission further noted that, “counties are the basic ‘building blocks’ of many geographic areas, making them suitable for aggregation for licensees that wish to operate over larger areas.”⁹

In adopting counties, the Commission also cited the importance of reducing auction complexity, as compared to census tract licensing.¹⁰ As discussed further in Section III, permitting CMA-level bidding would undermine this benefit by dramatically amplifying auction

⁶ *Id.* ¶¶ 20, 21, 26, 28.

⁷ *Id.* ¶ 28.

⁸ *Id.*

⁹ *Id.* ¶ 29.

¹⁰ *Id.* ¶ 31 (“We also anticipate that fewer license areas and fewer overall biddable items available through the PAL auction will reduce auction complexity.”).

complexity and introducing unintended inefficiencies – including inhibiting price and demand discovery – without providing the corresponding benefit of reducing the overall number of potential biddable items.

By contrast, the Commission explained that “increasing the PAL license area size further . . . could disproportionately favor mobile use cases and hinder investment in innovative fixed networks and localized deployments,” and so concluded that “the incremental benefit for 5G mobile use of going from counties to [Metropolitan Statistical Areas] MSAs or [Partial Economic Areas] PEAs would be far less than the incremental costs incurred by other potential users of the band.”¹¹ The Commission further found that while there was credible evidence “that census-tract based licensing risks intractable interference problems at PAL borders, potentially precluding the use of this spectrum for mobile 5G services,” adopting county-based licensing would “reduce network design complexity and minimize border coordination issues.”¹²

B. The Cable Industry Is Already Investing In A County-Based 3.5 GHz Ecosystem

The cable industry has been very involved in standards development and testing in the 3.5 GHz band. When licensed by county, the 3.5 GHz band has the potential to be a close match to cable operator footprints and an important part of cable broadband deployment strategies. NCTA’s members are actively exploring operations in the 3.5 GHz band. For example:

- One NCTA member contemplates using 3.5 GHz spectrum in a variety of ways, from fixed wireless deployments at the edge of its hybrid/fiber coax network, to small cell deployments that can enable mobile device traffic offload, to private LTE networks for enterprises. This company has conducted multiple proof of concept trials for fixed and

¹¹ *Id.* ¶¶ 20, 39.

¹² *Id.* ¶¶ 23, 30.

mobile use cases under various conditions, and over the last few months launched a commercial fixed wireless trial to extend broadband service into rural territories, targeting 25 Mbps download and 3 Mbps upload speeds. It is also currently participating in initial commercial deployments (ICD) in the band.

- One NCTA member that holds licenses in the 3.65 GHz band contemplates transitioning existing rural fixed wireless service to the 3.5 GHz ecosystem. In preparation for 3.5 GHz availability, this company worked with an equipment vendor and Spectrum Access System (SAS) provider to successfully test 3.5 GHz fixed wireless operations at three locations and anticipates being able to offer rural customers broadband speeds of up to 100 Mbps download and 20 Mbps upload using the band.
- Another NCTA member is conducting field trials in two markets as a generic technology test to determine CBRS capabilities.

NCTA's members are optimistic about the possibilities for bringing the 3.5 GHz band online for consumers in the near term. But to ensure a successful auction of 3.5 GHz spectrum, the Commission should stick with right-sized county licenses for the reasons discussed below.

III. UNINTENDED, DETRIMENTAL CONSEQUENCES OF CMA-LEVEL BIDDING WOULD JEOPARDIZE THE AUCTION'S SUCCESS, AND SHOULD LEAD THE COMMISSION TO ADHERE TO COUNTY-LEVEL BIDDING

When the Commission adopted county-sized PALs in the *2018 3.5 GHz Order*, it also stated that, “[n]evertheless, to provide greater flexibility to PAL applicants interested in serving larger areas, we will seek comment in the pre-auction process on allowing package bids to facilitate bidding for the counties that comprise a complete MSA in the top 305 markets.”¹³ The Commission made clear that it was not adopting package bidding in the *2018 3.5 GHz Order*,

¹³ *Id.* ¶ 40.

and that it had not yet determined whether doing so would be in the public interest. Rather, the Commission noted that it “expect[ed] that the proposed procedures for the auction” would seek additional comment on such an option.¹⁴ It further stated that, “[l]icensing PALs by county, and seeking comment on the best flexible auction mechanism that may allow bidders to aggregate MSA bids, including possibly using package bidding for all of the counties in an MSA, could reduce secondary market transaction costs while still promoting an active secondary market.”¹⁵ The Commission left itself ample opportunity to decline to adopt such a proposal if it later determined that it would not be in the public interest. Consistent with the Commission’s initial decision to seek further comment on a more specific proposal, the Public Notice seeks comment on CMA-level bidding for Auction 105.¹⁶

It is now evident that CMA-level bidding as proposed would introduce significant complexity and inefficiencies, while mitigating only relatively minor risks. As a result, it could jeopardize the success of the auction, negatively “affect auction participation by bidders that seek licenses for individual counties,” and thwart “participation by smaller entities interested in county-sized licenses” and localized deployment.¹⁷ The public interest benefits of county-sized PALs are less likely to be realized if new entrants, innovators, and those contemplating localized deployments are unable to acquire the licenses they seek due to the auction’s design, and/or their perceptions about the complexity and likely results of the design. Therefore, the Commission should decline to adopt CMA-level bidding and instead adhere to county-level bidding only.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Public Notice ¶¶ 29-33.

¹⁷ *Id.* ¶ 33.

A. Overlaying CMA-Level Bidding On County-Based Licenses Could Result In A Variety Of Unintended Harms, Leading To A Less-Than-Successful Auction

If CMA-level bidding is permitted alongside county-level bidding, a number of highly inefficient auction outcomes and unintended negative consequences would likely result, including the types of gamesmanship the Commission has traditionally sought to quell. This result would also be directly contrary to the Commission’s goal in the *2018 3.5 GHz Order* of *reducing* auction complexity.¹⁸ At all stages of this proceeding, parties have raised concerns related to package bidding for PALs.¹⁹ Based on past precedent, these concerns are well-founded. For example, following Auction 73, in which the Commission adopted package bidding, commenters strenuously criticized the results after the fact, emphasizing that the package bidding added undue complexity to the auction design, prevented entities interested in serving smaller areas from obtaining spectrum, led to a single bidder running the table, and depressed auction revenues.²⁰ While the CMA-level bidding the Commission contemplates here

¹⁸ See 2018 3.5 GHz Order ¶ 31.

¹⁹ See, e.g., Comments of U.S. Cellular, GN Docket No. 17-258, at 8 (Dec. 28, 2017) (“USCC strongly urges the Commission not to permit package bidding . . . package bidding creates significant and unwarranted biases in favor of the largest bidders.”); see also Letter from Michael P. Goggin, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-258 & AU Docket No. 19-244, at 1-2 (Sept. 16, 2019) (expressing concerns that aspects of the CMA-level bidding could lead to “potential arbitrage” and “strategic auction behavior”). The Wireless Internet Service Providers Association also encouraged the FCC to “ensure that the auction rules afford bidders a fair opportunity to bid on and acquire rural counties.” Letter from Louis Peraertz, Vice President of Policy, WISPA, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 19-244, at 1 (Sept. 20, 2019).

²⁰ See, e.g., Comments of Cellular South, Inc., AU Docket No. 14-78, at 3 n.7 (June 9, 2014) (warning that “the Commission should avoid repeating the mistake [it] made” in Auction 73 by permitting package bidding for certain licenses, because that approach foreclosed participation by smaller bidders and reduced auction revenue; and stating that “[t]he clear lesson to be learned from [Auction 73] is that competitive operators and virtually all other new entrants cannot realistically participate in package bidding for large, combined geographic license areas”); Comments of United States Cellular Corporation, AU Docket No. 13-178, at 14-15 (Aug. 5, 2013) (explaining that package bidding in Auction 73 permitted a

“differ[s] significantly from most package bidding implementations,” the criticisms of package bidding that commenters leveled should nevertheless give the Commission pause in this context.²¹

Moreover, as NCTA has already described in detail in its October 15, 2019, *ex parte* filing in this proceeding, the complexities inherent in the proposed CMA-level bidding procedures introduce very specific and foreseeable unintended harms, all of which would undermine the success of the auction, and the success of the 3.5 GHz band.²²

First, county-level bidders would have strong incentives to engage in gamesmanship and strategic “price-steering” to counties in which a bidder has no genuine interest in order to displace CMA-level demand.²³ In other words, a county-level bidder would be highly incentivized to bid on counties that it does not actually want in the early stages of the auction in order to increase the CMA-level price above the price that CMA-level bidders are willing to pay. Later in the auction, that county bidder could shift its demand to the county license it actually does desire and acquire it at a lower price. A county-level bidder would be very likely to accept the risk of “accidentally” acquiring a less-desired county, given the enormous benefits of successfully winning its desired county at a lower price.

single bidder to acquire virtually all licenses subject to such bidding, and to do so at a “significant discount” compared to other spectrum in the same auction that was not subject to package bidding); Comments of MetroPCS, GN Docket No. 12-268, at 14 (Jan. 25, 2013) (“[T]he combinatorial [i.e., package] bidding process in Auction 73 appears to have played a major role in enabling Verizon to acquire the C Block at a substantially lower per-pop price than the other spectrum sold for.”).

²¹ Public Notice ¶ 29 n.63.

²² See Letter from Danielle J. Piñeres, NCTA, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 19-244 (Oct. 15, 2019) (Oct. 15 NCTA Letter).

²³ See *id.*, Attach. at 5.

It is highly likely that this price steering would happen at much greater levels than the “parking” that regularly occurs in Commission auctions, since the incentives for price steering are so much greater when a county bidder seeks to displace CMA-level demand. The likely outcome is chaotic bidding and inefficient outcomes. Specifically, due to high levels of price steering, it would be much more difficult for county-level auction participants to engage in price and demand discovery – i.e., determining what licenses other bidders truly desire, and how much they value those licenses – as the auction progresses. Price steering would therefore likely result in county prices that do not reflect an efficient demand curve on a county-by-county basis. Furthermore, the higher levels of gamesmanship would greatly disadvantage less sophisticated, “straightforward” bidders that the Commission sought to encourage to participate in order to spur localized deployment.

Second, CMA-level bidding would result in many PALs, particularly those in sought-after CMAs, remaining unsold, despite demonstrated demand from county-level bidders at economically efficient prices.²⁴ An auction that concludes with a significant number of unsold licenses, even in desirable areas where demand was strong, would not be deemed a success or in the public interest. Under the proposal, a CMA-level bidder would be permitted to decrease its demand across all counties in a CMA as long as excess demand existed in at least *one* county in the CMA. If a CMA-level bidder were to reduce its demand across all counties in a sought-after CMA, it is likely that many county-level bidders would not have sufficient eligibility remaining to bid on those individual counties newly available at a later stage of the auction, thus resulting in excess county-level supply and unsold licenses. CMA-level bidders would likely even strategically and intentionally create excess supply by bidding for many 10-megahertz blocks in

²⁴ *Id.*, Attach. at 6.

a CMA and then reducing demand to achieve this outcome, thereby foreclosing competitors at no cost.

For example, there are 17 counties in the CMA encompassing New York City. This CMA is likely to be in high demand from CMA-level bidders, due in large part to the fact that it contains the county in which Manhattan is located – New York County. The presence of CMA-level bidders would drive the price up for all the counties in the CMA, not just New York County. If the CMA-level bidders then reduce their demand by one PAL across the CMA, New York County would likely still be sold given the high likelihood for excess demand for that county by county-level bidders. However, by the time the CMA-level bidders reduce their CMA-wide demand, county-level bidders in the other 16 counties may no longer have sufficient eligibility to bid on those counties at the then-current prices. Those PALs would remain unsold, despite underlying demand from county-level bidders.

The problem illustrated above arises even when bidders engage in straightforward, non-strategic bidding,²⁵ but will be exacerbated by the fact that CMA-level bidders will view the New York CMA as a safe place to park their eligibility. Bidders will know that they will be able to reduce their demand in that CMA, as long as there is any excess demand in New York County, and will then deploy that eligibility elsewhere. In fact, even bidders with no underlying interest in any of the 17 counties in that CMA now will have a much stronger incentive to elect to bid at the CMA-level and then use that CMA to park eligibility. Moreover, the same problem will likely also present itself in other large CMAs.

²⁵ *Id.*, Attach. at 8. As the example shows, even if the CMA-level bidder has a lower value for the CMA than the combined values of county-level bidders and bids in a *straightforward* manner, in a wide range of cases the county-level bidders will be priced out of their counties, and the PALs will ultimately remain unsold after the CMA-level bidder drops its demand.

On a related note, implementing CMA-level bidding could benefit larger bidders at the cost of disincentivizing smaller entities from participating based on the perception that they will not be able to effectively compete against CMA-level bidders. One of the Commission's stated objectives in licensing the 3.5 GHz band by counties is to maximize auction participation in order to ensure that the spectrum in the "band is put to its highest and best use."²⁶ If smaller providers decline to participate in the auction, county-level licenses that these entities might have bid for would be even more likely to remain unsold, potentially further compromising the results of the auction.

Third, the inability for CMA-level bidders to accommodate county-level bidders that seek to acquire a license for an individual county within the CMA could lead to a failure to maximize the value of individual county licenses, and potentially the auction as a whole.²⁷ It would also create an uneven playing field between CMA-level and county-level bidders, disadvantaging county-level bidders. Specifically, a county bidder may place a higher value on an individual county than a CMA-level bidder aggregating value across counties places on that particular county alone, but the county-level bidder would be unable to acquire the sought-after license due to the CMA-level bidder's value aggregation across the CMA. This unintended consequence would artificially increase the concentration of spectrum in the hands of CMA-level bidders, despite competing demand of county-level bidders at high prices.

Finally, while less significant a problem than the three discussed above, accommodating CMA-level bidding in the auction design could force some bidders to pay more for a package of

²⁶ 2018 3.5 GHz Order ¶ 21.

²⁷ See Oct. 15 NCTA Letter, Attach. at 3.

licenses than the face value of their submitted bids.²⁸ The Commission openly acknowledges this auction design oddity: “A bidder that makes a CMA-level bid to reduce demand that is partially applied may face a price for the remaining demand that is higher than its bid price for some of the counties.”²⁹ While this risk is acknowledged, it only adds to the complexity of the auction for potential bidders.

B. The Commission Should Adhere To County-Level Bidding

Because CMA-level bidding could jeopardize the success of the auction and undermine the achievement of the important goals that the Commission set when it designated counties as the geographic license area for PALs, the Commission should adhere to a county-based auction. There is no simple fix that would eliminate the complexity, substantially distorted incentives, and inefficient outcomes that would result from adopting CMA-level bidding. The best approach is to select an appropriate geographic partition and apply it to all blocks; as discussed in Section I, the Commission has already determined that counties are most appropriate for the 3.5 GHz band.

The adoption of a county-based clock auction without CMA-level bidding would result in a simple and powerful auction that is well-understood, low-risk, and proven to be successful. Although there will be a large number of licenses available as compared to prior auctions, it will be relatively easy – particularly for large, sophisticated bidders that wish to operate over areas larger than counties – to successfully aggregate a synergistic package using the same simple, time-tested bidding strategies employed in spectrum auctions in which package bidding was not

²⁸ See *id.*, Attach. at 6.

²⁹ Public Notice ¶ 76.

permitted. Adjusting for the limited additional complexity caused by the number of biddable items would be akin to simply adding rows to an existing Excel spreadsheet.

IV. CMA-LEVEL BIDDING WOULD DELIVER LIMITED BENEFITS

In contrast to the very clear and significant risks to the auction’s success and the Commission’s goals for the 3.5 GHz band created by CMA-level bidding, the benefits of CMA-level bidding are relatively small and uncertain. The Commission’s brief discussion of CMA-level bidding in the Order focused on the ostensible benefits, stating that it would seek comment on allowing package bids to “provide greater flexibility to PAL applicants interested in serving larger areas” and “reduce secondary market transaction costs while still promoting an active secondary market.”³⁰ The Public Notice does not provide additional analysis of the potential benefits of CMA-level bidding,³¹ and does not even affirmatively conclude that CMA-level bidding would provide the desired flexibility, noting that such an approach “*could* permit greater flexibility for bidders seeking to serve areas larger than a county.”³² Indeed, the core element of CMA-level bidding is *to remove* the flexibility of a large bidder to accommodate county-level demand. The source of flexibility is granting the CMA bidder the ability to reduce demand at the CMA level, when doing so creates excess supply. Even if permitting CMA-level bidding would provide large bidders with some desired flexibility, it would likely magnify secondary market transaction costs as a result of the poor price and demand discovery. These

³⁰ 2018 3.5 GHz Order ¶ 40.

³¹ See Public Notice ¶¶ 29-33.

³² *Id.* ¶ 25 (emphasis added)

high transaction costs are apt to frustrate efforts by smaller entities to buy or lease spectrum from large providers that acquired large areas at auction.³³

Adopting CMA-level bidding would not meaningfully advance 5G deployment efforts either. In the *2018 3.5 GHz Order*, the Commission evaluated whether county-level licensing would be sufficient for 5G purposes and concluded that county-sized licenses would likely “ensure that mobile 5G deployments are feasible in the 3.5 GHz band.”³⁴ It further determined that counties are sufficiently large to incentivize and support the economies of scale beneficial for mobile 5G deployments.³⁵

CMA-level bidding may mitigate exposure risk to a certain extent, limiting the possibility that bidders would be unable to acquire a license for one or more important portions of a large CMA, thus thwarting their ability to serve the larger area, or making service uneconomical.

³³ See, e.g., Letter from David D. Rines, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-258, at 2 n.3 (Sept. 13, 2018) (“In addition, holders of large-area PAL CBRS licenses would be unlikely to make appropriate amounts of 3.5 GHz spectrum available to industrial and CII entities via secondary market access. Even where available on the secondary market, it is likely that this spectrum would come at an uneconomic cost or be subject to lease terms and conditions that would prevent industrial and CII operators from accessing meaningful amounts of spectrum.”); Comments of Google LLC, GN Docket No. 17-258, at 18-21 (Dec. 28, 2017) (“According to Commission records, the large wireless carriers who typically win mobile-ready spectrum in auctions only rarely engage in secondary market transactions with smaller entities, much less entities other than established telecommunications companies.”); Comments of General Electric Company, GN Docket No. 17-258, at iii (Dec. 28, 2017) (“Large wireless operators holding these CBRS licenses would be unlikely to make meaningful amounts of 3.5 GHz spectrum available to GE, its IIoT customers, and other non-traditional spectrum users. Even where available on the secondary market, it is likely that this spectrum would come at an exorbitant, uneconomic cost or be subject to lease terms and conditions that prevent GE and its customers from realizing the full potential of IIoT connectivity.”).

³⁴ 2018 3.5 GHz Order ¶ 21.

³⁵ See *id.* ¶ 26 (“[C]ounties cover a large enough geographic footprint to incentivize investment in wider area geographic deployments that take full advantage of the CBSD power limits in the 3.5 GHz band, a particularly important issue for 5G networks.”).

However, the Commission did not discuss exposure risk when considering CMA-level bidding in the *2018 3.5 GHz Order* or the Public Notice, and exposure risk in Auction 105 will be minimal and very manageable.³⁶ Applicants interested in serving larger areas will still have flexibility to acquire the licenses they seek in the absence of CMA-level bidding. As noted above, past spectrum auctions have demonstrated that bidders are able to successfully aggregate a synergistic package of licenses within an auction without package bidding.³⁷ This is an important feature of the simultaneous ascending clock auction that the Commission has proposed.

Moreover, there are several considerations that would significantly mitigate the effect of any potential exposure risk in the 3.5 GHz auction. First, the 3.5 GHz band differs from most other bands allocated for licensed use in that at least 80 megahertz will be available for General Authorized Access (GAA) use in every license area. For example, given the existence of GAA spectrum, an auction participant that is able to acquire only two 10-megahertz blocks instead of the three it desires would still have access to significantly more 3.5 GHz spectrum than just the

³⁶ Indeed, with its single reference to a commenter's discussion of exposure risk in the Order, the Commission implicitly acknowledged that adopting county-sized licenses would appropriately mitigate that risk. *See id.* ¶ 25 n.98.

³⁷ *See, e.g., Auctions of Upper Microwave Flexible Use License for Next-Generation Wireless Services*, Public Notice, 33 FCC Rcd. 7,575 (2018) (Auctions 101 and 102); *Expanding the Economic and Innovation Opportunities Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6,567 (2015) (Auctions 1001 and 1002); *Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014*, Public Notice, 29 FCC Rcd. 8,386 (WTB 2014) (Auction 97); *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014*, Public Notice, 28 FCC Rcd. 13,019 (WTB 2013) (Auction 96); *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, Public Notice, 21 FCC Rcd. 4,562 (2006) (Auction 66); *Broadband PCS Spectrum Auction Scheduled for January 12, 2005*, Public Notice, 19 FCC Rcd. 18,190 (WTB 2004) (Auction 58); *C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000*, Public Notice, 15 FCC Rcd. 19,485 (WTB 2000) (Auction 35).

20 megahertz it won at auction.³⁸ Second, the Commission plans to make available soon a significant amount of additional mid-band spectrum in the adjacent 3.7-4.2 GHz C-band.³⁹ This relative near-term availability means that a bidder that fails to round out its spectrum portfolio with desired mid-band spectrum in the 3.5 GHz auction in certain areas will have a second opportunity to acquire exclusively-licensed mid-band spectrum shortly thereafter, thus significantly diluting any exposure risk that might otherwise arise from an auction in a more isolated context. Finally, the entities most likely to find CMA-level bidding attractive are large, nationwide mobile network operators that already have robust spectrum holdings spread across numerous bands.⁴⁰ These other holdings make it exceedingly unlikely that a given carrier's failure to obtain its optimal number of PALs in a given geographic area, or failure to obtain licenses in every county comprising its desired deployment area, would result in a true gap in coverage.

Additionally, permitting CMA-level bidding is apt to *increase* secondary market transaction costs, contrary to the Commission's stated goal. As described above, permitting

³⁸ See 2018 3.5 GHz Order ¶ 38 (“[T]he unique structure and technical rules governing the 3.5 GHz band . . . largely obviate the need to rely solely on auctioned licenses for access to the band.”).

³⁹ See Remarks of FCC Chairman Ajit Pai Before the 8th Annual Americas Spectrum Management Conference, at 2 (Sept. 24, 2019), <https://docs.fcc.gov/public/attachments/DOC-359818A1.pdf> (stating that the 3.7-4.2 GHz band “is a critical band for 5G, and I’m optimistic that we will have results to show on this front this fall”).

⁴⁰ See, e.g., 2018 3.5 GHz Order ¶ 10 (observing that AT&T, T-Mobile, USCC, and Verizon, along with the trade associations of which these carriers are members, were the chief proponents of licensing the 3.5 GHz band using geographic areas larger than counties); Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-258, at 3 (Oct. 16, 2018) (supporting the Commission's decision to seek comment on “some form of package or combinatorial bidding,” because this approach caters to the interests of “wide-area operators”).

CMA-level bidding could lead to inefficient outcomes in which larger, more sophisticated auction participants bidding at the CMA-level could amass large amounts of spectrum, potentially including spectrum in counties they do not highly value, despite competing demand from smaller county-level bidders. This incentive structure is less likely to lead to the scenario the Commission apparently envisioned in which “providers with larger-area needs have to turn to the secondary market to aggregate additional licenses, . . . thus increasing transaction costs.”⁴¹

Instead, it appears more likely to result in a situation in which secondary market transactions are necessary to resolve auction inefficiencies stemming from the poor bidding incentives induced by CMA-level bidding. Large bidders are apt to win too many 10-megahertz blocks in certain counties, because they cannot reduce demand on a county basis. Many blocks will remain unsold as large bidders reduce demand at the CMA-level. And smaller bidders may win counties they do not want as a result of the poor price and demand discovery created by CMA-level bidding.

⁴¹ 2018 3.5 GHz Order ¶ 32.

V. CONCLUSION

The Commission struck the right balance when it designated counties as the geographic license area for PALs, and it should decline to adopt CMA-level bidding in Auction 105. Limiting the auction to county-level bidding would deliver on the clear public interest benefits the Commission anticipated when it adopted county-sized PALs. By contrast, CMA-level bidding would greatly increase complexity, introduce significant inefficiencies, and likely produce a host of unintended and detrimental consequences without corresponding benefits. These unintended consequences would jeopardize the success of the auction, and the ultimate success of the 3.5 GHz band.

Respectfully submitted,

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