

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services)	AU Docket No. 18-85
)	
Comment Sought on Competitive Bidding Procedures for Auctions 101 (28 GHz) and 102 (24 GHz))	
)	
Bidding in Auction 101 Scheduled to Begin November 14, 2018)	
)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Steven K. Berry
President & CEO

Rebecca Murphy Thompson
EVP & General Counsel

Courtney Neville
Associate General Counsel

COMPETITIVE CARRIERS ASSOCIATION
601 New Jersey Avenue NW, Suite 820
Washington, DC 20001

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COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”)¹ submits these comments in response to the *Public Notice* (“Notice”) in the above-captioned proceeding in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on competitive bidding procedures for auctioning 28 GHz and 24 GHz millimeter wave (“mmW”) spectrum.² CCA applauds the FCC’s efforts to unleash additional spectrum resources to ensure the United States leads the deployment of 5G. mmW spectrum promises opportunity for investment, innovation, and competition, and for these reasons, any rules adopted to auction this spectrum must provide competitive wireless carriers the opportunity to develop next-generation

¹ CCA is the 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 subscribers to regional and national providers serving millions of customers. CCA also represents associate members consisting of small businesses, vendors, and suppliers that provide products and services throughout the mobile communications supply chain.

² *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services: Comment Sought on Competitive Bidding Procedures for Auctions 101 (28 GHz) and 102 (24 GHz)*, Public Notice, AU Docket No. 18-85 (rel. Apr. 17, 2018) (“*Public Notice*”).

technologies on an equal playing field with the largest carriers. CCA therefore provides tailored recommendations to ensure all carriers can efficiently deploy vital mmW spectrum including auctioning all available mmW bands as soon as feasible, modifying certain bidding procedures, ensuring anti-collusion rules are not overly restrictive, and promptly auctioning unconstructed mmW licenses for the benefit of all providers.

I. THE FCC MUST AUCTION ALL AVAILABLE mmW SPECTRUM BANDS AS EXPEDITIOUSLY AS POSSIBLE

CCA supports the FCC’s goal to expeditiously auction mmW spectrum and encourages the Commission to adopt procedures that facilitate investment and innovation. While the Notice is an important start, minor improvements will ensure mmW spectrum auctions enhance next-generation and 5G deployments in both urban and rural areas of the United States and enhance auction revenue to benefit American tax-payers and the Treasury. To that end, CCA supports the FCC’s proposal to first auction 28 GHz spectrum (“Auction 101”) commencing on November 14, 2018.³ As CCA has explained,⁴ the 28 GHz band is likely to support 5G deployments sooner than other mmW bands because it has emerged as a “focus” of academic and industry efforts in 5G,⁵ and equipment development in 28 GHz is “more advanced than in other bands.”⁶

³ Notice ¶ 11.

⁴ Reply to Joint Opposition of Verizon and Straight Path of Competitive Carriers Association at 7, ULS File No. 0007783428 (filed Aug. 25, 2017) (“CCA Verizon-Straight Path Reply”). *See also*, Application for Review, or in the Alternative, Petition for Reconsideration of Competitive Carriers Association, ULS File No. 0007783428 at 15-16 (filed Feb. 20, 2018) (“CCA Verizon-Straight Path Application for Review”).

⁵ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-89, 31 FCC Rcd. 8014, 8025 ¶¶ 19- 23 (2016) (“*First Report & Order*”).

⁶ Letter from Joan Marsh, Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 GN Docket No. 14-177 (filed Jul. 6, 2016) (noting that the 28 GHz band is more likely to “support . . . initial 5G deployments in the U.S. and worldwide” than other mmW spectrum, and that “licensee diversity” is “particularly” important “in 28 GHz, which is a seminal band for 5G development and will be critical to early 5G deployment”).

Moreover, the 28 GHz band has active authorizations covering “about 75 percent of the U.S. population,”⁷ making it immediately available for next-generation deployments. While CCA continues to encourage the FCC to auction all mmW spectrum simultaneously,⁸ separating Auction 101 from other mmW bidding could promote efficient use of mmW spectrum to quickly deploy 5G. Commencing the 24 GHz auction (“Auction 102”) after Auction 101 also provides the FCC meaningful opportunity to resolve outstanding issues related to other mmW spectrum bands, in particular whether to require operability across the entire 24 GHz band.⁹

After the FCC concludes Auction 101, it should auction all remaining and available mmW bands together including the 24 GHz, 37 GHz, 39 GHz, and 47 GHz bands. Development and testing of equipment in the 39 GHz band is approximately equal to development and testing in the 28 GHz and 37 GHz bands. Delaying auction of this spectrum will delay service deployment and create disparity with respect to the 28 GHz band; effectively giving dominant carriers a head start in 5G deployment. This also is true for the 37 GHz band. As a green field band adjacent to 39 GHz band, the 37 GHz band can be readily deployed. While the 47 GHz band is a higher band, making it available during the same auction as the other bands will inform bidding and allow bidders to move between various substitutable bands. Further, the FCC must be mindful that the 28 GHz band in particular is already heavily encumbered based on secondary market acquisitions. As explained in more detail below, in the top 50 markets only two percent

⁷ *First Report & Order* ¶ 19.

⁸ *See*, Letter from Rebecca Murphy Thompson, EVP & GC, CCA to Marlene H. Dortch, Secretary, FCC, AU Docket No. 18-85 (filed Apr. 11, 2018) (“CCA April EP”).

⁹ *See*, Comments of Competitive Carriers Association, GN Docket No. 14-177 (filed Jan. 23, 2018) (“CCA SF Second FNPRM Comments”).

of spectrum in the 28 GHz band is still available; therefore, including auction of the 37 GHz, 39 GHz, and 47 GHz bands along with the 24 GHz band will foster competition.

Additionally, delaying auction of the 37 GHz, 39 GHz, and 47 GHz bands could stymie the development of mmW equipment. Indeed, the 39 GHz band in particular has emerged as uniquely important due to the enormous amounts of contiguous bandwidth available and existing licensing regime, and equipment in the 24 GHz band is still being developed.¹⁰ And like the 28 GHz band, the 39 GHz band has been subject to intensive research and development.¹¹ Auctioning the 37 GHz and 39 GHz bands together with remaining mmW spectrum, therefore, promotes interoperability and creates a clean licensing regime for stakeholders interested in deploying next-generation technologies in these bands.

A single auction of available mmW bands also provides potential bidders sufficient information when determining whether and on what bands to bid. For example, entities will acquire a clear understanding of price levels and license differences after Auction 101, which will help plan for capital expenditures and promote future exchanges between bands. As CCA has noted, providers expend significant amounts of capital and resources to participate in FCC spectrum auctions. More specifically, rural and regional carriers are not as well-funded, and experience a more difficult time raising significant upfront capital. The FCC should therefore seize the opportunity to make as much mmW spectrum available to as many stakeholders as possible by implementing common-sense procedures and auctioning as many mmW bands together as feasible.

¹⁰ Reply Comments of Verizon at 4, GN Docket Nos. 14-177, et al. (filed Feb. 26, 2016); *see First Report & Order* ¶ 101 (noting that the 37 GHz band is “adjacent to the 39 GHz band, which presents an opportunity to create a larger, contiguous 37/39 GHz band, subject to similar technical and operational rules.”).

¹¹ *See*, CCA Verizon-Straight Path Application for Review at 16.

In the alternative, if the Commission refrains from simultaneously auctioning all remaining and available mmW spectrum after Auction 101, it should at minimum auction the 47 GHz band with the 24 GHz band.¹² The Notice recognizes that 24 GHz licenses are possible substitutes or complements for other licenses, and thus it makes sense for the FCC to auction this band alongside the 47 GHz band.¹³ Mobile carriers can deliver the ultrafast mobile broadband speeds, low latencies, and network densification required to provide 5G services only by accessing large expanses of contiguous spectrum available in the mmW bands. The way to achieve this is to ensure that mmW spectrum is available to as many providers as possible on an equal timeframe.

II. MODIFIED BIDDING PROCEDURES WILL ENHANCE AUCTION PARTICIPATION AND REVENUE

The FCC can enhance auction participation by modifying its proposed bidding procedures for at least Auction 101 and Auction 102. First, the Commission should clarify that Auction 102 will commence *after* the conclusion of Auction 101.¹⁴ This will avoid confusion and ensure the Commission’s anti-collusion rules are applied to the auction underway at that time.¹⁵ To that end, the FCC also should specify that the filing window for Auction 102 will open only after bidding in Auction 101 concludes.¹⁶ More specifically, the short-form application deadline for Auction 102 should be wholly separate from the down payment deadline associated with Auction 101. As the Notice explains, if the filing window for Auction 102

¹² See, e.g., CCA SF Second FNPRM Comments; CCA April EP.

¹³ Notice ¶ 71.

¹⁴ *Id.* ¶ 11.

¹⁵ *Id.* ¶ 12; Letter from Steve Sharkey, Vice President – Government Affairs, Technology and Engineering Policy, T-Mobile US Inc., to Marlene H. Dortch, Secretary, FCC, AU Docket No. 18-85 (filed Apr. 3, 2018) (“TMUS EP”).

¹⁶ See, CCA April EP.

occurs prior to the close of bidding in Auction 101, entities wishing to participate in either auction would be applicants during overlapping periods of time.¹⁷ This breeds confusion and imposes anti-collusion requirements on carriers for an indiscriminate timeframe, which unduly burdens providers from entering into unrelated business ventures during an extensive period.

The FCC also must be mindful of competitive providers' limited resources. Given the extensive upfront capital needed to participate in any auction, potential bidders may be unwilling or unable to participate in a series of mmW auctions, thereby reducing participation and auction revenue. The Commission should therefore consider reducing the upfront payment and opening bid prices for Auction 101 and Auction 102. At minimum, if the opening bid and upfront prices prove to be excessive in Auction 101, the Commission should adjust those amounts prior to Auction 102 to better reflect market realities. Doing so will encourage robust participation by providers of all sizes.

III. THE COMMISSION MUST ENSURE ITS ANTI-COLLUSION RULES ARE NOT OVERLY RESTRICTIVE

In addition to minor modifications to competitive bidding procedures, the Commission should ensure its prohibited communications rules for the mmW auctions are not overly restrictive. Specifically, the Commission should not apply its anti-collusion rules from the 600 MHz incentive auction ("Auction 1000") to mmW auctions and should clarify that each individual mmW auction will have a separate and distinct quiet period. As currently drafted, the Commission's anti-collusion rules for Auction 101 and Auction 102 are overly restrictive for carriers, including those other than the nationwide carriers, in both application and breadth.

¹⁷ Notice ¶ 14.

The Notice proposes to accept applications for Auction 102 before Auction 101 closes but explains that “if the short-form window for Auction 102 occurs before the close of Auction 101, entities wishing to participate in either auction will be applicants during overlapping periods of time. In this scenario, based on the relationship between the two auctions, we propose to apply the prohibition of section 1.2105(c)(1) across both auctions.”¹⁸ While CCA understands the importance of prohibiting inappropriate conversations and colluding during an auction period, as written the current would apply to applicants in both auctions, during the same period.¹⁹ This is much too restrictive, especially for competitive providers, and should be reconsidered.²⁰

Additionally, the current rules are ambiguous regarding what behavior constitutes an “understanding” or “communication” relating to “post-auction market structure” between a “nationwide provider” and a regional operator. This ambiguity restricts both rural, regional providers and nationwide carriers from properly planning for upcoming spectrum auctions and other unrelated business arrangements. For this reason, the FCC should clarify that its anti-collusion rules apply only to agreements that relate to the licenses at auction, and communicate, directly or indirectly, bidding at auction, bidding strategies, or post-auction market structure.²¹

¹⁸ *Id.* ¶ 22.

¹⁹ *Id.* ¶¶ 11-14, 12, 42, 81.

²⁰ *See also*, letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Sept. 29, 2015) (“CCA ACR Ex Parte Letter”); letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 9, 2015) (“CCA ACR Ex Parte Letter”); letter from Rebecca Murphy Thompson, Competitive Carriers Association (“CCA”), Julie Kearney, CEA, Scott K. Bergmann, CTIA – The Wireless Association (“CTIA”), and Jill Canfield, NTCA, to Marlene H. Dortch, FCC, RM-11395, GN Docket No. 13-185, AU Docket No. 14-78, GN Docket No. 12-268 (filed May 30, 2014).

²¹ *See*, 47 C.F.R. § 1.2105(a)(2)(ix)(C); *Part 1 Order* at ¶ 197 (“stating that any agreement for the transfer or assignment of licenses existing at the deadline for filing short-form applications will not be regarded as a prohibited arrangement, provided that it does not both relate to the licenses at auction and include terms

Based on this definition, agreements addressing only operational aspects of deploying, expanding, or providing mobile broadband service should be clearly exempt from the prohibited communications rules for all mmW auctions.²² Indeed, many carriers, especially those serving rural and remote areas, continue to deploy 3G and 4G networks on the road to 5G. The FCC’s anti-collusion rules should not inadvertently force providers to stall construction for essential communications deployments, and in turn delay advanced communications to many Americans. In addition, providers are discussing upcoming deployments for the First Responder Network Authority’s (“FirstNet”) national public safety broadband network and continue to use other partnerships like the Verizon LTE in Rural America (“LRA”) program for roaming and other network strategies.²³ The scope of the Commission’s anti-collusion rules, as currently drafted, make it particularly hard for these entities to conduct business as usual.

To be clear, the rule states that “[a]fter the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment

or conditions regarding a shared bidding strategy and expressly does not communicate bids or bidding strategies”).

²² See, *Updating Part 1 Competitive Bidding Rules, Report and order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order*, 30 FCC Rcd 7493 ¶¶ 182-186 (2015) (“*Part 1 Order*”); see also, 47 C.F.R. § 1.2105(a)(2)(ix).

²³ Verizon, About – Product Responsibility, available at <http://www.verizon.com/about/product-responsibility>.

deadline.”²⁴ The rule in no way could be read to prevent carriers from participating in the auction if they in the middle of merger or acquisition discussions. While the Sprint and T-Mobile proposed transaction comes to mind, many other carrier members surely have ongoing business discussions about roaming, equipment procurement, and acquisitions. These business discussions are part of competitive carriers’ everyday operations and therefore necessary for ongoing operations.

More specifically, announced transactions unrelated to the bands that are the subject of the upcoming auctions simply are not the types of “understandings” or “communications” related to “post-auction market structure” that the rules were intended to address.²⁵ The Commission has noted that agreements between an applicant and another entity “solely for funding purposes, *i.e.*, with no agreements with regard to bids, bidding strategies, or post-auction market structure relating to the licenses at auction,” are not prohibited joint-bidding arrangements.²⁶ The Commission subsequently issued similar guidance clarifying that arrangements or discussions among auction applicants (or discussions between nationwide providers where at least one is an applicant) that relate to post-auction market structure are permissible as long as they do not relate to the licenses being auctioned.²⁷ The “and” in the rule is a limiting factor. Communications

²⁴ 47 C.F.R. § 1.2105.

²⁵ *See*, 47 C.F.R. § 1.2105(a)(2)(ix).

²⁶ *See, Updating Part 1 Competitive Bidding Rules*, Report and order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order, 30 FCC Rcd 7493 ¶ 197 (2015).

²⁷ *See, Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 ¶¶ 33-35 (2015).

may occur so long as they do not 1) relate to the licenses being auctioned *and* 2) involve bids, bidding strategies and post-auction market structure.²⁸

Finally, the FCC should adopt its proposal to separately apply the post-auction down payment deadline when determining when the quiet period ends for each auction.²⁹ Auction 101's outcome will significantly influence bidders' behavior in Auction 102 and beyond.

Indeed, the Commission must provide parties "an adequate period [] after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services."³⁰

Following Auction 101's conclusion, applicants will reevaluate their spectrum holdings and formulate bidding strategies in advance of subsequent mmW auction short-form deadlines. As noted above, this period of time will be especially critical for rural and regional providers seeking to smartly allocate limited resources to acquire mmW spectrum. Accordingly, the Commission should ensure that its anti-collusion rules separately apply to each mmW auction to provide ample opportunity for carriers to reassess the market landscape after the conclusion of Auction 101.

IV. THE FCC SHOULD PROMPTLY ADDRESS PENDING APPLICATIONS FOR REVIEW TO ENSURE PREVIOUSLY UNCONSTRUCTED mmW LICENSES ARE AVAILABLE TO ALL PROVIDERS AT AUCTION

Finally, in addition to promptly auctioning all available mmW spectrum, the FCC must be mindful that secondary market transactions for mmW spectrum have placed enormous

²⁸ More expansive interpretations of the anti-collusion rules risk running afoul of principles of fair notice and unconstitutional vagueness; violating the protected speech rights of applicants; impermissibly singling out certain applicants for disparate treatment; undermining key procedural protections due regulated entities by purporting to effectuate individualized adjudications under the guise of a generalized rulemaking; and lacking reasoned basis justified by substantial evidence in the record.

²⁹ Notice ¶ 23.

³⁰ *See*, 47 U.S.C. § 309(j)(3)(ii); Notice ¶ 12.

amounts of 28 GHz and 39 GHz spectrum into the hands of two carriers before services and standards are developed. To ameliorate this first-mover advantage, the Commission should promptly grant CCA’s pending Applications for Review of the Verizon-Straight Path transaction and AT&T-FiberTower deal to ensure that previously unconstructed mmW licenses are made available for competitive bidding to all providers.

With AT&T and Verizon largely in control of the 28 GHz and 39 GHz bands,³¹ the FCC should reconsider these transactions and auction unconstructed mmW licenses for the benefit of all tax-payers and the Treasury. Reconsideration would be consistent with the FCC’s rules, Chairman Pai’s Digital Empowerment Agenda and the importance of “buildout obligations” to “incentivize investment in rural America,”³² as well as Commission precedent against parties that warehouse or fail to buildout spectrum.³³

Lack of access to spectrum is a significant roadblock on the way to next-generation technologies and 5G. As CCA has noted, mmW spectrum is especially important to many rural carriers’ operations and their ability to expand next-generation deployments. Unleashing mmW

³¹ See, Letter from Courtney Neville, Policy Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC at 3, GN Docket No. 14-177, IB Docket Nos. 15-256 & 97-95, WT Docket No. 10-112, ULS File Nos. 0007652635, 0007652637, 0007765708, & 0007783428 (filed Oct. 20, 2017).

³² FCC, *A Digital Empowerment Agenda*, Remarks of Commissioner Ajit Pai at the Brandery, at 5 (Sept. 13, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf (proposing “to increase the buildout obligations that apply to wireless providers,” and, “for licenses that the FCC has already issued,” taking a “fresh look at the renewal stage and the reasonable steps we can take to incentivize investment in rural America”); see also FCC, *Summary of Commissioner Pai’s Digital Empowerment Agenda* (Sept. 13, 2016), available at <https://www.fcc.gov/document/commissioner-pais-digital-empowerment-agenda/summary>.

³³ See, e.g., letter from Roger S. Noel, Wireless Telecommunications Bureau, FCC, to Douglas Minster, SAL Spectrum, LLC, 32 FCC Rcd. 6543, 6545 (WTB 2017) (denying a six-month extension to a licensee that offers facilities-based service and failed to meet an interim buildout deadline only because it had “stretched” itself “thin” building wireless facilities in other licensed areas); *Terrestar Corp. Request for Temporary Waiver of Substantial Service Requirements for 1.4 GHz Licenses*, DA 17-995 (WTB Oct. 10, 2017). See also, CCA Application for Review of AT&T/FiberTower Consent Order at 16, fn 51.

spectrum to all carriers at auction will provide industry a meaningful opportunity to develop a dynamic and competitive marketplace today and deploy next-generation 5G services tomorrow.

V. CONCLUSION

For the forgoing reasons, the FCC should adopt certain proposals to promptly auction all available mmW spectrum to promote competition and innovation throughout the mobile ecosystem, as detailed herein.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Steven K. Berry

Rebecca Murphy Thompson

Courtney Neville

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601 New Jersey Avenue NW, Suite 820

Washington, DC 20001

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