

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Comment Sought on Competitive Bidding)	AU Docket No. 19-59
Procedures for Auction 103)	
)	
To: The Commission		

COMMENTS OF PVT NETWORKS, INC.

PVT Networks, Inc. (“PVT” or “the Company”), by its attorneys, hereby submits reply comments on the Commission’s proposed procedures to be used for Auction 103, the incentive auction of Upper Microwave Flexible Use Service (UMFUS) licenses in the Upper 37 GHz (37.6-38.6 GHz), 39 GHz (38.6-40 GHz), and 47 GHz (47.2-48.2 GHz) bands.¹

After review of the comments filed in this proceeding, PVT continues to have significant concerns about the Commission’s proposal to group Upper 37 GHz Band and 39 GHz Band channels together as “Category M/N” blocks for purposes of clock phase bidding. This proposal would not only have a significant impact upon the substantive interference protection rights to which PVT and other 39 GHz Band incumbents are entitled, but treating Upper 37 GHz Band and 39 GHz Band channels as fungible when they are “far from perfect substitutes”² would do irreparable harm to PVT and other smaller service providers by restricting their ability to acquire spectrum in their desired millimeter wave (mmW) band. PVT therefore joins WISPA in urging the Commission to establish separate categories for the blocks in the Upper 37 GHz and 39 GHz bands. Moreover, to address concerns raised by WISPA and RWA that Partial Economic Area

¹ See *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz and 47 GHz Bands for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 103*, Public Notice, FCC 19-35 (rel. April 15, 2019) (“*Auction 103 Procedures Comment PN*”).

² See Comments of the Wireless Internet Service Providers Association, filed May 15, 2019 (“*WISPA Comments*”) at p. 6.

(“PEA”) service areas are too large considering the relatively short range of the upper microwave bands,³ and that smaller service providers will be precluded from accessing the extremely large supply of UMFUS spectrum licenses being made available in Auction 103,⁴ PVT also urges the Commission to consider licensing the Upper 37 GHz band on the basis of county-sized geographic licenses. Adopting both of these proposals would be in the public interest because this would encourage robust participation in Auction 103 by a broad and especially innovative segment of the wireless industry (small and rural service providers) in a manner that should not delay or add to the cost or complexity of the 39 GHz band rebanding effort.

In its initial comments, PVT urged the Commission to limit the availability of Lower 37 GHz band channels in certain geographic areas identified by NTIA, and to make available for bidding Category M and Category N licenses as separate products in PEA markets adjacent to identified coordination zones. However, upon review of other proposals in the docket, PVT believes it would make more sense on behalf of all potential auction participants for the Commission to treat Category M and Category N channel blocks as separate clock-phase products on a nationwide basis. Separating the Category M and Category N products would address PVT’s concern that it be allowed to retain the same interference protection rights that it bargained for when it acquired its 39 GHz licenses over a decade ago. It would guarantee that the vouchers PVT would be entitled to receive in exchange for relinquishing its incumbent 39 GHz licenses would be sufficient to acquire PEA blocks of contiguous 39 GHz band spectrum. Grouping the Category M/N licenses together would instead put a premium on assignment phase bidding, a process that would add significantly to the cost and uncertainty of bidding in Auction

³ See Comments of the Rural Wireless Association, Inc., filed May 15, 2019 (“RWA Comments”) at p. 2.

⁴ WISPA Comments at p. 2.

103, and one that would always favor deep-pocketed nationwide carriers. Bidders may have different reasons for wanting to pursue spectrum licenses in the Upper 37 GHz band, or in the 39 GHz band. Comments of WISPA and PVT make that clear. The Commission would promote confidence and certainty in its Auction 103 procedures, as well as in the 39 GHz rebanding process, if smaller carriers can be assured that the spectrum rights that they bargained for in the clock phase are valued fairly, and are the same as what they ultimately end up with when assignment phase bidding has concluded.

PVT also believes that treating Category M and N licenses as separate products nationwide is in the public interest because it could facilitate resolution of another concern voiced by small carriers – that of PEA service areas being too large for many potential Auction 103 participants to swallow in light of their limited resources and more focused/localized business plans. In this regard, RWA rightly observes that “[g]iven the less robust signal propagation of high-band spectrum and the performance requirements associated with UMFUS licenses, the capital costs of servicing a PEA-sized license might be too much for small and rural carriers to bear, and thus provide a barrier to participating in Auction 103.”⁵ Indeed, the Commission itself previously recognized the numerous benefits of county-based licensing for mmW spectrum bands in the *Spectrum Frontiers* docket.

We believe there may be several advantages to county-based licenses. First, we believe county licenses best fit the localized types of services we expect to be offered in the mmW bands. These bands do not propagate well over long distances, and when used in mobile applications, are expected to provide coverage of areas measured in meters, not kilometers. Second, establishing smaller licenses could provide licensees with additional flexibility to target their deployments to those areas where they need the capacity. Under the existing framework in 28 GHz and 39 GHz, a licensee must meet buildout for its entire BTA or EA or lose its license. Establishing smaller

⁵ *Id.*

license areas will allow licensees to base their deployment decisions on market forces and customer demand. If it does not make business sense for a licensee to build in a particular county, it can sell or lease the license for that county. Third, smaller license areas reduce the potential for warehousing spectrum; again, licensees will be more likely to acquire and hold only the licenses they need to meet their customers' demand. Fourth, county based licenses could equally facilitate access by both small carriers and large carriers. Smaller license areas allow smaller carriers to better tailor their spectrum acquisitions to the locations for which they need it the most. Smaller license areas would facilitate access by larger carriers because such carriers could both narrowly target the areas in which they need the additional spectrum or aggregate the counties—which serve as the building blocks for traditional license areas—into larger license areas, thus achieving economies of scale.⁶

All of these flexibility arguments still apply, and the market's demand for county-based mmW spectrum was not fully met by the availability of county-based licenses for 28 GHz spectrum in Auction 102. For one, the 28 GHz spectrum in that auction was not available on a nationwide, but rather only in counties where LMDS A-Block licenses had been forfeited due to non-construction or otherwise voluntarily returned to the FCC. Making the Upper 37 GHz band licenses available for bidding separately from 39 GHz band licenses and on a county-by-county basis would allow the Commission to achieve all of the public interest benefits enumerated in the *Spectrum Frontiers NPRM*. PVT also believes it would likely increase the level of competition in bidding and ultimately result in a fairer and more equitable allocation of initial mmW spectrum licenses nationwide among large and small service providers, entrepreneurs and companies that want to acquire mmW spectrum rights for internal use.

The Auction 103 procedures proposed by PVT are fair because it will ensure that incumbent 39 GHz licensees retain rights to spectrum in the same incumbent band, and they are economically sound because this would let the marketplace more accurately value the 39 GHz

⁶ *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Notice of Proposed Rulemaking, 30 FCC Rcd 11878 at 11912, para. 111 (“*Spectrum Frontiers NPRM*”) (2015).

band rights of incumbent licensees in areas where there is likely to be a disparity (and quite possibly a significant disparity) in value between the Upper 37 GHz band and the 39 GHz band. As a result, it would likely encourage broader participation in the incentive auction. Creating separate categories and allowing separate bidding for generic Category M and Category N license blocks should not be difficult for the FCC to implement since it has successfully auctioned multiple categories of mmW licenses at the same time in Auctions 101 and 102.

CONCLUSION

For the reasons discussed above, and to ensure that the public interests benefits of broad participation in Auction 103 and mmW spectrum licensing opportunities by designated entities as mandated in Section 309(j) of the Communications Act, PVT respectfully requests that the Commission modify its proposed Auction 103 procedures consistent with these comments.

Respectfully submitted,
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