

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

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| In the Matter of |) | |
| |) | |
| Use of Spectrum Bands Above 24 GHz For |) | GN Docket No. 14-177 |
| Mobile Radio Services |) | |

COMMENTS OF VERIZON

William H. Johnson
Of Counsel

Charla M. Rath
Gregory M. Romano
1300 I Street, NW
Suite 500 East
Washington, DC 20005
(202) 515-2574

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I. INTRODUCTION AND SUMMARY.

Verizon supports the Federal Communications Commission’s (“Commission” or “FCC”) proposal to reorganize the 39 GHz band (38.6-40.0 GHz) and resolve legacy issues that diminish the promise of this important swath of spectrum for 5G and other next-generation services. In particular, with the modifications described below, the proposed 39 GHz auction design offers a fair and reasonable approach that will foster a robust auction and promote efficient spectrum use by incumbents and new entrants alike.

The *Fourth Further Notice of Proposed Rulemaking* addresses two key challenges to repurposing the 39 GHz band: incumbent holdings are licensed in 50 megahertz blocks; and there are hundreds of partially encumbered licenses (Rectangular Service Area (“RSA”) licenses that do not conform to Partial Economic Areas (“PEAs”) and PEA licenses and channel blocks that overlap and must protect those RSA licenses).¹ Taken as a whole, the Commission’s proposals provide for market-based reconfiguration of the 39 GHz band, reduce encumbrances that threaten the utility of this spectrum for 5G, and create more contiguous spectrum holdings,

¹ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et al.*, Fourth Further Notice of Proposed Rulemaking, FCC 18-110, ¶ 4 (rel. Aug. 3, 2018) (“*Fourth FNPRM*”).

while protecting incumbent licensees' spectrum usage rights and advancing opportunities for new entrants. To that end, Verizon:

- Supports the proposed change in size of license blocks in the 39 GHz band (as well as in the Upper 37 GHz and 47 GHz bands) from 200 megahertz to 100 megahertz, which are more consistent with incumbent holdings in the 39 GHz band and the baseline building block for 5G services channelization.
- Supports the proposed 39 GHz auction design, with a few modifications and clarifications:
 - The FCC should equate an incumbent's offer to relinquish its licenses to an upfront payment in the purchase of bidding eligibility. If, however, an incumbent wishes to be eligible to bid on more spectrum than it currently holds, that incumbent should make a cash upfront payment to obtain bidding eligibility for additional licenses just as any bidder would.
 - The FCC should set low minimum opening bids to encourage participation and provide for a robust auction.
 - The FCC should prioritize blocks supplied by incumbent licensees over blocks held by the FCC to encourage full incumbent participation, with fractional licensees receiving additional priority.
 - The FCC should apply bidding credits only to cash payments required from winning forward auction bidders.
 - The FCC should confirm that all nonparticipating incumbent licenses will be converted into new licenses that conform with the reconfigured 39 GHz band plan (100 megahertz licenses in repacked frequencies). This confirmation will enable incumbents to participate in the auction without recognizing gain for federal income tax purposes—thereby encouraging incumbent auction participation.
- Supports voluntary rebanding and, with modest changes, the pre-auction voucher exchange.
 - Voluntary rebanding has been hampered by new tax rules that exclude license exchanges from “like kind” nonrecognition treatment under Internal Revenue Code section 1031, and by the strict contiguity definitions found in the Voluntary Rebanding Public Notice that often restrict logical block re-alignment. Because of this, certain incumbents have turned to limited use of modified Special Temporary Authority to gain contiguity in the Upper 37 GHz band. The proposed auction design and pre-auction voucher exchange,

however, with certain clarifications and adaptations will further the public interest.

- The FCC should adopt a feasible pre-auction voucher exchange approach that will soften the “rough edges” of fractional vouchers and decline to adopt its proposal to restrict incumbents to the nearest integer up or down in their pre-auction exchanges of vouchers.
- Urges the FCC to confirm that it will consider blocks in the 47 GHz band as a separate auction “product” from those in the 39 GHz and Upper 37 GHz bands.

With these modifications and clarifications, Verizon supports the *Fourth FNPRM* and urges the Commission to act swiftly to introduce this newly reconfigured band into the 5G marketplace.

II. THE PROPOSAL TO RECONFIGURE EXISTING 39 GHz SPECTRUM HOLDINGS, WITH MODIFICATIONS, IS A SOUND PATH TO RATIONALIZE THE BAND FOR 5G AND OTHER NEXT-GENERATION SERVICES.

The 39 GHz reconfiguration proposal in the *Fourth FNPRM* is a significant improvement from the original AT&T voucher auction concept that Verizon opposed earlier this year.² Of particular relevance, the Commission’s auction design – with certain modifications and clarifications as proposed in Part IV. below – would not materially harm or disadvantage incumbent 39 GHz licensees.

As an initial matter, the *Fourth FNPRM*’s auction design squarely addresses a key concern Verizon raised earlier – that an incumbent 39 GHz licensee could be forced to make additional payments to retain its existing spectrum usage rights. As contemplated, prior to the assignment phase of the auction, no incumbent would generally be required to make a cash payment to maintain the same level of 39 GHz band spectrum holdings. As the Commission

² See Letter from Charla M. Rath, Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177 (filed Apr. 24, 2018) (“Verizon April 24, 2018 Letter”); Letter from Gregory M. Romano, Vice President & Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177 (filed Jan. 25, 2018) (“Verizon Jan. 25, 2018 Letter”).

observes, the proposal to reconfigure the band into 100 megahertz-wide licenses rather than 200 megahertz-wide channels will facilitate a realignment process for incumbent licensees that currently hold 2 x 50 megahertz licenses, without additional payment.³ Further, the *Fourth FNPRM* proposes a pre-auction exchange program – another innovation that will encourage incumbents to voluntarily exchange licenses and will result in fewer PEAs in which an incumbent retains a fractional voucher at the start of the auction. Finally, any incumbent that seeks either to use a voucher as credit to acquire a reconfigured block in another PEA or to exercise a “cash out” option – but who is left holding an unredeemed voucher after the auction – should retain a newly reconfigured 39 GHz band license in the same PEA.

Overall, the proposal – with modifications described below – provides a fair and reasonable means to reduce encumbrances and reconfigure existing holdings into contiguous spectrum blocks. Commission action in this proceeding will constitute another important and groundbreaking spectrum reform that will help to spur investment and innovation and to ensure U.S. leadership in the deployment of 5G services.

III. THE MODIFIED 100 MEGAHERTZ CHANNEL BAND PLAN WILL FACILITATE LICENSE REALIGNMENT AND MAXIMIZE EFFICIENT SPECTRUM USE.

Verizon supports the Commission’s proposal to adopt 100 megahertz-wide license blocks in the 39 GHz band, as well as in the Upper 37 GHz (37.6-38.6 GHz) and 47 GHz (47.2-48.2 GHz) bands. As the Commission recognizes, for the 39 GHz band, this change “should better accommodate the repacking of incumbents,” which for the most part currently hold non-contiguous paired 50 megahertz blocks.⁴ Use of 100 megahertz-wide license blocks rather than the previously adopted 200 megahertz-wide framework will simplify the realignment process,

³ *Fourth FNPRM* ¶ 9 (citing Verizon Jan. 25, 2018 Letter at 1-2).

⁴ *Fourth FNPRM* ¶ 9.

reduce the presence of partial licenses in the post-auction 39 GHz band, and aligns with the 3GPP's 5G specifications for the band.⁵

Further, as Verizon explained in an *ex parte* letter in this proceeding, conducting a voucher auction using a 200 megahertz block size would have serious weaknesses that could cause existing spectrum licenses to be undervalued and force incumbents either to pay more money just to maintain their current spectrum positions or to accept a reduced amount of spectrum in a particular market.⁶ A block size of 100 megahertz should boost participation in the auction, significantly improving the prospects for its success and advancing the Commission's goal of maximizing the efficient use of the band for new 5G services while minimizing those potential negative consequences.

More broadly, Verizon supports the 100 megahertz channel size for the Upper 37 GHz and 47 GHz bands as well which, among other things, will provide consistency across Upper Millimeter Wave Flexible Use Spectrum ("UMFUS") bands.⁷ Of note, however, Verizon supports the Commission proposal to permit a licensee to aggregate licenses up to larger channel sizes in any of these bands (e.g., 200 megahertz or 300 megahertz).⁸

IV. THE FCC SHOULD MODIFY AND CLARIFY ELEMENTS OF THE PROPOSED AUCTION DESIGN TO ENCOURAGE ROBUST INCUMBENT PARTICIPATION AND PROVIDE FOR AN EFFICIENT AUCTION PROCESS.

A. The FCC Should Afford Incumbent Licensees Full Bidding Flexibility to Foster a Robust Auction.

The Commission can encourage participation in this auction by affording full bidding flexibility to incumbent licensee participants. This full flexibility can take many forms, and the

⁵ *Id.* ¶¶ 9, 10.

⁶ *See* Verizon April 24, 2018 Letter, Attachment 2 at 5.

⁷ *See Fourth FNPRM* ¶¶ 11, 12.

⁸ *Id.* ¶¶ 10, 12.

auction procedures here should enable an incumbent to readily shift its license holdings. For example, the auction process should allow an incumbent holding a full voucher in one PEA to use that voucher to acquire a full block in a different, equally valued PEA.

To the extent that an incumbent seeks to exchange a voucher in a PEA for a cash incentive payment, it should be permitted to express that intent up front in some way (e.g., by making an opening round bid of zero), without committing to acquire a newly-reconfigured license in that PEA, and it should be assured that it will be compensated at the end of the auction if aggregate auction proceeds are sufficient.⁹

In a PEA where demand falls short of supply such that the Commission does not need to clear the existing spectrum holdings, incumbents holding vouchers nonetheless should (as proposed below in Section IV.D.) be afforded the option of either using the voucher's value as a credit against payments due for new licenses in the same or other PEAs or accepting a cash incentive payment.¹⁰ If the Commission does not adopt our Section IV.D. proposal, then the incumbent would simply retain its spectrum rights in the PEA subject to being repacked to different frequencies.

Finally, the Commission need not be concerned in this proposed auction about insincere bidding – i.e., bids made above their true value in order to increase the potential incentive payment a bidder would be paid.¹¹ Though insincere bidding remains a theoretical possibility, the decision to auction the 39 GHz and Upper 37 GHz spectrum together presents such a large supply of licenses (24 100 megahertz licenses) that the likelihood of such behavior occurring is

⁹ See Part IV.D. *infra*.

¹⁰ *Id.*

¹¹ See *Fourth FNPRM* ¶ 25.

greatly reduced.¹² This is because the ability of any one incumbent to affect the auction price is small and it would be difficult and risky for any incumbent to seek to drive up prices by bidding insincerely above its vouchered amount. Because of the activity rules and the always-present risk that a bidder's request to reduce its demand may not be processed, such a bidder could be "stuck" with demand higher than it truly demands. Bidding below vouchered amounts subjects the incumbent to a different kind of risk, specifically that it would be unable to preserve its original holdings if demand and supply were to equalize in a market at a point where its demand was below its vouchers. In light of these risks, incumbents must bid wisely in each market to preserve and equalize their holdings, and they are unlikely to bid insincerely.

B. The FCC Should Equate an Incumbent's Offer to Relinquish its Licenses to an Upfront Payment in the Purchase of Bidding Eligibility.

The Commission typically requires prospective bidders in spectrum auctions to make a refundable cash deposit (an "upfront payment") in advance of bidding in an auction to "protect against frivolous or insincere bidding and provide the Commission with a source of funds to collect payment owed at the close of bidding."¹³ This proposed auction of 39 GHz spectrum, however, conditions incumbents' participation in the forward auction for new licenses "on incumbents' offering their existing spectrum usage rights in the auction."¹⁴ Verizon has no objection to this proposal, but the Commission should recognize that in this setting, the incumbents' offer to relinquish fully satisfies the purposes underlying the upfront payment rule.

¹² We focus here on the Upper 37 GHz and 39 GHz bands. See Part VI. *infra* discussing 47 GHz spectrum as a separate auction "product" in an Upper 37 GHz / 39 GHz / 47 GHz auction.

¹³ See *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services – Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz)*, Public Notice, FCC 18-109, ¶¶ 50, 93 (rel. Aug. 3, 2018).

¹⁴ *Fourth FNPRM* ¶ 23.

The Commission therefore should modify the upfront payment procedures for this auction by assigning bidding unit eligibility to each participating incumbent licensee according to the aggregate value (measured in bidding units based on the MHz-pops) of its full and fractional vouchers following the pre-auction voucher exchange.

Having offered to relinquish its existing spectrum usage rights, an incumbent licensee that seeks only to replace its existing spectrum holdings with the equivalent spectrum rights at the close of the auction should not be required to make a cash upfront payment. The Commission generally requires upfront payments from prospective auction bidders “[t]o ensure that only serious, qualified bidders participate”¹⁵ By definition, an incumbent 39 GHz licensee that offers to relinquish spectrum usage rights has “skin in the game” without making a cash deposit in advance of the auction. Of course, if an incumbent wishes to be eligible to bid on more spectrum than it currently holds, that incumbent should make a cash upfront payment to obtain bidding eligibility for additional licenses just as any bidder would.

In addition to ensuring serious bidding, the Commission typically requires upfront payments in spectrum auctions to protect the government’s financial interests by providing “a source of available funds in the event a penalty must be assessed for bid withdrawal prior to further payments.”¹⁶ The design of the clock auction itself addresses these interests: the Commission will process a bidder’s request to “withdraw” a bid (that is, to reduce its requested demand for blocks in a PEA) only if the aggregate demand in that PEA exceeds supply at the

¹⁵ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2377 ¶ 169 (1994) (“*Competitive Bidding Second Report and Order*”).

¹⁶ See *id.* at 2379 ¶ 176.

time the request is made.¹⁷ Furthermore, there is no need to protect against payment defaults in this auction: an incumbent who seeks merely to exchange vouchers for newly-reconfigured licenses would use voucher credit for payment for those licenses (i.e., no cash down payment or final payment would be required), and an incumbent who seeks only to “cash out” would have no payment obligations.¹⁸

In addition to fulfilling the purpose of the upfront payment requirement, modifying the upfront payment mechanism for the auction as suggested here will serve the goal of encouraging incumbent participation in the auction by equitably reducing incumbent licensees’ costs of participation.

C. The FCC Should Set Low Minimum Opening Bids.

Again, to encourage participation and provide for a robust auction, the Commission should set minimum opening bids low. The higher the minimum opening bids, the less incentive bidders will have to participate. And because of the large number of 100 megahertz blocks that will be offered in the auction, it is critical that the Commission set low minimum opening bids so as to make a demand shortfall less likely. The Commission’s ascending clock auction design, which allows a reduction in demand only when supply allows it, ensures that as rounds progress, demand always will exceed or be equal to supply. Thus, the only way that a demand shortfall can occur is if demand fails to meet supply in the opening round. The Commission should seek to avoid this scenario by setting minimum opening bids low.

¹⁷ See *Fourth FNPRM* ¶ 18 (“Bidders would be held to their bids, as in the forward phase of the broadcast incentive auction, with the system only allowing a bidder to reduce demand if aggregate demand would not fall below the available supply of blocks in that PEA.”).

¹⁸ As noted above, incumbents seeking to acquire more spectrum rights than they currently hold would make a required cash upfront payment deposit.

Low minimum opening bids will most likely serve to maximize demand in the auction. Too high a minimum opening bid can lead to inefficient license allocations if bidders who otherwise should acquire the license, nevertheless, find the required bid to be beyond their value. That's why the Commission has often recognized that setting opening bids too high could discourage competition.¹⁹ And the inefficiency of high minimum opening bids is exacerbated in the ascending clock auction design, where excess demand in a PEA affords bidders the potential benefit of being able to shift their spectrum holdings to another PEA. Although setting low minimum opening bids carries the risk that voucher values will be low, Verizon (as a potential "seller") believes that, on balance, the benefits associated with beginning the auction with low prices outweighs this risk because voucher owners retain the opportunity to bid on the licenses for which they hold vouchers.

D. The FCC Should Prioritize Blocks Supplied by Incumbent Licensees Over Blocks Held by the FCC If Auction Demand Does Not Meet Supply.

To advance its twin goals of maximizing incumbent participation in this auction and minimizing the number of partial PEA licenses existing post-auction, the Commission should always prioritize the blocks held by incumbent licensees over those held by the FCC when insufficient demand requires a choice as to whose blocks should be relinquished.²⁰ For example, the FCC clearly indicates that a shortfall in any individual PEA will not keep the auction from

¹⁹ See, e.g., *Auction of Licenses in the Lower 700 MHz Band Scheduled for May 28, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures*, Public Notice, 18 FCC Rcd 3138, 3174 (2003) (concluding that the minimum opening bids are set "not so high as to discourage competition"); *Auction of FM Broadcast Construction Permits Scheduled For November 3, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures*, Public Notice, 19 FCC Rcd 10570, 10599 (2004) (adjusting minimum opening bids downward "to reduce the possibility of unsold construction permits and the likelihood that excessive minimum opening bid and upfront payment amounts could discourage auction participation").

²⁰ See *Fourth FNPRM* ¶ 22.

closing as long as “the total auction proceeds exceed the total incentive payments to be shared with licensees relinquishing spectrum usage rights....”²¹ The Commission should go one step further and, at the close of the auction, make that incentive payment to each voucher-holding incumbent in all PEAs (regardless of whether a demand shortfall exists in a particular PEA). Prioritizing the redemption of incumbent vouchers will send the clearest possible message that the auction offers as certain a path as possible for the current license holders to rationalize both their spectrum holdings and the band.

If (1) the aggregate auction proceeds are insufficient to cover the amount needed to pay all vouchers in all PEAs, or if (2) the Commission chooses to adopt a PEA-specific approach to incentive payments and demand in a particular PEA falls short of the total supply of blocks being offered in the auction in that PEA, the Commission should first use all incumbent-held blocks to satisfy demand. Further, in the unlikely event that demand in a PEA is less than the number of vouchers in that PEA, the Commission should first make incentive payments for vouchers involving encumbered licenses, then for vouchers to be used as credits against licenses won in the auction (in that PEA or in other PEAs), and finally for full vouchers to be used to cash out and turn in spectrum usage rights.

Prioritizing the holders of fractional licenses will provide certainty – and thus the greatest incentive to participate – to small independent RSA license holders who may wish to accept incentive payments rather than spend heavily to purchase newly reconfigured 100 megahertz PEA-wide blocks. Further, it will advance the Commission’s goal to “reduce encumbrances and create contiguous blocks of spectrum throughout the 39 GHz and Upper 37 GHz bands.”²² As a secondary priority, because no incumbent should be required to make a cash payment to

²¹ *Id.* ¶ 21.

²² *Id.* ¶ 2.

maintain the same 39 GHz band spectrum holdings prior to the assignment phase, any incumbent that bids for reconfigured blocks in the same PEA should be able to use credits earned from its vouchers to pay for those blocks. Finally, any incumbent that seeks either to use a voucher as credit to acquire a reconfigured block in another PEA or to exercise a “cash out” option, but is left holding an unredeemed voucher after the auction, should retain a newly reconfigured 39 GHz band license in the same PEA. This prioritization order will serve to clean up the 39 GHz band as much as possible, advancing the public interest in eliminating encumbrances and maximizing the efficient use of the band for 5G wireless services.

E. The FCC Should Apply Bidding Credits Only to Cash Payments Required From Winning Forward Auction Bidders.

The Commission is correct to propose that bidding credits in the auction be applied only to cash payments for winning bids in the auction, after the winning bidder has used its vouchers to satisfy winning bids.²³ This limitation is needed in order to avoid the situation in which an incumbent that is qualified for a bidding credit is able to both retain its existing spectrum position by bidding on new licenses and obtain an incentive payment. Also because the FCC used bidding credits in the original auction of these licenses, there is no need for it to offer bidding credits again for the same licenses.²⁴ Such a result would amount to an abuse of the voucher concept.

²³ See *id.* ¶ 26

²⁴ See *Auction of Licenses for Fixed Point-to-Point Microwave Services in the 38.6-40.0 GHz (39 GHz) Band*, Public Notice, 15 FCC Rcd 850, 863-864 (WTB 2000).

F. The Commission Should Confirm that Non-Participating Incumbent Licenses Will Be Modified, Thereby Clarifying Tax Consequences of Participating in the Incentive Auction and Spurring Further Incumbent Participation.

The Commission's order in this proceeding should include confirming language to help incumbent licensees establish that, if they participate in the incentive auction, they will qualify for the same, generally favorable federal income tax treatment that they would have had by not participating. Incumbent licensees that do not participate in the incentive auction will not recognize taxable gain, even if all of their existing 39 GHz licenses are "repacked" and converted into new licenses.²⁵

When determining whether to participate in the incentive auction, incumbent licensees will consider whether doing so would cause them to realize²⁶ and recognize²⁷ taxable gain. As illustrated by three recent private letter rulings issued by the Internal Revenue Service to participants in the Commission's broadcast incentive auction,²⁸ incumbent licensees should be able to participate in the 39 GHz incentive auction without recognizing taxable gain. To establish that they can participate in the auction and also qualify for gain nonrecognition, incumbents can show that failure to participate would have resulted in the involuntary

²⁵ See I.R.C. § 1033(a)(1) (gain is not recognized when property is compulsorily or involuntarily converted into similar property).

²⁶ An incumbent may *realize* taxable gain or loss by, for example, participating in the reverse auction, and receiving vouchers in exchange for its licenses.

²⁷ Gain or loss that is *realized* will not be *recognized* for tax purposes if it qualifies for nonrecognition under the Internal Revenue Code, for example, under section 1033.

²⁸ See IRS Private Letter Ruling, PLR 201821012 (Feb. 20, 2018); IRS Private Letter Ruling, PLR 201816008 (Jan. 10, 2018); IRS Private Letter Ruling, PLR 201702034 (Feb. 1, 2016). Although a private letter ruling may not be used or cited as precedent, *see* I.R.C. § 6110(k)(3), recently issued rulings are generally considered to indicate the views of the Internal Revenue Service on the matters addressed.

conversion of their licenses into new licenses through the repacking process.²⁹ The Commission can assist incumbents in making this showing by expressly confirming in the order that all nonparticipating incumbent licenses will be converted into new licenses that conform with the reconfigured 39 GHz band plan (100 megahertz licenses in repacked frequencies). This express confirmation will encourage incumbents to participate in the auction by enabling them to establish that they can participate without recognizing gain for federal income tax purposes.

V. VERIZON SUPPORTS THE PRE-AUCTION VOUCHER EXCHANGE PROPOSAL WITH MODIFICATIONS.

The Commission’s proposal to conduct a pre-auction voucher exchange significantly improves on the original AT&T proposal for an incentive auction in 39 GHz.³⁰ Conducted properly, the pre-auction voucher exchange will be a critical element in helping the auction to succeed. It should result in fewer PEAs in which an incumbent retains a fractional voucher at the start of the auction. In those few instances, the incumbent holding that fractional voucher can choose either to bid for a full PEA block in the forward auction (the “pay and buy more spectrum” option) or redeem its voucher for a cash incentive payment (the “sell and turn in spectrum” option).

Verizon, however, proposes modifications to foster a more flexible exchange approach that will soften the “rough edges” of fractional vouchers and avoid inequities for certain incumbents. The Commission should decline to adopt its proposal to restrict incumbents to the

²⁹ See, e.g., IRS Private Letter Ruling, PLR 201821012 (Feb. 20, 2018) (Noting that “[c]hoosing to forego the Incentive Auction would have subjected Taxpayer to the repacking process,” and concluding that “Taxpayer’s sales of Spectrum Rights . . . to the FCC pursuant to the Incentive Auction constitutes a disposition under the threat or imminence of condemnation for purposes of § 1033 of the Code.”).

³⁰ See Verizon April 24, 2018 Letter at 1.

nearest integer up or down in their pre-auction exchanges of vouchers.³¹ Rather, incumbents should have flexibility to aggregate and exchange fractional vouchers with the Commission so as to facilitate the spectrum holding rationalization of their choice. In a simple example, if an incumbent has vouchers valued at 0.4 units in each of five PEAs that are deemed equal under the Commission-determined exchange rate, it should be able to exchange vouchers in four PEAs with the Commission to bring its voucher in the fifth PEA to a value of 2.0. In the secondary market for spectrum, the Commission does not set limits on the exchange of spectrum usage rights (aside from spectrum aggregation concerns), and it should not do so in the pre-auction voucher exchange.³² Each incumbent should be permitted to use the indexed aggregate amount of any fractional vouchers it holds to add full vouchers in any market so long as the aggregate indexed MHz-pops of the new full vouchers do not exceed the aggregate indexed MHz-pops of the licensee's relinquished fractional vouchers.

The Commission also should clearly specify as soon as possible the methodology it will employ to develop its pre-auction voucher calculations, and the inputs that will be used in those calculations. In particular, the Commission should specify (1) the population database it will use, (2) the coordinates and depth of all RSA licenses, and (3) the procedure it will use to determine population coverage within RSA boundaries. These modifications and clarifications will help to advance the goals of the pre-auction voucher exchange.

³¹ See *Fourth FNPRM* ¶ 34.

³² Verizon supports voluntary rebanding, but the Commission's efforts to promote it have been hindered by 2017 amendments to Internal Revenue Code section 1031 that exclude license exchanges from gain nonrecognition, and by the Wireless Telecommunications Bureau's requirements for contiguity in voluntary rebanding. *Wireless Telecommunications Bureau Accepting Applications to Modify Existing Licenses in the 39 GHz Band Pursuant to Voluntary Rebanding Process*, Public Notice, DA 18-619, at 3 (rel. June 14, 2018).

VI. THE FCC SHOULD CONFIRM THAT IN THE UPPER 37 GHz / 39 GHz / 47 GHz AUCTION, IT WILL AUCTION 47 GHz BLOCKS AS A SEPARATE AUCTION “PRODUCT” FROM THE OTHER BANDS.

The Commission should confirm that, even with a single auction for the Upper 37 GHz, 39 GHz, and 47 GHz spectrum,³³ it will offer 47 GHz band spectrum blocks as a different auction “product” than the Upper 37 GHz and 39 GHz blocks. This is consistent with the statements in the *Fourth FNPRM* that the proposed auction design will enable the Commission to auction “the Upper 37 GHz and 39 GHz bands as near-nationwide contiguous spectrum in a single generic-block, clock auction,”³⁴ and that “unencumbered spectrum blocks in the Upper 37 GHz and 39 GHz bands can be treated as largely interchangeable within a PEA.”³⁵ In neither case does the Commission make any reference to the 47 GHz band.

There is good reason for this distinction. Because 3rd Generation Partnership Project (“3GPP”) has already identified the 37 GHz frequencies as part of the same band class as the 39 GHz frequencies,³⁶ Verizon finds it reasonable to consider 37 and 39 GHz a single product. On the other hand, the 47 GHz band is not fungible with the 39 GHz and Upper 37 GHz bands. The work being done under the auspices of 3GPP demonstrates that stakeholders are not currently focused on the 47 GHz band as they are on the Upper 37 GHz and 39 GHz bands.³⁷

³³ See *Fourth FNPRM*, Separate Statement of Chairman Ajit Pai (“[W]e intend to hold a single auction of the upper 37 GHz, 39 GHz, and 47 GHz spectrum bands in the second half of 2019.”).

³⁴ *Id.* ¶ 15.

³⁵ *Id.* ¶ 17.

³⁶ 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; NR; User Equipment (UE) radio transmission and reception; Part 2: Range 2 Standalone (Release 15), *Table 5.2-1: NR operating bands in FR2*, at 12 (June 2018) (“3GPP Rel. 15”).

³⁷ See *id.*

Also, as the FCC has recognized, there are operational differences between the 47 GHz and 39 GHz bands that further distinguish the bands.³⁸

There is another reason for the Commission to separately assess clock phase demand for 39 GHz and Upper 37 GHz blocks from demand for 47 GHz blocks. To do otherwise would add ten more blocks to the supply against which demand in each PEA will be assessed in each round of the auction. This could result in demand in a significant number of markets falling short of supply, choking off the auction prematurely.

The Commission has previously offered different products in the same auction where there was good reason to do so. In the past, in both clock and simultaneous multiple round auctions it has separated out particular blocks or licenses for bidding.³⁹ Given the differences between these bands described above, it should likewise distinguish these bands as different products in this context.

Verizon also supports the proposal to allow voucher payments “earned” from incumbent holdings in the 39 GHz band to be applied to winning bids in any of the three bands.⁴⁰ To

³⁸ See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8155-56 ¶ 411 (2016) (“Unlike in the 28 GHz and 39 GHz bands, where FSS can use other spectrum to operate user equipment, FSS would have to use some portion of the 47 GHz band to operate user equipment. Sharing between terrestrial mobile and FSS user equipment is more complicated, particularly where FSS user equipment is transmitting.”).

³⁹ For example, the forward auction component of the broadcast incentive auction feature restricted bidding on the “spectrum reserve” (see *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133, 6208-10 ¶¶ 184-188 (2014)), and in the 1990s, the Commission set aside “Entrepreneurs’ Blocks” in the PCS C and F Block auctions for bidding only by qualified applicants (see *Implementation of Section 309(j) - Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5584-88 ¶¶ 118-127, *recon.* 10 FCC Rcd 403, 413-15 ¶¶ 12-16 (1994)).

⁴⁰ See *Fourth FNPRM* ¶ 16.

further enhance auction participation, that proposal should be adopted even with 47 GHz blocks offered as a separate auction “product” in the same auction.

VII. CONCLUSION.

The Commission’s proposed auction to reconfigure the 39 GHz band and afford incumbent 39 GHz licensee the opportunity to rationalize their spectrum holdings represents an important step in advancing the use of these bands for 5G and other next-generation services. With the modifications and clarifications suggested herein, Verizon supports the Commission’s proposals in the *Fourth FNPRM* and urges the Commission to act swiftly to add new usable spectrum into the 5G marketplace.

Respectfully submitted,

/s/

William H. Johnson
Of Counsel

Charla M. Rath
Gregory M. Romano
1300 I Street, NW
Suite 500 East
Washington, D.C. 20005
(202) 515-2574

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