

**Before the
Federal Communications Commission
Washington, DC 20554**

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

To: The Commission

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby replies to certain of the initial comments filed in response to the Commission’s Public Notice proposing procedures for the auction of Priority Access Licenses (“PALs”) in the Citizens Broadband Radio Service (“CBRS”).¹

Many commenters focused on the Commission’s proposal to allow CMA-level bidding in the 172 Cellular Market Areas (“CMAs”) containing two or more counties. The vast majority of commenters agrees with WISPA that the Commission’s proposal would effectively preclude the ability of small broadband providers to obtain PALs in the rural counties within those CMAs. Not surprisingly, large mobile wireless carriers stand alone in supporting CMA-level bidding, with one carrier even taking the extreme position of suggesting that the Commission allow *only* CMA-level bidding in those 172 CMAs. The record overwhelmingly supports rejection of CMA-level bidding to allow a simpler, more competitive and more equitable county-based auction open to all bidders, large and small, mobile and fixed.

¹ Public Notice, *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*, AU Docket 19-244, FCC 19-96 (rel. Sept. 27, 2019) (“*Auction Procedures PN*”).

Discussion

I. THE RECORD REFLECTS BROAD SUPPORT FOR REJECTING CMA-LEVEL BIDDING

Although WISPA respects the Commission's attempt to adopt procedures that could help encourage sincere bids, after carefully considering the Technical Guide and the record, WISPA cannot support the Commission's CMA-level proposal. Trade associations,² large and small commercial mobile wireless providers,³ broadband providers,⁴ utilities⁵ and public advocacy groups⁶ are among the overwhelming majority of commenters that oppose the Commission's proposal for CMA-level bidding. The Commission should follow the record and reject its proposal in favor of individualized county-level bidding.

Commenters describe a number of reasons why the Commission should not adopt its proposal. First, the record clearly supports WISPA's position that small providers seeking PALs in rural counties would be disadvantaged, if not precluded, from acquiring PALs. This is

² See Comments of WISPA, AU Docket No. 19-244 (filed Oct. 28, 2019); Comments of NCTA – The Internet & Television Association, AU Docket No. 19-244 (filed Oct. 28, 2019) (“NCTA Comments”); Comments of NTCA – The Rural Broadband Association, AU Docket No. 19-244 (filed Oct. 28, 2019) (“NTCA Comments”); Comments of the Competitive Carriers Association, AU Docket No. 19-244 (filed Oct. 28, 2019) (“CCA Comments”); Comments of the Rural Wireless Association, Inc., AU Docket No. 19-244 (filed Oct. 28, 2019) (“RWA Comments”); Comments of the National Rural Electric Association Cooperative Association, AU Docket No. 19-244 (filed Oct. 28, 2019) (“NRECA Comments”); Comments of the American Petroleum Institute, AU Docket No. 19-244 (filed Oct. 28, 2019).

³ See Comments of Verizon Communications, Inc., AU Docket No. 19-244 (filed Oct. 28, 2019) (“Verizon Comments”); *see also* Comments of AT&T, Inc., AU Docket No. 19-244 (filed Oct. 28, 2019) (“AT&T Comments”) (proposing modification as otherwise CMA-level bidding would “distort competitive outcomes”).

⁴ See Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, AU Docket No. 19-244 (filed Oct. 28, 2019) (“Blooston Rural Carriers Comments”) Comments of California Internet L.P. dba GeoLinks, AU Docket No. 19-244 (filed Oct. 28, 2019).

⁵ See Comments of Southern Communications Services, Inc. dba Southern Linc, AU Docket No. 19-244 (filed Oct. 28, 2019) (“Southern Linc Comments”); Comments of Southern California Edison, AU Docket No. 19-244 (filed Oct. 28, 2019) (“SC Edison Comments”).

⁶ See Comments of the Open Technology Institute at New America, AU Docket No. 19-244 (filed Oct. 28, 2019) (“OTI Comments”); Comments of the Dynamic Spectrum Alliance, AU Docket No. 19-244 (filed Oct. 28, 2019) (“DSA Comments”).

because, as RWA points out, “numerous rural counties . . . would be tied to pricier metropolitan package bid areas for which large and nationwide carriers would be competing, and therefore effectively unavailable to small and rural bidders.”⁷ NRECA explains that CMA-level bidding “will result in reduced opportunities for entities seeking to serve counties in exurban areas at the edge of many CMAs and may prejudice the participation of certain parties in the PAL auction.”⁸

NTCA puts it this way:

Some of the [rural] counties involved may be within these smaller operators’ reach if available on a county-wide basis. Yet, once swept up into neighboring counties and aggregated into CMAs, they may be out of reach both because the smaller operator cannot compete at auction against a larger carrier with much greater resources and may not, even if successful at auction, have the ability to muster the resources to deploy and operate a wireless network across that broader geographic area.⁹

OTI similarly observes that:

By requiring CMA bidders to remain in the auction in outlying counties of urban areas until the core urban counties have concluded, the prices of the PALs for those “collar” counties within the same CMA will be artificially inflated to a point that is likely to crowd out small ISPs and other localized bidders seeking to bring connectivity to these less densely populated and typically less profitable outer counties.¹⁰

Likewise, DSA concludes that CMA-level bidding will impair the ability of rural providers to obtain spectrum to serve the unserved, stating that “[r]educing the number of small ISPs and other entities that can acquire PALs is likely to stifle innovation and undermine efforts by fixed wireless broadband ISPs to deploy more high-capacity and affordable networks in rural and less populated areas.”¹¹

⁷ RWA Comments at 3-4.

⁸ NRECA Comments at 1.

⁹ NTCA Comments at 3; *see also* OTI Comments at 9 (“several cases where rural counties would be swept up in the Commission’s proposed regime”).

¹⁰ OTI Comments at 5.

¹¹ DSA Comments at 5.

Second, if the Commission were to adopt its proposal, many potential bidders desiring only to acquire PALs for individual counties likely would choose to stay on the sidelines, knowing that they would have little or no opportunity to acquire PALs. That result would contradict the Communications Act¹² and the Commission’s goals of “maximizing auction participation”¹³ and “support[ing] licensee diversity.”¹⁴ To quote CCA, “[p]roviders interested in serving less-urban counties within CMAs will be less likely to incur the significant costs associated with auction participation if they know that CMA bidders will be committed to driving the prices beyond what is economically rational.”¹⁵ DSA agrees, stating that “market distortion will mean that county-level bidders in rural or exurban counties within a CMA will pay artificially high prices for those PALs or even be priced out altogether.”¹⁶ As a result, PALs would become just another spectrum band to serve only the interests of large mobile carriers.

Third, CMA-level bidding would contradict the Commission’s objectives of promoting “rural deployment” and “localized use cases”¹⁷ which, as CCA states, “are not the business models of the carriers most likely to opt for CMA bidding.”¹⁸ The Commission cannot ignore the record in which an overwhelming majority of commenters oppose CMA-level bidding because it would limit or foreclose the participation of all but the largest nationwide commercial mobile wireless carriers and undermine the Commission’s interest in “serv[ing] a variety of

¹² 47 U.S.C. § 309(j)(3).

¹³ *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd 10598, 10608 ¶ 21 (2018) (“2018 CBRS Order”).

¹⁴ *Id.* at 10621 ¶ 41.

¹⁵ CCA Comments at 7. Verizon observes that the Commission’s proposed method for determining clock price increments “would increase uncertainty (and therefore the difficulty of between-round auction analysis), especially for smaller bidders who are likely to prefer county-sized bids.” Verizon Comments at 4.

¹⁶ DSA Comments at 9.

¹⁷ 2018 CBRS Order at 10616 ¶ 33.

¹⁸ CCA Comments at 8.

innovative use cases for urban, suburban, and rural deployment, including IoT deployments and those by new entrants.”¹⁹

Fourth, allowing only county-level bidding will, as Southern Linc states, “simplify the auction for all participants, provide potential users of all sizes a meaningful opportunity to acquire PAL, and preserve and promote the balance achieved in the *2018 Order*.”²⁰ NCTA observes 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.”²¹ As Southern California Edison points out, “[t]he greater the complexity and inscrutability of the auction procedures, the more ordinary citizens are deterred from participating.”²² Simplifying the auction will level the playing field between large providers that can afford economists and sophisticated bidding algorithms and smaller providers that lack such resources and must compete for a limited pool of experts, to the extent they can afford them at all.

Fifth, commenters representing both large and small companies note the potential for gamesmanship and mischief stemming from CMA-level bidding. On one hand, CCA states:

If a bidder loses in any county in the CMA, it loses in every county. A large nationwide mobile carrier opting for CMA-level bidding therefore must be willing to over-bid in a CMA’s least-densely populated county in order to protect its interest in the multiple more-densely populated counties in a CMA – even if it has no intention of meeting the needs of the rural parts of the CMA. As a result, for a CMA-level bidder, the value of a less-populous county in a CMA is its

¹⁹ *2018 CBRs Order* at 10613 ¶ 28.

²⁰ Southern Linc Comments at 10; *see also* RWA Comments at 3.

²¹ NCTA Comments at 6, *quoting Auction Procedures PN* at ¶ 33.

²² SC Edison Comments at 2; *see also* OTI Comments at 8 (large carriers “have on hand sophisticated auction software that allow them to closely follow auction progress on a county-by-county basis regardless of whether they are making an aggregated bid for the CMA”).

substantive value as a community to serve, plus its regulatory value as a way to protect the carrier’s bidding strategy in urban counties.²³

On the other hand, Verizon opines that “those who select CMA-level bidding might very well be concerned about falling prey to mischievous behavior on the part of certain county-level bidders who could seek to foreclose them by arbitrarily bidding up a single county within a particular CMA, forcing them to reduce demand across the market.”²⁴ NCTA similarly suggests that “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.”²⁵ While the perspectives differ, the fact that both large and small providers have identified the potential for mischief suggests that the Commission’s proposal is flawed.

Significantly, Verizon disagrees with the Commission’s proposal for a “select all” approach in which bidders are locked in, months in advance of the auction, to selecting either CMA-level bidding or county-level bidding with no ability to switch during the auction.²⁶ This “reduces bidder flexibility”²⁷ – an outcome that can be mitigated by simply eliminating CMA-level bidding and permitting bidders to bid for the specific counties they desire. Like WISPA and other commenters, Verizon also notes that combining CMA-level bidding and county-level bidding will introduce additional complexity and uncertainty into an already complex auction.²⁸

AT&T likewise acknowledges that CMA-level bidding could “distort competitive outcomes.”²⁹ It proposes modifications to other elements of the auction procedures and design to

²³ CCA Comments at 4.

²⁴ Verizon Comments at 5.

²⁵ NCTA Comments at 8.

²⁶ Verizon Comments at 2.

²⁷ *Id.* at 3.

²⁸ *See id.* at 4-5.

²⁹ AT&T Comments at 2. *See also* DSA Comments at 5 (“An auction structured to encourage most or all of the PALs to end up in the hands of the highest bidders in the most densely populated county in a CMA is likely to create a market distortion that leads to a more uniform use case – such as wide area

compensate for this potential.³⁰ But these purported fixes are cosmetic and would not correct the needless complexities and inequities created by the proposal to allow CMA-level bidding. The far better approach is for the Commission to reject CMA-level bidding as fundamentally flawed, rather than to try to make it less objectionable through superficial and incomplete fixes to the auction design.

T-Mobile, for its part, tries to argue with a straight face that proposals to reject CMA-level bidding are untimely objections.³¹ In the *2018 CBRS Order*, the Commission could have decided to adopt CMA-level bidding or package bidding or some other form of competitive bidding, but stated that it “will seek comment in the pre-auction process” on package bidding.³² Thereafter, the Commission proposed for the first time in the *Auction Procedures PN* to adopt CMA-level bidding, distinguishing it from package bidding. That the Commission proposed a novel approach to package bidding in the *Auction Procedures PN* is proof positive that objections to CMA-level bidding are timely and appropriate.

A few commenters opposing CMA-level bidding suggest that if the Commission nevertheless adopts its proposal, it should remove rural counties from those CMAs.³³ That alternative may improve the ability of small providers to meaningfully participate in the PAL auction in those counties, but would not reduce auction complexity or the potential for mischief cited in the record. Accordingly, WISPA does not support that alternative given the limited nature of the benefit it would confer.

mobile cellular deployments – rather than to the more localized, small cell and innovative variety of use cases and market entrants envisioned in previous CBRS orders”)

³⁰ See AT&T Comments at 2-6.

³¹ Comments of T-Mobile USA, Inc., AU Docket No. 19-244 (filed Oct. 28, 2019) (“T-Mobile Comments”) at 8-9.

³² *2018 CBRS Order* at 10621 ¶ 40.

³³ See RWA Comments at 3-9; NTCA Comments at 3-4; Blooston Rural Carriers Comments at 4-5.

In sum, the record demonstrates that adopting CMA-level bidding in the 172 CMAs would “effectively rig the auction in a manner, whether intended or not, that harms rural and small town consumers and firms,”³⁴ a result that would be inconsistent with the Commission’s policy objectives. No commenter has provided any convincing case supporting the Commission’s proposed complicated and untested CMA-level bidding rules. Instead of adopting its proposal, the Commission should auction PALs only by individualized county bids.

II. THE COMMISSION SHOULD REJECT T-MOBILE’S PROPOSAL TO PERMIT ONLY CMA-LEVEL BIDDING IN MULTI-COUNTY CMAS

Standing alone yet again,³⁵ T-Mobile argues that, not only should CMA-level bidding be permitted in the 172 CMAs, but that the Commission should permit *only* CMA-level bidding in those multi-county CMAs.³⁶ Adopting this self-serving proposal would eliminate any possibility that small providers could obtain PALs even in the rural counties within those CMAs, contravening the policies underscoring the Commission’s CBRS rules. In its various forms, T-Mobile’s efforts to convert CBRS to another band solely for itself and other large mobile carriers do not improve with repetition. The Commission should reject this latest proposal out of hand.

In a strained effort to support its position, T-Mobile trots out the empty argument that CMA-level bidding would mitigate interference concerns arising from the issuance of multiple PALs in small, densely populated areas.³⁷ This myopic view simply assumes that all bidders will want to acquire larger areas and dismisses the reality that small broadband providers and others will have no interest in bidding on larger areas. The Commission should reject this argument for

³⁴ OTI Comments at 6.

³⁵ See *Promoting Investment in the 3550-3700 MHz Band*, Notice of Proposed Rulemaking and Order Terminating Petitions, 32 FCC Rcd 8071, 8092-95 (2017) (denying T-Mobile’s request to allow PALs in the entire 150 megahertz and to raise the power limit for CBSDs).

³⁶ T-Mobile Comments at 3-8.

³⁷ *Id.* at 4-6.

the same reason it rejected larger license areas in the *2018 CBRS Order* – “the incremental benefit for 5G mobile use of going from counties to MSAs or PEAs would be far less than the incremental costs incurred by other potential users of the band.”³⁸ Moreover, T-Mobile’s claims about the technical challenges for the Spectrum Access System (“SAS”) are completely unfounded – no SAS administrator has supported this claim, either in the record here or in response to the 2017 notice of proposed rulemaking. If T-Mobile is truly concerned that “allowing county-level bidding and CMA-level bidding in the same area would result in many of the same technical challenges that the Commission’s proposed adoption of CMA-level bidding was intended to resolve in the first place,”³⁹ then the solution is to eliminate CMA-level bidding and allow only county-level bidding, as WISPA and a host of others have proposed.

In addition to its technical infirmities, T-Mobile’s proposal is a transparent effort to eliminate competitive bidding by smaller providers willing to pay more than T-Mobile to acquire PALs. As WISPA previously stated, “a company should not have to compete in an auction to procure a regional shopping mall when it needs less than 1,000 square feet of exclusive retail kiosk space.”⁴⁰ Any convenience that T-Mobile may obtain for itself is outweighed by the preclusive effect that permitting *only* CMA-level bidding will have on other potential bidders. T-Mobile also makes the preposterous argument that CMA-level bidding would enable wireless service providers to create more appropriately-sized service areas to fit their customers’ needs, encouraging more intensive and efficient use of the spectrum.⁴¹ To the contrary, CMA-level bidding will reduce the ability of bidders to aggregate counties in smaller, larger or different groups that correspond to the areas they desire to serve.

³⁸ *2018 CBRS Order* at 10620 ¶ 39 (footnote omitted).

³⁹ T-Mobile Comments at 4.

⁴⁰ Reply Comments of WISPA, GN Docket No. 17-258 (filed Jan. 29, 2018) at 10.

⁴¹ T-Mobile Comments at 4.

Equally meritless is T-Mobile's assertion that allowing county-level bidding and CMA-level bidding in the same area could harm the auction process and leave counties unsold because of the Commission's proposed exception to the "no excess supply" rule.⁴² Here again, T-Mobile's argument is misplaced. As shown by NCTA's analysis and the Commission's own Technical Guide, there is a significant risk that CMA-level bidding would result in county licenses remaining unsold.⁴³ By contrast, county-level bidding will encourage more bidders to participate in the auction, increasing the supply of bidders and thus more demand for PALs. T-Mobile's proposal would exacerbate the harmful effects of CMA-level bidding, allowing the few large mobile carriers to divide the seven PALs among themselves and likely underselling spectrum, outcomes the Commission has rightly and repeatedly sought to avoid.⁴⁴

Conclusion

For the foregoing reasons, the Commission should reject the CMA-level bidding proposal.

Respectfully submitted,

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⁴² See *id.* at 6-8.

⁴³ See Letter from Danielle Pineros, NCTA, to Marlene H. Dortch, FCC Secretary, AU Docket No. 19-244 (filed Oct. 15, 2019) Attachment p.6; see also *Auction 105 Technical Guide*, AU Docket No. 19-244 (rel. Sept. 27, 2019) at 15-16 (Example 8, showing the possibility that a CMA-level bidder reducing demand will result in excess demand in four out of five counties in a CMA).

⁴⁴ See *2018 CBRS Order* at 10603 ¶ 8 ("the revised rules are designed to increase flexibility so that licensees can efficiently deploy these next generation 5G networks in addition to – not in lieu of – the technologies the Commission contemplated in 2015").