

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

In the Matter of)	
)	
Auction of Priority Access Licenses for the 3550-3650 MHz Band)	AU Docket No. 19-244
)	
Comment Sought on Competitive Bidding Procedures for Auction 105)	

REPLY COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (UTC) hereby files the following reply comments in response to the Federal Communications Commission’s Public Notice in the above-referenced proceeding.¹ UTC joins the comments on the record that overwhelmingly oppose the Commission’s proposal to adopt Cellular Market Area (“CMA”) level bidding. UTC agrees with these comments that CMA-level bidding will have the practical effect of favoring large bidders over smaller ones – contrary to the Commission’s policy goal for the CBRS band to promote opportunities for new entrants and greater access to services in rural and otherwise unserved areas. Moreover, it will affect those areas comprising two-thirds of the population in the country, exacerbating the inequity of the rule and increasing the concentration of market control by the largest carriers. Finally, UTC agrees with these comments that the proposal for CMA-level bidding is inflexible and would prevent bidders from bidding at the county-level in any of the CMAs in which they had decided to bid at the CMA-level.²

At the same time, UTC disagrees with those comments who suggest that CMA level bidding is somehow justified by concerns about interference between smaller geographic areas or that CMA-level

¹ See *Auction of Priority Access Licenses for the 3550-3650 MHz Band, Comment Sought on Competitive Bidding Procedures for Auction 105*, Public Notice, AU Docket No. 19-244, FCC 19-96 (rel. Sept. 27, 2019) (“Public Notice”).

² See Comments of Southern Linc in AU Docket No. 19-244 at 5-6 (filed Oct. 28, 2019), *citing Auction 105 Technical Guide*, AU Docket No. 19-244 (rel. Sept. 27, 2019) at 2, *available at* <https://www.fcc.gov/auction/105/education>. (“*Technical Guide*”). *And see* Comments of Verizon in AU Docket No. 19-244 at 3 (filed Oct. 28, 2019).

bidding is merely a form of package bidding.³ The interference concerns raised by T-Mobile in its comments are a red-herring, and can easily be addressed without allowing CMA-level bidding in the top 172 markets that have more than one county. Contrary to T-Mobile, allowing county-based bidding in these markets is also consistent with the Commission’s obligation to avoid “excessive concentration of licenses,”⁴ and it is consistent with the Commission’s goal of distributing CBRS spectrum to “a wide variety of users, deployment models, and business cases, including some solutions to market needs not adequately served by [the FCC’s] conventional licensed or unlicensed rules.”⁵

As numerous comments on the record observed, the Commission struck an appropriate balance when it decided to compromise between licensing PALs larger and smaller geographic areas, opting for geographic licenses based on counties.⁶ UTC echoes those comments and urges the Commission not to upset the compromise that resulted in its decision to provide opportunities for smaller entities to access county-based licenses. As Southern California Edison stated, CMA-level bidding “will further facilitate larger enterprises in acquiring the lion’s share of the licenses at the expense of more localized applicants,” and “[i]f the Commission wishes to give smaller bidders a fair shot at acquiring licenses, CMA-based bidding election should be dropped.”⁷ As Southern Linc explained, the proposal is overly complex and inflexible, locking

³ See Comments of T-Mobile USA, Inc. in AU Docket No. 19-244 at 3 (filed Oct. 28, 2019).

⁴ See 47 U.S.C. § 309(j)(3).

⁵ *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 3962 (2015). *But see* Comments of T-Mobile USA, Inc. at 9 (arguing that the Commission should reject comments supporting county-based bidding because it is contrary to the Commission’s goal of facilitating bidding in larger geographic areas.)

⁶ See Comments of the American Petroleum Institute in AU Docket No. 19-244 at 2 (filed Oct. 28, 2019). *See also* Comments of the Competitive Carriers Association in AU Docket No. 19-244 at 3 (filed Oct. 28, 2019), *citing* Promoting Investment in the 3550-3700 MHz Band, Report and Order, 33 FCC Rcd. 10,598, 10,601 ¶ 7 (2018) (“2018 Report and Order”)(stating that “The Commission reasoned that using counties as the size for PALs would best ‘maximiz[e] auction participation to ensure this band is put to its highest and best use’ and ‘service the needs of rural communities and . . . allow new and innovative services to reach underserved and unserved communities.’”)

⁷ Comments of Southern California Edison in AU Docket No. 19-244 at 2 (filed Oct. 28, 2019).

bidders into CMA-bidding and requiring them to keep their demand consistent in every county in the CMA. Because of this, the large carriers won't reduce their demand in any of the counties in the CMA, and they have the resources to wait for competing providers to drop out of the auction.⁸ Therefore, the rules will operate as a practical matter to prevent smaller entities from being able to compete with the big carriers to win county-based licenses in those CMAs.

The proposal would also discourage smaller entities from competing in those CMAs with a mix of rural and urban counties. As NRECA and NTCA both explained in their comments large carriers are likely to drive up the price of licenses in counties in rural areas, and even two carriers can quickly exceed the supply of blocks in a given county because they can each aggregate up to four blocks of spectrum. Even if the large carriers have no interest in those rural counties, they may decide to continue to bid for them in order to maintain demand in the urban counties that they really want.⁹ Hence, “[t]his will tend to reduce opportunities for entities only seeking to acquire single, less densely populated counties.”¹⁰

In conclusion, UTC has participated throughout this proceeding to promote opportunities for utilities to access broadband spectrum that they need to support their increasing communications needs, and it has advocated for licensing the spectrum in smaller geographic

⁸ Comments of Southern Linc at 5-6.

⁹ See Comments of the National Rural Electric Cooperative Association in AU Docket No. 19-244 at 5 (filed Oct. 28, 2019)(hereinafter, “NRECA Comments”)(explaining that “[u]nder CMA-level bidding, each round’s clock price would be set based not on demand in any specific county, but on the aggregate level of demand across all CMA and county bids. More densely populated counties located in the urban core will tend to represent a larger share of the valuation of the CMA as a whole, as compared to less populated counties at the edge of the CMA. Thus, demand by CMA-level bidders is likely to be disproportionately based on acquiring those urban core counties.” See also Comments of NTCA the Rural Broadband Association in AU Docket No. 19-244 at 3 (filed Oct. 28, 2019)(stating “[s]ome of the 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.”)

¹⁰ NRECA Comments at 4.

areas so that utilities will be able to compete at auction and won't be forced to overbid for licenses that don't conform to their service territories.¹¹ UTC believes that the Commission struck a reasonable balance in its *2018 Report and Order* when it decided to use county-based PALs for the auction, and there are several utilities who have commented on the record in response to the most recent Public Notice, demonstrating their interest in accessing 3.5 GHz PALs. In addition, there are other critical infrastructure industries, such as oil and gas, that are also clearly interested in accessing PALs, as well. Therefore, consistent with the overwhelming number of comments on the record including and particularly utilities and other critical infrastructure industries, UTC urges the Commission not to adopt its proposal for CMA-level bidding in the top 172 markets, in order that utilities and other critical infrastructure industries will have a meaningful opportunity to access the broadband spectrum that they need to ensure safe, reliable and secure delivery of essential energy and water services.

Respectfully,

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¹¹ See e.g. Comments of the Utilities Telecom Council, the Edison Electric Institute and the National Rural Electric Cooperative Association in GN Docket No. 12-354 (filed Feb. 20, 2013); Reply Comments of the Utilities Telecom Council in GN Docket No. 12-354 (filed Dec. 13, 2013); Comments of the Utilities Technology Council in GN Docket No. 17-258 (filed Dec. 28, 2017) and Reply Comments of the Utilities Technology Council in GN Docket No. 17-258 (filed Jan. 30, 2018); and Letter from American Petroleum Institute, Edison Electric Institute, Enterprise Wireless Alliance, Exelon Corporation, General Electric Company, Google LLC, Hospitality Technology Next Generation, Motorola Solutions, Inc., pdvWireless, Inc., The Port of Los Angeles, Southern Linc, Union Pacific, and the Utilities Technology Council to Marlene H. Dortch, Secretary, FCC (filed Apr. 25, 2018).

