

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

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

REPLY COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural and independent telephone carrier and wireless service provider clients that have interests in developing and deploying rural 4G and 5G networks and providing IoT and other advanced spectrum-based services (the “Blooston Rural Carriers”), hereby submits reply comments on procedures to be used for its upcoming auction of Priority Access Licenses (PALs) in the 3550-3650 MHz Band.¹

Upon review of the record, a vast majority of commenters and potential Auction 105 bidders believe the CMA-level bidding proposal is ill advised. The bidding mechanism adds unnecessary complexity to an already complex auction, it would artificially inflate prices for PALs in outlying, less-populated counties and it would harm rural and small town consumers and businesses that are the intended beneficiaries of a CBRS licensing framework. This framework was designed to facilitate access to PAL spectrum by a wide variety of competitive networks and use cases. County-level bidding in all areas – as the Commission determined was in the public interest when it adopted the CBRS licensing framework in 2018, will result in more efficient spectrum utilization and encourage rural broadband.

¹ See Auction of Priority Access Licenses for the 3550-3650 MHz Band, Comment Sought on Procedures for Auction 105, *Public Notice*, FCC 19-96 (*rel.* September 27, 2019) (*CBRS PAL Auction Procedures Notice*).

I. The Commission Should Abandon its CMA-Level Bidding Proposal

In their initial comments, the Blooston Rural Carriers proposed that CMA-level bidding should be precluded for CMAs that include counties that qualify as rural areas. However, and as discussed in greater detail below, a significant majority of commenters on the Auction 105 procedures agreed that the proposed CMA-bidding mechanism would be unduly harmful for small and rural service providers and entrepreneurs, as well as other entities that wish to bid for PALs in smaller counties that are part of multi-county CMAs (*i.e.*, not just counties that qualify as “rural areas” under the Commission’s policies and rules). With the further appreciation that the complex “activity upper limit” mechanism would not be required if the FCC took CMA-level bidding proposal off the table, the Blooston Rural Carriers now believe the Commission should use county-based bidding for PALs in all areas. CMA-level bidding provides a unique and unnecessary advantage to certain large incumbent carriers, and these entities do not need an extra “leg up” to facilitate their bidding eligibility.

Comments of NTCA – The Rural Broadband Association (“NTCA”) pointed out that the CBRS band is particularly well suited for the targeted, local applications typically deployed by its members, but that the Commission’s CMA-level bidding proposal would make it difficult for smaller operators to compete in bidding for sparsely populated counties that have been aggregated into CMAs.² Moreover, even if a small carrier is successful at auction, it may lack the resources to deploy and operate a wireless network across that broader geographic area.

New America’s Open Technology Institute (“OTI”) observed that CMA-level bidding is likely to crowd out or diminish deployments by small ISPs, rural WISPs, and new market

² Comments of NTCA at pp. 2-3.

entrants that the CBRS framework was meant to empower.³ The OTI comments do an excellent job in explaining how the proposed CMA bidding mechanism would artificially inflate prices for PALs in outlying, less-populated counties, and thereby “harm rural and small town consumers and businesses that were – until now – the intended beneficiary of CBRS rules aimed at facilitating access to PAL spectrum by a wide variety of competitive ISPs, enterprise networks and other innovative use cases.”⁴ OTI also correctly focuses the Commission’s attention on its 2018 CBRS Order which concluded that county-sized licenses were the best compromise to ensure this spectrum best serves the public interest and the mobile industry’s desire to build a platform for 5G.⁵ The Blooston Rural Carriers agree that county-based bidding for all counties should not be unduly burdensome to large bidders when bidding for all of the constituent counties within a CMA.

Likewise, the Dynamic Spectrum Alliance (“DSA”), a diverse group that spans multinational companies, small- and medium-sized enterprises, academic, research, and other organizations from around the world, believes that county-level bidding is far better suited for efficient spectrum utilization and encouraging rural broadband.⁶ The Blooston Rural Carriers agree with DSA that county-level bidding will allow a diverse set of entities and new market entrants to purchase licenses for 3.5 GHz spectrum for high-speed broadband deployment in rural areas, as well as for a variety of other innovative use cases.

Verizon also urges the Commission not to permit CMA-level bidding. It argues that that the CMA-level bidding approach would reduce bidder flexibility, add unnecessary complexity to

³ OTI Comments at p. 3

⁴ *Id.*

⁵ *Id.* at p. 4.

⁶ DSA Comments at p. 3.

an already-complex auction, and have unintended consequences including the potential for inviting mischief.⁷ Verizon’s comments describe how CMA-level bidding could result in bidders having to pay more than they wish for a license, or alternatively could cause blocks of PALs to go unsold even where demand had once existed for them. The Blooston Rural Carriers agree that neither of these potential outcomes serves the public interest.

The Competitive Carriers Association (CCA) opposes the Commission’s proposal to allow CMA-level bidding because it could undermine the FCC’s stated goal for the band.⁸ The group argues that CMA-level bidding is unnecessary and could reduce participation in the auction, and could lead to less investment and deployment in rural America. CCA correctly characterizes the FCC’s decision to license PALs at the country level to be “the most consequential decision the Commission made in the 2018 Report and Order.”⁹ CCA comments also describe how smaller regional or rural providers that are most interested in building out robust networks in rural counties could be harmed by “regulatory price distortion” created by CMA-level bidding.¹⁰ Rather than maximizing auction participation, CMA-level bidding could do just the opposite. It would also make it less likely that rural communities within CMAs are served by license winners with a true commitment to the community. CMA-level bidding would also concentrate 3.5 GHz licenses in the hands of the largest mobile carriers.

WISPA opposes any form of package bidding, including CMA-level bidding and requests that the Commission reject this proposal.¹¹ Bidders seeking to combine counties do not need

⁷ Verizon Comments at pp. 2-3.

⁸ CCA Comments at p. 1.

⁹ *Id.* at p. 3.

¹⁰ *Id.* at p. 5.

¹¹ WISPA Comments at p. 3.

CMA-level bidding to achieve this goal. Eliminating CMA-level bidding will reduce the likelihood that large carriers will bid up the rural counties within the CMAs to the detriment of small and rural service providers and WISPs.¹² The Blooston Rural Carriers agree with WISPA that “[f]oreclosing competitive bidding opportunities for smaller fixed wireless providers will not advance the Commission’s “top priority” of bridging the digital divide.”¹³

Comments of NCTA – The Internet & Television Association (NCTA) observe that CMA-level bidding would dramatically amplify auction complexity as well as inhibit price and demand discovery without providing the corresponding benefit of reducing the overall number of potential biddable items.¹⁴

Rural electric cooperatives – another large industry with potential new market entrants – also urge the FCC to abandon its proposal for CMA-level bidding. In this regard The National Rural Electric Cooperative Association (“NRECA”), a national service organization representing than 900 not-for-profit rural electric cooperatives, argues that CMA-level bidding will result in reduced opportunities for its members that serve counties in exurban areas at the edge of many CMAs.¹⁵ NRECA comments explain how the Commission’s CMA-level bidding proposal will tend to reduce opportunities for entities only seeking to acquire PALs in single, less densely populated counties.¹⁶ The Blooston Rural Carriers agree with NRECA that granular geographic bidding units produce a more equitable auction format and encourage participation from a wider

¹² *Id.* at pp. 3-4.

¹³ *Id.* at pp. 4-5.

¹⁴ NTCA Comments at p. 3-4.

¹⁵ NRECA Comments at p. 1.

¹⁶ *Id.* at p. 4.

group of interested entities.¹⁷

Finally, comments of T-Mobile – a proponent of exclusive CMA-level bidding in the top 172 CMAs - explain how allowing bidding on both a county-level and CMA-level for certain larger CMAs would (1) increase the potential for interference protection problems; (2) create the need for complex auction processes such as the proposed exception to the “no excess supply” rule, the use of an “activity upper limit” and (3) potentially result in unsold licenses.¹⁸ While T-Mobile’s proposed solution to this problem is to only allow CMA-level bidding in the top 172 CMAs, the Blooston Rural Carriers believe a far better solution is to require county-by-county bidding in all areas because this would eliminate the need for unnecessary complexity while creating opportunities for the largest and most diverse group of auction participants.

II. The Activity Upper Limit Proposal is Too Complex and is Prone to Abuse

The Blooston Rural Carriers previously supported the Commission’s activity upper limit proposal because seemed to be an appropriate safeguard to protect a small carrier from losing bidding eligibility if one of its bids could only be partially applied. However, on further examination, and with the benefit of insights from other commenters, the Blooston Rural Carriers now appreciate that the mechanism would add an unnecessary layer of complexity to an already complex auction and that it could invite mischievous behavior for little apparent gain. In this regard, comments of Verizon raise a red flag when they point out that the activity upper limit could permit certain auction participants to engage freely in insincere bidding across counties without regard for their processed demand or level of eligibility.¹⁹ The Blooston Rural Carriers

¹⁷ *Id.*

¹⁸ Comments of T-Mobile at p. 2

¹⁹ Verizon Comments at p. 7.

would not support adoption of a bidding mechanism that is so complex and which they now understand has significant potential for misuse. Even proponents of CMA-level bidding have characterized the use of an “activity upper limit” as “complex.”²⁰ However, adoption of an “activity upper limit” would not be necessary if the Commission used county-based bidding in all areas and it refrained from providing a CMA-level bidding option. The Blooston Rural Carriers respectfully submit that the Commission should aim to simplify auction procedures wherever possible so bidders of all types and sizes have equal opportunity to compete in obtaining valuable spectrum rights.

III. The Commission Should Be Cautious About Accelerating the Pace of Auction 105

Verizon’s comments urge the Commission to accelerate the pace of Auction 105 at the start, since clock auctions that involve generic blocks of spectrum are easier for bidders to manage than simultaneous multiple-round (SMR) auctions.²¹ Using Auction 102 as an example, Verizon notes that this auction lasted for 91 clock rounds and took over a month to complete. If the Commission had conducted seven rounds per day from the beginning of Auction 102, Verizon posits that the clock phase could have been completed in 13 bidding days, saving more than two weeks,²² and it concludes that “a minimum of six rounds per day from the auction outset provides adequate processing and analysis time for bidders of all sizes.”

The Blooston Rural Carriers strongly disagree with Verizon’s assertion that a six round per-day schedule would provide all bidders with adequate processing and analysis time for bidders of all sizes. Verizon has an experienced team of lawyers, economists and game theory

²⁰ Comments of T-Mobile at p. 2

²¹ Verizon Comments at p. 8.

²² *Id.* at p. 9.

experts available to inform their bidding decisions, and has resources and is bidding on such a scale that it can afford to treat spectrum licenses as a commodity. In other words, it can stick to a rigorous mathematical formula to decide whether or not to raise its bid (simplifying its auction decision making), and the harm of not winning a particular license in the auction is minimal since it can freely obtain whatever spectrum it needs in the secondary market. Small businesses and rural carriers operate on a much smaller scale and have far less bidding flexibility than nationwide carriers. They also have far less access to the secondary market when compared to a nationwide service provider. Missing even one bidding round can be fatal to a small business participating in an auction, and especially an auction like this one where activity rule waivers are not available. Moreover, small carriers which are often funded by a number of strategic investors, and rural bidding consortia frequently need to convene conference calls among members to discuss developments from a previous bidding round and/or strategy for future rounds. Allowing an auction to start slowly and to pick up the pace of bidding gradually (especially one with so many geographic area licenses available for bid) allows smaller bidders and less experienced auction participants time to size up bidding trends in real time and to game plan for future bidding rounds.

The Commission has been judicious about accelerating the pace of previous auctions and it should continue to exercise its discretion in this regard wisely. Most small and rural carriers do not have large teams advising them on auction participation and bid analysis and they do not have sophisticated IT teams who can develop and test bidding systems based on sample file formats released ahead of the bidding. Conducting an auction at a slower pace in the initial week of bidding allows small bidders and their attorneys/consultants sufficient breathing room to develop and test bidding systems and spreadsheets for bid analysis “on the fly.” Since the FCC adopted county-based bidding as a way to promote diverse types of service providers using

different categories of network infrastructure and undertaking innovative use cases, it should be very careful about accelerating the pace of Auction 105 since this could hamper the ability of small and rural service providers to compete effectively in the auction.

CONCLUSION

By refraining from its CMA-level bidding proposal, the FCC will promote opportunities for the widest variety of applicants, including designated entities, to participate in Auction 105 and to compete on an even-handed basis. Elimination of the CMA-level bidding proposal will also eliminate the need for an “activity upper limit” proposal that is unnecessarily complex and that poses significant risk of abuse. The Commission should strive to simplify auction procedures whenever and wherever this is possible to expand the pool of auction applicants and to maximize opportunities for all.

Respectfully submitted,

**BLOOSTON, MORDKOFISKY, DICKENS,
DUFFY & PRENDERGAST**



By: D. Cary Mitchell
John A. Prendergast
Their Attorneys

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Tel. (202) 659-0830

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