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May 12, 2015

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Notice of Ex Parte Presentation*
GN Docket No. 12-268 and AU Docket No. 14-252

Dear Ms. Dortch:

On May 8, 2015, Grant Spellmeyer, Vice President, Federal Affairs and Public Policy, United States Cellular Corporation ("USCC"), Joseph Hanley, Senior Vice President, Telephone and Data Systems, Inc. (the parent company of USCC), and Leighton Brown, Partner, Holland & Knight LLP, met with staff from the Commission's Incentive Auction Task Force, Wireless Telecommunications Bureau, Office of Engineering and Technology, and Office of Strategic Planning & Policy Analysis[1] to discuss competitive bidding procedures and other issues related to the broadcast incentive auction, on which the Commission sought comment late last year.[2]

During the meeting, we distributed the enclosed presentation and discussed the issues detailed therein. We also discussed a few issues arising out of, but not explicitly covered by, that presentation. First, we clarified that, although USCC has urged the Commission to make the results of the F(50,10) statistical propagation model available to forward auction bidders, USCC does not propose that the Commission rely on this model for purposes of predicting inter-service interference levels during the incentive auction. Rather, for the reasons noted by the Commission, USCC agrees that "the F(50,50) measure is more appropriate for use in predicting interference from DTV signals to wireless operations during the auction."[3] USCC has supported the release of the results of the F(50,10) measure in order to provide forward auction bidders with as much information as possible regarding potential impairments to 600 MHz licenses. Bidders do not, however, specifically require the results of the F(50,10) model so long as the Commission provides them with sufficient information to make these calculations themselves, or otherwise perform analyses that will provide

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[1] A complete list of Commission staff participating in the meeting is provided in the Attachment hereto.

[2] *See Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, 29 FCC Rcd 15750 (2014) ("*Procedures PN*").

[3] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, et al.*, Second Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 13071, 13090 (2014).

them with a full understanding of the likely impairments to 600 MHz licenses. For instance, the Commission could instead provide forward auction bidders with the key technical parameters of the television stations that would serve as the sources of inter-service interference.

Second, with regard to the Commission's proposal to assign television stations, where necessary, to channels in the 600 MHz band on the basis of minimizing the total impaired weighted-pops nationwide, USCC noted that an advantage of this approach is that it would increase the likelihood of meeting a given spectrum clearing target.[4] Further, because the optimization procedure could assign television stations to any frequency in the 600 MHz band,[5] USCC noted that this approach also could help to allay lingering interoperability concerns with respect to the 600 MHz band.

This notice of ex parte presentation is being filed electronically in the above-referenced dockets pursuant to Section 1.1206 of the Commission's rules.

Respectfully submitted,
HOLLAND & KNIGHT LLP

/s/
Leighton T. Brown
Counsel for United States Cellular Corporation

Enclosure

[4] *See Procedures PN*, 29 FCC Rcd at 15765.

[5] *See id.*

<u>Attachment</u>
Commission Participants[6]

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*Participated via Teleconference

[6] USCC is providing each Commission participant with a carbon copy of this notice of ex parte presentation via email at the address noted.

Bidding Procedures for the Broadcast Incentive Auction

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Maximizing Spectrum Clearing & Ensuring an Equitable Distribution of Licenses

- USCC generally supports the Commission's proposed procedures for the incentive auction, but believes certain modest revisions would help to maximize the amount of repurposed spectrum and ensure a more equitable distribution of the licenses amongst all bidders.

- These outcomes would, in turn, advance the public interest by allowing more robust competition in the wireless industry and spurring wireless broadband network deployments in rural and other underserved areas.

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Executive Summary

- Nationwide Impairment Threshold
  - Adopt proposal to limit license impairments on a nationwide aggregated basis to less than 20% of "weighted-pops."
- Generic License Categories
  - Adopt proposal to define as Category 1 licenses with predicted impairments affecting up to 15% of a PEA's population, and to define as Category 2 licenses with predicted impairments affecting more than 15%, but not greater than 50%, of a PEA's population;
  - Offer heavily-impaired licenses in subsequent, SMR format auction; and
  - Make the results of the F(50,10) statistical propagation model available to bidders.
- Activity Rule
  - At least early in the auction, rely on an activity requirement lower than the proposed 92-97% (*e.g.*, 80%); and
  - Briefly "pause" bidding after any increase in the activity requirement to partly compensate for the proposed lack of activity rule waivers.

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Executive Summary

- Spectrum Reserve
  - Adopt the proposed $1.25 price benchmark;
  - Impose a 20 MHz cap on the amount of reserved spectrum a bidder may acquire in a PEA;
  - Ensure reserve-eligible bidders have a reasonable opportunity to shift their demand to their most preferred licenses prior to transitioning to a new stage or triggering the spectrum reserve; and
  - In any PEA with a limited number of Category 1 licenses, include the least impaired Category 2 license(s) in the reserve, up to the maximum.
- Assignment Phase
  - Rather than relying on bidding, allow generic license holders to express their block preferences via a “points” system or, alternatively, rely on a “quasi-random” assignment process;
  - Randomly sequence the assignment rounds;
  - Include only one PEA in each assignment round; and
  - If bidding procedures are used despite the likely public interest harms, apportion bids on a per-license basis.

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Nationwide Impairment Threshold

- USCC supports the Commission's proposal to limit license impairments on a nationwide aggregated basis to less than 20% of "weighted-pops."
- As the Commission explained, permitting market variation will "avoid the need to restrict the licenses offered in the forward auction to the number available in the most constrained market."
- USCC also agrees with the Commission that the 20% threshold, in particular, is "appropriate to avoid reducing the amount of spectrum that will be available in most areas nationwide while ensuring that … licenses generally will not be affected by inter-service interference."
- Notably, this approach also will address the concern of some commenters that the largest markets will have significant impairments because the weighting component "will help to ensure that most of the spectrum in the most heavily-weighted PEAs remains unimpaired."
- Regardless of the amount of impairment in a PEA, no station should be assigned to Channel 51, and any stations currently on Channel 51 should be repacked to another channel.

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Generic License Categories

- USCC supports the Commission's proposal to define as Category 1 licenses with predicted impairments affecting up to 15% of a PEA's population, and to define as Category 2 licenses with predicted impairments affecting more than 15%, but not greater than 50%, of a PEA's population.
- USCC therefore opposes the proposals of some commenters to offer only wholly-unimpaired licenses outside of border areas, or to offer only Category 1 licenses.
  - These proposals would significantly reduce the number of licenses offered in the forward auction that otherwise could be used to help alleviate our nation's spectrum crunch.
  - Fewer licenses also would make it more likely that the largest carriers dominate the auction to the exclusion of small and regional carriers, who require additional low-band spectrum in order to serve rural areas and provide consumers with competitive alternatives.

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Generic License Categories

- USCC also opposes the Commission's alternative proposal to restrict Category 1 to only those licenses that are not subject to any inter-service interference.
  - This approach would reduce the number of Category 1 licenses, which could exacerbate the risk of market foreclosure by making it more likely there will be an insufficient number of licenses to maximize the spectrum reserve.
  - It would also reduce the fungibility of Category 2 licenses.
- Finally, USCC opposes the proposal to group every license with impairments affecting up to 50% of a PEA's population into a single category.
  - This would significantly decrease the fungibility of every license, and thus increase bidder uncertainty, which would lead to conservative bidding and a greater likelihood that the auction moves to an additional stage with a lower clearing target.

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Subsequent Auction for "Heavily-Impaired" Licenses

- Licenses with impairments greater than 50% should be offered in a subsequent auction using the standard SMR auction format.
- Although the impairment levels of these licenses make them ill-suited for an auction of "generic" licenses, heavily-impaired licenses nevertheless are likely to attract interest.
  - For instance, because the impairment levels will be determined on the basis of the population affected, the unimpaired portions could cover a significant amount of geography, and thus have value for carriers seeking to expand their coverage footprints.
  - In this way, these licenses could be particularly well-suited for carriers focused on providing service in rural areas -- typically, local and regional carriers, who may have limited success during the incentive auction because the prices will primarily reflect the value bidders assign to the most populated areas in each PEA.
- Another significant benefit is that a subsequent auction would give potential bidders the time needed to more thoroughly evaluate the nature of the impairments of each license.

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Bidders Require Sufficient Information Regarding Impairments

- In order to reduce the inherent uncertainty associated with auctioning licenses with varying degrees of impairment, bidders need as much information as possible regarding the extent and nature of these impairments.
- USCC, therefore, urges the Commission to make the results of the F(50,10) statistical propagation model available to bidders.
- Given that the difference in impairment levels when using F(50,50) versus F(50,10) varies dramatically and unpredictably, releasing this information would permit bidders to make more informed decisions, which would lead to more reliable and efficient auction results.

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Activity Requirement

- At least early in the auction, the Commission should set the activity requirement below its proposed 92-97% range.
- Given the various complexities of this first-ever incentive auction, as well as the Commission's proposal not to permit activity rule waivers, bidders require a less aggressive activity requirement in order to have the time and flexibility needed to familiarize themselves with these novel auction procedures.
- USCC recommends starting the auction with an 80% activity requirement, which the Commission has adopted for, and which has proved effective in, many past auctions.
- As in past auctions, if the Commission subsequently determines that it needs to accelerate the pace of the auction, it could increase the activity requirement after providing sufficient notice to bidders.

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Activity Rule Waivers

- Activity rule waivers provide an important safety valve because they allow a bidder to avoid losing eligibility in the event exigent circumstances prevent it from bidding in a given round.
- Activity rule waivers are particularly important to smaller bidders, who are more likely to find it necessary to withhold a certain level of bidding activity in a few rounds.
  - For instance, because smaller bidders typically have fewer resources to devote to an auction, they may require more time to accurately value licenses and plan their strategies.
  - In addition, because smaller bidders often have a firmly-fixed budget, they need sufficient time to carefully analyze all of the potential consequences of their bidding activity prior to placing bids.

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Brief "Pauses" in Forward Auction Bidding

- USCC recognizes, however, that an ascending clock auction format weighs against activity rule waivers because of the need to maintain a consistent level of demand.
- Thus, in order to partly compensate for the proposed lack of activity rule waivers, USCC urges the Commission to briefly "pause" bidding (*e.g.*, for one or two hours) both before and after the first round following any increase in the activity requirement.
- Bidders will need this time to adjust their bidding strategies to account for the higher activity requirement, and then to sufficiently analyze the surge in bidding activity which typically occurs in the first round after an increase in an auction's activity requirement.

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Spectrum Reserve Price Benchmark

- USCC supports the proposal to set the price benchmark for the first component of the final stage rule equal to $1.25 per MHz-pop, and to determine whether this benchmark is satisfied based on the average clock prices for the Category 1 licenses in the largest PEAs.
- Auction 73, which also offered licenses for "greenfield" below-1-GHz spectrum, generated average prices per MHz-pop very close to this proposed price benchmark.
  - Given the inherent price uncertainty present in every spectrum auction, it would be inappropriate to base the price benchmark here on the results of Auction 73 *plus* a subjective premium intended to account for an apparent, but largely unknown, upward trend in spectrum prices since 2008.
- A higher benchmark would risk thwarting the various public interest benefits that otherwise should arise from the spectrum reserve.
  - For instance, because a higher price benchmark would, at a minimum, delay the trigger of the spectrum reserve, it could allow for the very type of foreclosure that the Commission found would likely occur in the absence of a spectrum reserve.

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20 MHz Cap on Amount of Reserved Spectrum

- The Commission should not permit a single bidder to acquire more than 20 MHz of reserved spectrum in a given PEA.
- Absent such a cap, a single bidder could acquire all 30 MHz of reserved spectrum in a PEA, which would conflict with the Commission's goal of facilitating access to below-1-GHz spectrum by multiple carriers.
  - This risk of exclusion would be especially acute for smaller bidders given that at least two, and in many markets three, of the four nationwide carriers will be reserve-eligible.
- A 20 MHz cap would not disadvantage bidders given that this is sufficient bandwidth for a carrier to deploy a next-generation broadband network.
  - Even if a bidder prefers more than 20 MHz, it could compete for the non-reserved blocks in the same PEA.

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Determining Maximum and Actual Amount of Reserved Spectrum

- Under the current proposals, the amount of reserved spectrum in a PEA could be reduced based solely on the bidding activity of reserve-eligible bidders in a *single* clock round.
  - The maximum amount of reserved spectrum in a PEA in a subsequent stage would equal the demand expressed by reserve-eligible bidders for Category 1 licenses at the end of the previous stage.
  - The actual number of licenses reserved in a PEA would equal the demand expressed by reserve-eligible bidders for Category 1 licenses when the spectrum reserve is triggered.
- However, because demand among markets generally shifts throughout an auction, the demand expressed by reserve-eligible bidders in a particular round may not accurately reflect the demand these bidders will ultimately express for that PEA.
  - For instance, bidders may switch back and forth between Category 1 and 2 licenses depending on price differentials and the degree of impairment of the licenses.

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Ensuring Actual Number of Reserved Licenses Reflects the True Demand

- The Commission, therefore, must ensure that reserve-eligible bidders have a reasonable opportunity to shift demand to their preferred licenses prior to irrevocably reducing the size of the reserve in some PEAs as a result of the demand expressed by these bidders in a single round.

- A failure to do so would effectively force reserve-eligible bidders to deploy their eligibility in the Category 1 licenses of all of their desired mid- and small markets, which would give them less bidding flexibility throughout the auction, while non-reserve-eligible bidders could freely switch their demand across PEAs and license categories in response to changes in price and demand.

- If reserve-eligible bidders did not refrain from the reasonable, and necessary, bidding strategies that would remain available to other bidders, the amount of reserved spectrum in a large number of PEAs to be artificially, and unreasonably, reduced.

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Information Available During the Auction

- One option would be to provide bidders with enough information to allow them to determine that the spectrum reserve will be triggered within the next few rounds.
- In this respect, the Commission proposes to "make public the forward auction bid amounts at the end of each round" because this information "will be used to determine whether the first component of the final stage rule has been satisfied."
  - It is unclear, however, how much detail the Commission intends to disclose.
  - For instance, for clearing targets of 84 MHz or less, it proposes to determine whether the first component of the final stage rule has been satisfied based on the average clock price for the Category 1 licenses in the "high-demand" PEAs.
  - Consequently, bidders will require this specific information, rather than simply the total "forward auction bid amounts" at the end of a round, in order to accurately gauge whether the spectrum reserve is about to be triggered in lower clearing scenarios.

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Information Available During the Auction

- In addition, after the reverse auction portion of each stage ends, the Commission proposes to provide bidders with "the total dollar amount of forward auction proceeds needed to satisfy the second component of the final stage rule."
  - The Commission also proposes, however, to "take into account any discounts based on impairments, as well as discounts based on small business bidding credits applicable to particular bidders," in determining whether the second component has been satisfied.
  - Consequently, the Commission will not know, and therefore could not disclose, the gross forward auction bid amounts that will be needed to satisfy the second component at the time it proposes to disclose this information, and bidders will lack the information necessary to make these calculations themselves during the forward auction.

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"Adjustment Round"

- Thus, if either (a) the first component of the final stage rule in a clearing scenario of 84 MHz or less or (b) the second component of the final stage rule (in any clearing scenario) either triggers the spectrum reserve (*i.e.*, is the second component to be satisfied) or causes a stage of the auction to fail (*i.e.*, is the first component that cannot be satisfied), the Commission should utilize USCC's "adjustment round" proposal.

- As previously detailed, this proposal would provide reserve-eligible bidders with a single opportunity to shift their demand to the PEAs and/or Category 1 licenses of greatest interest – *i.e.*, to those licenses for which they likely would have shifted their demand during the regular clock rounds had they known that the auction was about to advance to a new stage or satisfy the final stage rule.

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Key is to Provide Advance Notice

- Of course, if the Commission intends to disclose information about forward auction bid amounts that is sufficiently granular to allow bidders to calculate the current average clock price for the Category 1 licenses in the "high-demand" PEAs, the proposed "adjustment round" may not be needed where the first component of the final stage rule triggers the spectrum reserve in a clearing scenario of 84 MHz or less.

- The key point is that the Commission must either: (1) ensure that bidders have enough information to know that the final stage rule will soon be satisfied or that a stage of the auction will soon fail; or (2) employ a mechanism, such as USCC's proposed "adjustment round," to address the harms that could arise from a lack of advance notice.

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If Insufficient Category 1 Licenses, Include Least Impaired Category 2 in the Reserve

- The Commission should adopt its alternative proposal to include Category 2 licenses in the spectrum reserve in any PEAs with fewer Category 1 licenses than in the maximum reserve.
- As the Commission notes, this approach would "ensure that the need to offer fewer Category 1 blocks in certain PEAs in order to accommodate market variation does not reduce the benefits to competition and consumers from providing opportunities for multiple providers to gain access to low-band spectrum."
- USCC also urges the Commission to supplement the spectrum reserve in a PEA only with the least-impaired Category 2 license(s) in that PEA.
  - This would be consistent with the proposal to generally populate the reserve with Category 1 licenses, which the Commission noted would advance the public interest because reserve-eligible bidders "are likely to be more reliant on 600 MHz Band spectrum to expand coverage and to compete in the mobile wireless marketplace."

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Harms of Assignment Phase Bidding

- Incorporating bidding procedures into the assignment phase likely would:
  - Lead to reduced revenue in the clock phase, which would make it more likely that the auction will have to move to another stage with a lower clearing target; and
  - Relegate smaller bidders to the most impaired licenses included in a generic category, and these bidders would not be "made whole" by the proposed impairment discounts.

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Assignment Phase Bidding Would Reduce Clock Phase Revenues

- The sale of generic licenses in the clock phase will fully allocate rights to bidders (*i.e.*, entire set of generic licenses will be sold).
  - As a result, forcing bidders to pay for the subsequent division of these shared rights would be the equivalent of restricting the rights sold in the clock phase, which would reduce bidders' valuations of, and bids for, the generic licenses.
- We have provided examples demonstrating that, under the proposed Vickrey-style bidding procedures, "losing" bidders could pay nothing and receive their least-preferred assignments, while "winning" bidders could receive their preferred assignments but end up paying so much they would be no better off than had they been freely awarded their least-preferred assignments.
  - Consequently, during the earlier clock phase, each bidder would value the generic licenses under the assumption that they would receive their least-preferred possible assignment(s) (of those that remain feasible after optimizing for any "efficiency objectives").

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Substitutes to Assignment Phase Bidding

- Due to the likely harms that would arise from incorporating bidding procedures into the assignment phase, USCC urges the Commission to instead utilize one of two assignment procedures that would not rely on bidding:
  - Allow each bidder to express its block preferences by assigning a varying number of "points" to each of the blocks that could be assigned to it after optimizing for all three of the spectral-contiguity objectives proposed by the Commission.
  - Alternatively, optimize for the three spectral-contiguity objectives *and* USCC's proposed fourth "impairment averaging" objective and then, if more than one feasible assignment plan remains for the PEA, determine the winning plan on a random basis.

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Potential Substitute #1
Expressing Preferences without Bidding

- Under this "points-based" assignment procedure, for every PEA in which a bidder holds one or more generic licenses, the bidder would assign 0 to 100 points to each block in the PEA that could be assigned to it.
- A bidder could only "score" each block once, regardless of the number of generic licenses it holds for a PEA.
- Of the assignment plans for each PEA that best satisfy the three spectral-contiguity objectives, the winning plan would be the one which maximizes the sum of bidders' point assignments.

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Potential Substitute #1 (cont…)

- If more than one assignment plan maximizes the sum of bidders' point assignments, the winning plan would be determined on a random basis.
- USCC believes ties would be unlikely given the range of points bidders could assign to each block, as well as the fact that, in addition to impairment levels, different bidders will prefer different blocks due to the location of any impairments and the spectral- and geographic-contiguity of blocks in relation to their other licenses.
  - However, to further reduce the potential for ties, prior to randomly selecting the winning assignment plan, the auction system could first optimize for USCC's proposed "impairment averaging" objective (*see* "Potential Substitute #2" below) with respect to those plans that maximized the sum of the bidders' point assignments.

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Potential Substitute #2
"Quasi-Random" Assignment Process

- Under this alternative approach, for each PEA, the auction system would begin by optimizing for all three of the Commission's proposed "spectral-contiguity" objectives, which would limit the number of feasible assignment plans for the PEA.
- Next, with respect to those feasible assignment plans, the system would optimize for USCC's proposed "impairment averaging" objective, which would consist of the following two stages:
  - First, minimizing the difference in the average level of impairment of the Category 1 licenses held by any two bidders; and
  - Second, minimizing the difference in the average level of impairment of the Category 2 licenses held by any two bidders.
  - In other words, minimizing the difference in the average level of impairment of the Category 1 licenses would take precedence over minimizing this difference with respect to any Category 2 licenses in the same PEA.

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Sequencing the Assignment Rounds

- If the rounds are sequenced based on descending order of weighted-pops as proposed, most, if not all, smaller bidders will not participate in the assignment phase for many rounds because they generally will not hold generic licenses for any of the largest PEAs.
- By that time, the largest bidders would be willing to pay a premium for blocks that are geographically-contiguous to those they were assigned in earlier rounds.
- Further, even if bidding procedures are not used, the largest bidders would possess a significant “informational advantage” with respect to winning bid strategies.

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Random Sequencing

- USCC therefore urges the FCC to randomly sequence the assignment rounds.
- Notably, because the advantages of having contiguous blocks across adjacent PEAs arise regardless of how heavily-populated the PEAs happen to be, random sequencing would in no way undermine the Commission's primary goal in proposing to sequence the assignment rounds rather than conduct them concurrently.
- In addition, random sequencing should not add any complexity or length to the assignment phase (*e.g.*, the Commission still could conduct the assignment rounds for PEAs in different REAGs in parallel).

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Single PEA per Assignment Round

- The Commission should abandon its proposal to group certain PEAs together into a single assignment round.
- This proposal fails to recognize that the level of impairment, or the location of impairments (either generally or in relation to a particular carrier's current service area), will vary from one PEA to another.
  - Thus, a bidder could be forced to acquire an undesirable block in one PEA in order to acquire a desired block in another PEA.
- Notably, because few PEAs likely would satisfy the proposed grouping constraints, abandoning this proposal would have little effect on the length of the assignment phase.
- If the Commission nevertheless desires to group some PEAs together, it should at least add another constraint that allows PEAs to be grouped only if they do not contain licenses with impairment levels exceeding 5%.

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