

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

January 25, 2013

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INTRODUCTION AND SUMMARY

Competitive Carriers Association (“CCA”) hereby submits its comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued in the above-captioned proceeding.¹ CCA represents the interests of more than 100 competitive wireless carriers, including rural and regional carriers as well as national providers. CCA’s members have a keen interest in ensuring that the Commission’s incentive auction rules are designed to maximize the availability of licensed spectrum sufficient to meet growing demand, and are implemented in a manner that guarantees that all carriers have meaningful opportunities to acquire spectrum.

The Commission has recognized that “access to spectrum is a precondition to the provision of mobile wireless services,” and in particular, spectrum is a “key input” for competitive carriers.² Indeed, “[s]pectrum is the lifeblood of the wireless industry,” and the Commission “has a unique responsibility to ensure that spectrum is allocated in a manner that promotes actual and potential competition and that incentives are maintained for innovation and

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, Docket No. 12-268 (rel. Oct. 2, 2012) (“NPRM”).

² *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, WT Docket No. 12-269, ¶¶ 2, 4 (rel. Sept. 28, 2012) (“Mobile Spectrum Holdings NPRM”).

efficiency in the mobile services marketplace.”³ During the past decade, the demand for mobile voice and data services has exploded, which has created tremendous need for additional spectrum. Simultaneously, the wireless industry has undergone a period of significant consolidation. In particular, the two largest carriers, AT&T and Verizon, not only have swallowed smaller rivals, but also have engaged in significant spectrum acquisitions that have only strengthened their control over this critical input vis-à-vis competitive carriers.

The spectrum consolidation by the two largest incumbents is most notable in the low-frequency band “beachfront” spectrum below 1 GHz. The superior propagation characteristics of spectrum below 1 GHz provide the network economics essential to building coverage in light suburban and rural markets. Yet in recent years, the 850 MHz cellular band has seen significant consolidation to Verizon Wireless through the Alltel transaction,⁴ and AT&T through a variety of small transactions.⁵ Auction 73 brought the anticipation of new, advanced service to rural and regional areas offered by the numerous Lower A Block licensees, mostly regional and local operating companies. Unfortunately, most rural and regional parts of the country have not yet benefited for 4G LTE due to a lack of interoperability in the Lower 700 MHz band, as the two largest license winners defined band classes covering only their desired spectrum holdings.

The broadcast incentive auction provides one of the few near-term opportunities to allocate additional licensed spectrum for commercial wireless services—and more importantly,

³ *Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589 ¶ 30 (2011) (“AT&T-Qualcomm Order”).

⁴ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008).

⁵ See e.g. Press Release, Atlantic Tele-Network, Inc., Atlantic Tele-Network Announces Sale of U.S. Retail Wireless Business to AT&T (Jan. 22, 2013) (on file with author), available at <http://www.atni.com/news.html>.

provides another chance for competitive carriers to gain access to beachfront spectrum. The success of the auction will depend on several key criteria, including how much licensed spectrum the auction generates for wireless services, the fairness of the auction procedures both for broadcasters and wireless participants, and whether the auction bolsters competition in the wireless industry.

To create a successful auction, the Commission should do everything in its power to maximize participation by broadcasters to repurpose spectrum for licensed wireless uses. The Commission can do so by providing clarity and transparency in its bidding rules so that broadcasters can accurately assess the benefits of participating. The Commission also should implement a blend of “carrots” and “sticks” that promote participation by broadcasters while ensuring that the Commission’s policies are not artificially propping up broadcasters in a manner that actually discourages their participation. If broadcasters choose not to participate, it should not be because they know that they can continue to rely on regulatory policies that bolster an otherwise-flawed business model.

The Commission also must ensure that its incentive auction rules are procompetitive and give all carriers, in particular competitive carriers, a meaningful opportunity to acquire spectrum where needed. Put simply, the auction will be a failure, and the wireless industry will be substantially worse off, if the principal result of the auction is to further entrench the dominance of AT&T and Verizon at the expense of the rest of the industry. Rural, mid-size and regional carriers deliver vital public interest benefits to consumers who may not be well served by the largest carriers. The Commission therefore should design its spectrum auction in a manner that promotes the participation of a broad cross-section of the industry. CCA looks forward to working with the Commission to make these goals a reality.

DISCUSSION

I. THE COMMISSION SHOULD IMPLEMENT STRUCTURAL MECHANISMS THAT WILL PROMOTE PARTICIPATION BY COMPETITIVE WIRELESS CARRIERS

The Commission has demonstrated a longstanding commitment to inclusive auction design, and consistently has implemented structural features to ensure broad and balanced participation by a wide range of interested parties, consistent with its statutory directives. The Commission should maintain its policy of designing auction rules to promote effective competition by ensuring that its incentive auction rules encourage participation by a broad array of wireless carriers.

A. The Commission Has Ample Authority to Design Auctions In A Manner That Promotes Competition

Section 309(j)(3)(B) of the Communications Act specifically directs the Commission to design and implement spectrum auctions in a manner that will “promot[e] economic opportunity and competition ... by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”⁶ More broadly, “Congress has established the promotion of competition as a fundamental goal of the nation’s mobile wireless policy,”⁷ which is reflected in Title III of the Act.⁸

The Commission in the past has used a variety of tools—including set-asides through the Designated Entity program and eligibility restrictions designed to introduce greater

⁶ 47 U.S.C. § 309(j)(3)(B).

⁷ Mobile Spectrum Holdings NPRM ¶ 3.

⁸ *See, e.g.*, 47 U.S.C. § 332(a)(3), (c)(1)(C); *see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, 9687 ¶ 3 (2011) (“15th Wireless Competition Report”).

competition—to help promote procompetitive outcomes and reduce excessive spectrum aggregation.⁹ Just as it has done in previous auctions, the Commission can and should establish objective qualifications of general applicability to ensure that the broadcast incentive auction is competitive and fair. Doing so would be consistent with Section 6404 of the recently adopted Spectrum Act.¹⁰ That provision preserves the Commission’s right to establish objective, neutral qualifications and eligibility criteria that apply generally to all potential bidders—and in particular is evidence of Congress’s concerns related to spectrum aggregation. Specifically, the statute expressly confirms that nothing in Section 6404 “affects any authority the Commission has to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.”¹¹

Beyond the statute, Representative Waxman included in the Congressional Record that this preservation of Commission authority

clarifies that Congress intends for the FCC to continue to promote competition through its spectrum policies. The FCC can adopt and enforce, for example, a spectrum cap through a rule that applies either to all licenses or to spectrum offered in a particular auction, as long as such rules are not party-specific. Th[is] . . . clause thus preserves the FCC’s ability to require, among other things, the divestiture of specific spectrum, such as spectrum below 1 GHz, in order to promote competition.¹²

⁹ See, e.g., *Revision of Rules and Policies for Direct Broadcast Satellite Service*, IB Docket No. 95-168, Order, 11 FCC Rcd 9712, 9731, ¶¶ 49, 61–66 (1995) (one-time rule prohibiting incumbent licensees from bidding on new DBS licenses to promote entry); *Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299, 5326, ¶¶ 62–63 (2000) (rules for 700 MHz guard band prohibiting one licensee from obtaining both licenses in a market); see also PCS (A- through F-Block) and LMDS auction eligibility restrictions and DE opportunities.

¹⁰ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6404, 126 Stat. 156, 230 (2012).

¹¹ *Id.*

¹² 158 CONG. REC. E265, E266 (daily ed. Feb. 28, 2012) (speech of Hon. Henry A. Waxman).

Prior to final adoption of this Act, Senators Kerry, Snowe, Warner, and Moran noted that limiting Commission authority

could have a deterring effect on fostering competition and maximizing auction proceeds to pay for a public safety network and deficit reduction. Maintaining the FCC's current range of tools for structuring a spectrum auction, as prescribed by statute, provides the agency with the requisite flexibility to attract a significant number of bidders to ensure the competitive bidding necessary to maximize auction revenues and that the market for spectrum remains competitive for companies of all sizes.¹³

Congress's intent is clear and the Commission must utilize the range of tools at its disposal to introduce greater competition.

Ensuring the participation of a broad cross-section of the industry is more important than ever due to the substantial increase in industry concentration. As the Mobile Spectrum Holdings NPRM recognizes, the number of nationwide wireless carriers has declined from six to four since 2003; and, during the same period, several "regional and rural facilities-based providers have exited the marketplace through mergers and acquisitions."¹⁴ Consolidation in the wireless industry, as measured by the Herfindahl-Hirschman Index ("HHI") increased from 2,151 in 2003 to an alarming 2,848 in 2010 (where an HHI of greater than 2,500 indicates a "highly concentrated" market).¹⁵ As a result, the Commission has been unable for the past two years to conclude that the wireless marketplace is characterized by "effective competition."¹⁶ In the

¹³ Letter from U.S. Senators John F. Kerry, Olympia J. Snowe, Mark Warner and Jerry Moran to The Hon. Harry Reid, Majority Leader, United States Senate and The Hon. Mitch McConnell, Minority Leader, United States Senate (Jan. 9, 2012) (on file with author).

¹⁴ See Mobile Spectrum Holdings NPRM ¶ 14.

¹⁵ See 15th Wireless Competition Report ¶ 2.

¹⁶ *Id.*; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to*

current competitive environment, the Commission must ensure that this upcoming auction does not reinforce the dominance of AT&T and Verizon, but rather promotes competition and alleviates the competitive harms flowing from the industry's high concentration levels. The Commission should therefore ensure that its rules promote participation by a broad array of carriers.

These goals are particularly important within the context of the 600 MHz spectrum that is the subject of the incentive auction because this spectrum is ideal for wide area coverage and has strong propagation characteristics. The Commission has recognized that “[t]he more favorable propagation characteristics of lower frequency spectrum (*i.e.*, spectrum below 1 GHz) allow for better coverage across larger geographic areas and inside buildings,” and that access to such spectrum is “important for other competitors to meaningfully expand their provision of mobile broadband services or for new entrants to have a potentially significant impact on competition.”¹⁷ Spectrum below 1 GHz also can provide the same geographic coverage at lower costs than higher frequency bands.¹⁸ Those features make the 600 MHz spectrum attractive to rural, mid-size and regional carriers (and new entrants) for use in more effectively competing with the two super-carriers, which already control over 73% of spectrum below 1 GHz nationwide,¹⁹ and significantly more in the nation's largest markets.

Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407 ¶ 3 (2010).

¹⁷ *AT&T-Qualcomm Order* ¶¶ 49-51.

¹⁸ See Comments of Competitive Carriers Association, WT Docket No. 12-269 at 11 (filed Nov. 28, 2012).

¹⁹ *AT&T-Qualcomm Order*, ¶ 48.

B. The Commission Should Take Specific Steps To Promote Participation By Competitive Carriers

The Commission should implement several specific structural mechanisms to prevent spectrum aggregation and ensure that competitive carriers—including rural, mid-size and regional carriers—have a meaningful opportunity to acquire this scarce input so they can continue to provide viable, competitive alternatives to AT&T and Verizon.

1. Eligibility Rules

As discussed above, the Commission can and should “adopt and enforce rules of general applicability . . . concerning spectrum aggregation that promote competition,” consistent with Section 6404 of the Spectrum Act.²⁰ In particular, the Commission should adopt CCA’s spectrum screen proposal, as set forth in its comments in the spectrum aggregation proceeding.²¹ Specifically, CCA has proposed that the Commission adjust its approach to evaluating spectrum aggregation in today’s wireless industry by applying three independent thresholds to spectrum aggregation: one targeted specifically at local spectrum holdings below 1 GHz, one that evaluates an entity’s aggregate local spectrum holdings (both above and below 1 GHz), and one for nationwide holdings. That proposal is designed to create a more accurate tool for evaluating the competitive effects of spectrum holdings and to protect against competitive harms arising from the aggregation of spectrum in the hands of the carriers that have already concentrated vast amounts of commercial spectrum.

Adopting CCA’s proposal would have important implications for the incentive auction because the limits on spectrum aggregation will apply in this setting. In particular, the proposed

²⁰ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6404, 126 Stat. 156, 230 (2012).

²¹ See Comments of Competitive Carriers Association, WT Docket No. 12-269 (filed Nov. 28, 2012); Reply Comments of Competitive Carriers Association, WT Docket No. 12-269 (filed Jan. 7, 2013).

new screen for spectrum holdings below 1 GHz in a market would apply to the 600 MHz spectrum at issue here. However, the Commission should not attempt to implement a case-by-case analysis of spectrum holdings in the context of this auction, because the inability to predict in advance what specific spectrum will be available in a market will make case-by-case analysis hopelessly complex and time consuming. Instead, to provide clear and predictable rules for the auction process that are consistent with the newly refined spectrum screen, the Commission's auction rules should include either *ex ante* prohibitions on bidding in situations in which the winning bidder would exceed the Commission's newly revised spectrum screens, or an *ex post* requirement that a winning bidder must divest sufficient, comparable low band (*i.e.*, below 1 GHz) spectrum in order to remain under the new screen.²² The latter approach would have the benefit of promoting greater participation in the bidding process, while ensuring that winning bidders ultimately remain within the limits of the spectrum screen. An *ex post* divestiture requirements may also permit efficiency and competition-enhancing transactions between carriers on the secondary market, allowing them to rationalize their holdings.

On the other hand, *ex post* divestiture requirements may create uncertainty regarding what spectrum may be available through the auction or on the secondary market immediately following the auction. This may reduce incentives for participation and potentially jeopardize auction revenues that are to be made available for the construction of the nationwide public safety broadband network. Either way, to promote greater certainty, CCA encourages Chairman

²² If a carrier does not have comparable low-band spectrum, a participant could also divest a competitively equivalent amount of mid-band.

Genachowski to follow through on his intent to complete the Mobile Spectrum Holdings proceeding prior to issuing incentive auction rules.²³

Ensuring a competitive wireless marketplace requires that all market participants have sufficient spectrum to compete effectively. With only a limited amount of new spectrum coming available over the next few years, it is imperative that the Commission have the tools to design auctions that address today's and tomorrow's wireless marketplace. The Spectrum Act preserves the Commission's ability to adopt generally applicable spectrum aggregation rules that promote competition.²⁴ Rules that apply to every bidder apply generally. As CCA has previously stated, [w]hile generally applicable rules will always affect different companies differently, rules are no less 'generally applicable' as a result."²⁵

²³ *Keeping the New Broadband Spectrum Law on Track: Hearing Before the Subcomm. on Communications and Tech. of the H. Comm. on Energy & Commerce, 112th Cong. 67 (2012) (testimony of Hon. Julius Genachowski, Chairman, Federal Communications Commission), preliminary transcript available at <http://democrats.energycommerce.house.gov/sites/default/files/documents/Transcript-Broadband-Spectrum-Law-2012-12-12.pdf>.*

²⁴ Middle Class Tax Relief and Job Creation Act of 2012 § 6404.

²⁵ *See* Letter from Atlantic Tele-Network, Inc., *et al.*, to The Hon. Fred Upton, Chairman, House Committee on Energy & Commerce. *et al.* (Dec. 11, 2012) (on file with author). As CCA and its membership has noted, the Commission has long used generally applicable spectrum aggregation rules to promote competition, stimulate investment, and encourage innovation for the benefit of consumers. In the 1990s, for instance, the Commission adopted rules on personal communications service (PCS) spectrum holdings to foster broad participation in the marketplace. The Commission also implemented an overall limitation on the amount of commercial mobile radio spectrum any one entity could acquire at auction to help ensure diversity in the provision of mobile wireless services. These policies were fundamental to the emergence of a wireless marketplace in which new entrants challenged the established incumbent telephone companies on price, service, and innovation. Reversing course and allowing the dominant incumbents to prevent new competitive challenges has the potential to exclude, eliminate, or weaken the competitiveness of equally efficient competitors in ways that will raise consumer prices, destroy jobs, and kill innovation in the wireless industry.

2. *Bidding Credits*

CCA applauds the Commission's efforts to promote participation by rural, mid-size and regional businesses and new entrants, and supports the NPRM's proposal to provide bidding credits to small and very small businesses.²⁶ The Commission's prior efforts to promote participation by rural, mid-size and regional carriers were beneficial, and many CCA members, for example, were able to participate in the 700 MHz auction by taking advantage of the Commission's bidding credits for small businesses. Particularly in today's highly concentrated marketplace, it is critical that rural, mid-size and regional carriers have a meaningful opportunity to bid on broadcast spectrum. Bidding credits can help to counteract the potential foreclosure value that the two super-carriers may assign to spectrum, which reflects the added benefit to them of acquiring the spectrum to foreclose competition from smaller rivals. Keeping spectrum out of the hands of their competitors allows the largest carriers to reap benefits beyond the value of the spectrum itself (which is already a scarce commodity).²⁷ The foreclosure effects spill over into other critical inputs, such as smaller carriers' ability to enter into roaming agreements or acquire devices and other equipment.

The Commission also should consider additional proposals and refinements to level the playing field for competitive carriers who are willing and able to put spectrum resources to use for the benefit of consumers.²⁸ Such an approach would ensure that all carriers who need

²⁶ NPRM ¶ 295.

²⁷ This is particularly true for low-band spectrum as it allows carriers to offer coverage using fewer towers (and thus substantially lower capital and operational costs) than spectrum in mid- and high-frequency bands.

²⁸ For example, under MetroPCS's proposed BID program auction applicants would receive a sliding scale of bidding discount credits in inverse proportion to the amount of attributable spectrum the applicant holds in the geographic area covered by a particular license. *See* Comments of MetroPCS, *Fostering Innovation and Investment in the*

spectrum in an area will have a greater possibility to acquire it than those who already have significant holdings.

3. *Band Plan*

The Commission's overarching goal in designing the band plan for the 600 MHz band should be to maximize the amount of licensed spectrum available for mobile broadband services. Any particular decisions regarding the specifics of the band plan should be made with that goal in mind. CCA agrees with many of the proposals in the NPRM for the 600 MHz band plan, as discussed below.

a. *Block Size*

The NPRM proposes to license 600 MHz spectrum in 5 MHz "building blocks."²⁹ CCA agrees that 5 MHz blocks are appropriate. That block size will maximize the number of licensed blocks in an area and will enable wireless carriers to provide mobile broadband services. In addition, creating 5 MHz blocks comports with current industry practices and with the block sizes used in other bands. As the NPRM notes, some carriers may wish to obtain spectrum in larger units, such as 10 MHz blocks,³⁰ and the Commission accordingly should enable carriers to bid on multiple blocks in a market in order to obtain larger amounts of spectrum.

b. *Block Configuration*

CCA supports the NPRM's proposal to offer a uniform amount of downlink spectrum, with varying amounts of uplink spectrum in each service area.³¹ Such an approach will allow for

Wireless Communications Market; A National Broadband Plan for our Future, GN Docket No. 09-157, *et al.*, at 49-58 (filed Sept. 30, 2009).

²⁹ NPRM ¶ 128.

³⁰ *Id.* ¶ 130.

³¹ *Id.* ¶ 131.

the use of uniform mobile device filters and promote the efficient deployment of wireless services.

Moreover, CCA strongly agrees that pairing licensed spectrum where possible will result in faster, more efficient deployment of 4G services.³² Low frequency spectrum is particularly advantageous for smaller carriers and for new entrants, and offering paired spectrum will promote competition by enabling such carriers to deploy new and expanded services quickly and efficiently. Only after the Commission has paired as many blocks as possible in a market should the Commission offer excess spectrum as an unpaired downlink block. At a minimum, the Commission should establish a threshold of three 5 MHz uplink blocks to be paired with equivalent downlink blocks below Channel 37. Establishing such a minimum threshold preserves the intrinsic value of paired lower-band spectrum and incents broader broadcaster participation in every market. Alternatively, in this excess spectrum the Commission should consider using TDD allocation (allowing simultaneous uplink and downlink use) to increase competitive entry in the 600 MHz band.

In creating paired blocks, the Commission should seize the opportunity to immediately clear Channel 51, because interference concerns involving Channel 51 already have hampered base station deployment in the Lower 700 MHz band.³³ Clearing Channel 51 is another way that the Commission can help level the playing field and support rural, mid-size and regional carriers, because such carriers own many of the Lower 700 MHz A Block licenses that have been stranded by the ongoing concerns related to Channel 51. In turn, maximizing utilization of

³² *Id.* ¶ 132.

³³ See Reply Comments of RCA – The Competitive Carriers Association, *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69, at 9-10 (filed July 16, 2012).

Lower 700 A Block licenses allows license holders to realize returns on their investment and frees capital for participation in the incentive auction.

In particular, the Commission should implement a rule that the very first licenses that are auctioned in any geographic area consist of a paired downlink channel at Channel 36 with an uplink channel at Channel 51.³⁴ Thus, Channel 51 should be part of the first cleared and licensed spectrum in any area, and only after Channel 51 is auctioned should any additional spectrum potentially be allocated as a stand-alone downlink channel. The Commission also should incentivize the clearing of Channel 51 by reducing the exclusion zones that would be enjoyed by Channel 51 operators if they choose to remain in their current location. Finally, the Commission should promote the immediate, voluntary relocation of Channel 51 broadcasters by clarifying that broadcasters who voluntarily vacate Channel 51 forthwith nevertheless will be able to recover auction revenues.

c. Geographic License Areas

The Commission should use sufficiently small geographic areas that rural and regional carriers retain incentives to participate while still allowing carriers to aggregate blocks to serve larger geographic areas. By contrast, using large geographic areas would give significant and unwarranted advantages to the largest nationwide carriers at the expense of smaller carriers, and would risk leaving behind rural America. Large geographic areas significantly reduce the number of potential bidders for licenses, reducing potential auction revenue as was the case in the Upper 700 MHz C Block. The NPRM proposes to use Economic Areas (EAs) as geographic blocks.³⁵ CCA believes that the FCC should license the spectrum in geographic blocks no larger

³⁴ NPRM ¶¶ 135, 165.

³⁵ NPRM ¶ 148.

than EAs , as smaller license sizes give rural and regional carriers reasonable opportunities to bid.

As an alternative, the Commission should consider designing auction areas around existing broadcast Designated Market Areas (DMAs), or a reasonable approximation of DMAs. Aligning the geographic areas for both the contribution and acquisition of licenses could minimize distortions, reduce concerns about the mismatch between the reverse and forward auctions, and promote clarity and predictability in bidding. The Commission could further disaggregate DMAs into county blocks to allow more granular bidding and promote the ability of carriers to target low-density areas. Such an approach would allow the Commission to harness the benefits of aligning the geographic areas of the forward and reverse auctions while promoting the ability and incentive of different carriers to target service areas of different population densities.

d. Guard Bands

The NPRM proposes 6 MHz or greater guard bands, but the Commission is required to maximize the amount of licensed spectrum by employing a guard band that is no larger than technically reasonable to prevent harmful interference between licensed services outside of the guard bands.³⁶ In CCA’s view, 3 MHz is a sufficient guard band size to protect base stations, wireless broadband devices and television receivers. Moreover, based on how much spectrum is actually accumulated through the reverse auction and the auctioned block sizes, the resulting guard bands could in fact be larger should the Commission adopt its proposal to “add ‘remainder’ spectrum to the guard bands to further mitigate any potential interference

³⁶ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6407(b), 126 Stat. 156, 231 (2012); NPRM ¶ 126.

concerns.”³⁷ Smaller guard band sizes offer numerous benefits, including increased value to broadcasters, increased auction revenue, and additional wireless broadband spectrum to alleviate the looming spectrum crunch. A 3 MHz guard band is sufficient to protect against harmful interference, while at the same time freeing additional spectrum for the incentive auction.

e. Interoperability

CCA strongly urges the Commission to require interoperability throughout the 600 MHz band, to avoid the problems that have plagued the Lower 700 MHz band. As CCA has documented, the balkanization of the 700 MHz band has resulted in a device ecosystem controlled by one carrier, AT&T, in a manner that has sharply impeded competition and has slowed deployment of LTE services to consumers.³⁸ The Commission should protect the 600 MHz band from such harms by implementing an interoperability mandate as part of its initial band plan and service rules, rather than waiting to attempt to resolve interoperability concerns that inevitably will arise in the future.³⁹ To the extent that multiple band classes or multiple pass filters prove necessary, the Commission should ensure interoperability across band classes within the 600 MHz band, for example by requiring devices to support all channel blocks within the band.

f. Potential TDD Use

Although the foregoing discussion assumes that most carriers will employ FDD technologies, the Commission should not foreclose consideration of proposals for TDD use in

³⁷ NPRM ¶ 156.

³⁸ See Comments of RCA – The Competitive Carriers Association, *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69 (filed June 1, 2012).

³⁹ CCA notes the proliferation of LTE band classes around the world, which provides additional support for an interoperability mandate in the 600 MHz band to forestall interoperability problems that otherwise could arise in the U.S.

the 600 MHz band. A TDD allocation may offer more competitive opportunities and increase participation than an alternative band plan.

4. *Build Out Requirements*

CCA supports strong build-out requirements that prevent excessive aggregation or spectrum warehousing. Build-out requirements not only promote rapid deployment of services to consumers, but they also foster vibrant secondary markets in spectrum. The NPRM proposes to measure build-out requirements according to the percentage of the population served within the license area.⁴⁰ CCA agrees that measuring build out according to percentage of population served provides a clear, predictable metric that will promote efficient deployment. But the Commission also should consider including a geographic component in its build-out requirements, particularly in less dense areas. Geographic build-out requirements enable carriers to target rural areas without being effectively penalized for deploying facilities in less populated areas. Incorporating a geographic component in rural areas will ensure that carriers do not leave rural consumers behind.

5. *Auction Mechanics*

The NPRM obviously reflects extensive work by the Commission and its staff to flesh out potential details of what inevitably will be a complex auction process, and CCA commends the Commission's efforts to develop concrete options. However, there are certain aspects of the proposed mechanics that could create undue advantages for the largest carriers, and CCA urges the Commission to consider whether the mechanics of the auction adequately ensure meaningful participation by rural, mid-size and regional carriers.

⁴⁰ NPRM ¶ 397.

In particular, combinatorial bidding or package bidding can add significant complexity to the bidding process, which can bias the auction in favor of larger carriers with greater resources. Combinatorial bidding tends to create opportunities for the largest carriers to “game” the system to acquire highly desirable licenses at a discount by packaging them with the most valuable licenses, thereby shielding from other bidders the true value that they ascribe to the licenses. The auction rules should allow bidders who value particular blocks of spectrum to have the opportunity to acquire that spectrum, rather than be squeezed out by the largest carriers who seek to acquire a bundle of licenses. CCA therefore encourages the Commission to avoid combinatorial bidding or package bidding procedures.

Likewise, blind bidding can disadvantage smaller carriers. Auction 73, which employed blind bidding procedures, resulted in the largest carriers herding smaller carriers into the A Block, fragmentation of the band and isolation of the smaller carriers. The process of valuing spectrum is extremely complex and challenging, all the more so here because of the uncertainty about what spectrum will be available in the forward auction. Shielding information about how carriers value spectrum will only increase the complexity of the process, again advantaging the largest carriers. In addition, because of the importance of obtaining roaming arrangements and access to interoperable devices, it is critical that smaller carriers have an opportunity to learn how the largest carriers value spectrum in adjacent markets to facilitate their own valuation of spectrum blocks. Ultimately, the information disparities created by blind bidding will have a disproportionately adverse effect on smaller bidders. The Commission therefore should not employ blind bidding procedures in the incentive auction.

II. THE COMMISSION SHOULD ENCOURAGE MAXIMUM PARTICIPATION BY BROADCASTERS TO FREE UP LICENSED SPECTRUM FOR MOBILE WIRELESS USES

CCA supports the Commission's efforts to reach out to broadcasters to educate and inform them about the opportunities presented by the incentive auction.⁴¹ But the greatest opportunities to promote participation likely will come from auction design. The specific structural elements that the Commission implements, such as the range of bidding options, reserve prices, and process for determining winning bids, ultimately will determine whether the auction creates sufficient economic incentives for broadcasters to participate. The Commission should ensure that each choice that it makes regarding auction design has the goal of promoting broadcaster participation.

The Commission also should employ a blend of "carrots" and "sticks" that affirmatively encourage participation by broadcasters and also refrain from rewarding those who remain. With respect to affirmative incentives, the statute already provides that broadcasters who engage in channel sharing will not lose their "must carry" rights.⁴² In addition, the Commission should consider additional incentives, such as a rule that broadcasters that agree to give up at least 3 MHz of spectrum will obtain additional usage rights for their remaining spectrum. For example, the Commission should consider offering broadcasters who give up 3 MHz of their spectrum the right to implement two-way OFDM-based technologies in their remaining spectrum.

⁴¹ See, e.g., Federal Communications Commission, Broadcaster LEARN Program Workshop (Oct. 26, 2012), *available at* <http://wireless.fcc.gov/learn/LEARN-Deck-12-5-12.pdf>; Federal Communications Commission, Incentive Auctions - LEARN - A Groundbreaking Event for the Broadcast Television, Mobile Wireless, and Technology Sectors of the U.S. Economy, <http://wireless.fcc.gov/incentiveauctions/learn-program/index.html> (last visited Jan. 25, 2013).

⁴² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(a)(4), 126 Stat. 156, 226 (2012).

The Commission also should look holistically at all of its policies to ensure that they are not artificially propping up the broadcast business model. Regulations that put a thumb on the scales in favor of broadcasters—such as the existing retransmission consent rules, must carry obligations, limitations on importation of distant signals, tier and channel placement restrictions, lax or non-existent enforcement of ownership rules, etc.—continue to overprotect broadcast television and, in doing so, diminish the likelihood of broadcasters’ participating in the auction. The Commission should undertake a broad inquiry into whether its broadcast policies as a whole appropriately harness market forces, and should use *all* of the tools at its disposal to drive participation by broadcasters in the incentive auctions.

CONCLUSION

The incentive auction provides an increasingly rare opportunity to allocate additional licensed, beachfront spectrum for commercial mobile wireless services. CCA looks forward to working with the Commission to implement an auction that maximizes participation by broadcasters and wireless carriers via a fair, clear and predictable set of rules and procedures.

Respectfully submitted,

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