

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

In the Matter of)	
)	
Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures for Auction 96)	AU Docket No. 13-178
)	
)	

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) hereby submits this reply in response to the opening comments on proposals made by the Wireless Telecommunications Bureau (“Bureau”) in its *Public Notice* in this proceeding.¹ CCA takes this opportunity to update the record since filing comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) for service rules for the H Block.² Specifically, the record shows that the Commission should refrain from adopting package or anonymous bidding, especially in light of offering licenses in Economic Areas (“EAs”), and should complete the mobile spectrum holdings proceeding as soon as possible, but certainly before proceeding with upcoming spectrum auctions.

Without re-litigating the decision made by the Commission in its *Report and Order* to auction the H Block based on EAs,³ the Commission should be mindful of presentations made by

¹ Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures for Auction 96, AU Docket No. 13-175, *Public Notice*, DA 13-1540 (rel. July 15, 2013) (*Public Notice*).

² See Comments of Competitive Carriers Association, *Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357 (filed Feb. 6, 2013) (NPRM Comments).

³ Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920

competitive carriers both in this docket and in others showing that they will be precluded from participating in *any* spectrum auction utilizing EAs. While the unique nature of the H Block auction may warrant use of EAs, this auction should not serve as a model for future auctions.

As the record makes clear, however, the competitive carriers capable of participating in the H Block auction may sit this auction out if the Bureau's hierarchical package bidding ("HPB") proposal is adopted. HPB will allow the largest incumbents to grab less-densely populated EAs on the cheap by aggregating them with more heavily populated EAs. This structure will depress participation by even those carriers who can afford to bid on a particular EA, resulting in constrained auction revenues and slowed deployment of advanced wireless services to rural America.

Moreover, the Bureau's proposal to adopt anonymous bidding procedures for the H Block auction should be dismissed. Not only is anonymous bidding in contradiction with many previous auctions, it carries with it a host of costs and disadvantages—the majority of which would be disproportionately felt by competitive carriers. CCA has opposed anonymous bidding in other proceedings,⁴ and opposes its use for this auction as well.

Finally, the Commission has stated that it hopes to conduct Auction 96 on or around January 14, 2014. In order to meet this reasonable deadline and achieve the goals of maximizing

MHz and 1995-2000 MHz Bands, WT Docket No. 12-357, *Report and Order*, 28 FCC Rcd 9483, 9499-502, ¶¶ 35-43 (2013) (*Report and Order*).

⁴ See, e.g., Comments of Competitive Carriers Association, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 at 18 (filed Jan. 25, 2013); Reply Comments of Competitive Carriers Association, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 at 8-9 (filed Mar. 12, 2013); see also Comments of Rural Cellular Association, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150 at 18-19 (filed May 23, 2007).

auction participation and revenues, the Commission should *first* issue an order on its policies and rules concerning mobile spectrum holdings.

DISCUSSION

A. While EAs Might be Suitable for the H Block, the FCC Should Consider Use of CMAs in Other Auctions to Foster Greater Participation

As CCA noted in its comments in response to the NPRM, “the size of geographic areas to be licensed in the H Block is among the most important issues to small and rural wireless carriers in this proceeding.”⁵ In those comments, CCA advocated that the Commission license the H Block “in smaller geographic areas *no larger than* EAs,” and emphasized that “because the bands adjacent to the H Block (PCS and AWS-4) are both licensed on an EA basis, licensing the H Block spectrum in blocks no larger than EAs would streamline the development of wireless services in the H Block and create additional synergies in infrastructure deployment.”⁶ In the *Report and Order*, the Commission found it “particularly significant that the two bands adjacent to the H Block . . . are licensed on an EA basis.”⁷

While the Commission may be justified in licensing the H Block in EAs due to the configuration of neighboring bands, the record in this proceeding (and others, including the incentive auction proceeding) reflects that smaller carriers will not have the financial resources to participate in this auction, and others, absent use of smaller geographic license areas like CMAs. As a result of massive consolidation in the wireless industry, Tier 2 regional carriers are disappearing. Indeed, assuming pending transactions are approved, U.S. Cellular will be the

⁵ NPRM Comments at 12.

⁶ *Id.* at 13-14 (emphasis added).

⁷ *Report and Order* at ¶ 38; *see also id.* at ¶ 42 (“[W]e find that—for the H Block—licensing the spectrum on an EA basis best balances the Commission’s public interest goals We find this particularly so because, as explained above, EA-based licensing will make H Block consistent with two adjacent bands.”).

only regional carrier with more than 1 million subscribers.⁸ And Cellcom will most likely move into the top 10 rankings of U.S. carriers by subscriber at the end of this year—assuming pending transactions are approved.⁹ Despite being a top-10 wireless carrier, Cellcom will be foreclosed from participating in upcoming auctions if the Commission adopts EAs and does not consider smaller geographic license sizes.¹⁰ In the incentive auction proceeding, several other carriers have submitted similar statements expressing that they either know they will not participate¹¹ or expect to be deterred from participating¹² in the incentive auction should licenses be issued on an EA basis. Therefore, the Commission should not use the H Block rules as precedent for licensing future spectrum in EA geographic license sizes.

⁸ See Mike Dano, *M&A Catches Fire: 24M Wireless Subscribers Moving from Tier 2 to Tier 1 Carriers*, FierceWireless, Aug. 12, 2013, <http://www.fiercewireless.com/story/m-a-catches-fire-24m-wireless-subscribers-moving-tier-2-tier-1-carriers/2013-08-12>.

⁹ See Kevin Fitchard, *Squeezed by Wireless Giants, Have the Regional Mobile Carriers Just Given Up?*, GigaOM, July 30, 2013, <http://gigaom.com/2013/07/30/page/2/> (scroll down to link for article). Cellcom serves approximately 300,000 subscribers. *See id.*

¹⁰ See Letter from Patrick D. Riordan, President and CEO, New-Cell, Inc. d/b/a Cellcom to Marlene H. Dortch, Secretary, FCC, AU Docket No. 13-178, *et al.* at 2 (filed Aug. 5, 2013) (“[If] the Commission adopts EAs for its upcoming auctions, it will not be able to participate.”).

¹¹ See Letter from Ron Smith, President, Bluegrass Cellular, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 10, 2013) (“Bluegrass Cellular will not participate in the 600 MHz spectrum auction if the FCC does not license the spectrum in small geographic areas, like CMAs.”).

¹² See Letter from Gregory W. Whiteaker, Counsel for Plateau Telecommunications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 30, 2013); Letter from Gregory W. Whiteaker, Counsel for Northwest Missouri Cellular Limited Partnership to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 30, 2013); Letter from Gregory W. Whiteaker, Counsel for Chat Mobility to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Aug. 8, 2013); *see also* U.S. Cellular, Spectrum Incentive Auction: An Opportunity to Promote Competition in the Wireless Market at 9, attached to Letter from Leighton T. Brown, Counsel for U.S. Cellular Corp. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 15, 2013) (noting that “CMAs [are] needed to preserve opportunities for small and regional carriers, as well as new entrants, to provide an important source of competition.”).

B. The Record Overwhelmingly Disfavors the Bureau’s HPB Proposal

While the use of EAs will be a limiting factor in the H Block auction, the Commission’s HPB proposal will add insult to this injury, and foreclose all but the largest carriers from bidding on (much less obtaining) spectrum in the auction. The net effect of the proposal would be decreased auction participation, depressed revenues, and a protracted deployment of broadband services to rural America.

Several comments noted that the HPB proposal could limit overall auction participation, but in particular participation of smaller carriers. The portion of the proposal by which the Commission would consider bids from previous rounds is not only “inordinately complex,”¹³ but also requires a ban on bid withdrawals, “which could further discourage participation of smaller operators and new entrants with lower tolerance for risk in Auction 96.”¹⁴ And as U.S. Cellular notes, “[t]he interaction of the bidding eligibility and package bidding rules [] adds yet another layer of complexity to the auction,”¹⁵ which only inures to the benefit of the largest carriers.

In addition, using HPB will almost certainly decrease the amount of revenues derived from the auction—to be used for important initiatives such as building out FirstNet and paying down the national debt—for several reasons. First, the Commission’s proposal of determining provisionally winning bids by “comparing aggregate gross bid amounts, at each tier, for various combinations of package and individual license bids” fails to adequately account for the

¹³ C Spire Wireless Comments at 3.

¹⁴ *Id.* at 3-4; *see also* U.S. Cellular Comments at 8 (“The unfortunate irony is that, in attempting to deal with the possibility of ‘exposure’ problems for large bidders, package bidding creates substantial exposure risks for small bidders because of its potential to reactivate dormant bids.”).

¹⁵ U.S. Cellular Comments at 9.

enhanced value a carrier may place on an individual license.¹⁶ By contrast, an auction without package bidding allows larger bidders to compete for EAs containing major metropolitan areas, while at the same time allowing smaller bidder to compete and pay more for less-populated markets than these larger bidders would have under a package bidding scenario—all for the benefit of overall auction revenue.¹⁷ Furthermore, retroactively activating prior bids will cause those bidders *who actually have the tolerance* for participating in the auction to adopt cautious initial bid strategies, which will also restrict revenues.¹⁸ These problems are in addition to the “free-rider” problem, whereby multiple bidders on individual licenses will rely on each other to outbid package bids, which ultimately results in the package bidder receiving the group of licenses at a discounted premium.¹⁹

Finally, if competitive carriers are foreclosed from participating in an auction of the H Block, this will likely have a negative impact on deployment of services to rural America. In its comments, CCA deliberately asked the Commission to consider geographic-based build out requirements in less dense areas.²⁰ The Commission rejected this argument, valuing scalability of networks and cost efficiencies over ensuring service to rural areas.²¹ But this scalability comes at a cost. The largest carriers historically have had no interest in building out rural America. If the largest nationwide carriers are able to bundle multiple EAs encompassing both

¹⁶ *Public Notice* at ¶ 21.

¹⁷ *See* U.S. Cellular Comments at 13-14; RDL Management Comments at 4 (combinatorial bidding “may allow larger bidders to acquire certain licenses at a discount” and “could lead to substantial competitive problems if the package bidder is able to acquire spectrum at substantially lower prices per MHz/POP than bidders on the individual licenses[.]”).

¹⁸ Sprint Comments at 8-9.

¹⁹ U.S. Cellular Comments at 7-8; Sprint Comments at 9.

²⁰ NPRM Comments at 9-10.

²¹ *Report and Order* at ¶ 202. *N.b.*, in so doing, the *Report and Order* misstates CCA’s position in the record. *Compare id.* at ¶ 202, n.634 *with* NPRM Comments at 9-10.

major metropolitan centers and less-densely populated areas with only population-based performance requirements, rural areas will most assuredly be left behind.²² While geographic-based build out requirements aren't necessary in every spectrum offering, an absence of geographic considerations, *combined with* the HPB proposal, proposed anonymous bidding, and decision to license the H Block in EAs, will seriously endanger deployment of services to rural America. The result will be the H Block lying fallow over large swaths of the country.

HPB will not only stifle auction participation and revenues, but will also cripple deployment of advanced wireless services to rural Americans over this block of spectrum. The costs of this proposal far outweigh the benefits, which, according to the record, are minimal.²³

C. Anonymous Bidding Disproportionately Disadvantages Smaller Operators

The Bureau should abandon its proposal to implement anonymous bidding procedures for Auction 96.²⁴ In the first instance, anonymous bidding is inconsistent with the Commission's past practices in most spectrum auctions.²⁵ But aside from the fact that anonymous bidding lacks robust historical precedent, it will also harm all but the largest carriers. Several commenters explained how anonymous bidding would primarily benefit those carriers large enough to obtain products for their spectrum through scope and scale, while at the same time inhibit smaller

²² RDL Management Comments at 6 (“[T]he proposed construction requirement, which is population based, would not force the package bidder necessarily to build-out the less populated, more rural EAs. Accordingly, adoption of HPB would have a negative effect on the Commission’s policy to try and move broadband out to rural areas.”).

²³ Sprint Comments at 8 (“Setting predetermined packages of licenses presumes that each participant has the same aggregation strategy and would value the packages equally. Instead, each bidder, depending on its unique business model and existing portfolio, will have different packaging needs and strategies.”).

²⁴ *Public Notice* at ¶¶ 24-29.

²⁵ See U.S. Cellular Comments at 18 (*citing* Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06-30, *Public Notice*, 21 FCC Rcd 4562, 4602 (2006) (“With a single early exception, the Commission has elected not to limit such information.”)).

carriers' ability to adequately value spectrum.²⁶ For example, U.S. Cellular notes that “[e]specially for smaller bidders, license valuations [] depend on certain technical considerations – e.g., the availability of interoperable devices and adequate roaming opportunities – that require sufficient information on the identities of likely other licensees.”²⁷ U.S. Cellular also reminds the Commission of smaller carriers' need for financing to participate in auctions, and how financial institutions in the past have been hesitant to lend to smaller carriers in auctions without having enough information to accurately gauge potential risk.²⁸ However, the Commission should be mindful of C Spire's concern that open bidding has the potential to facilitate retaliatory bidding against smaller operators seeking to acquire spectrum in geographic areas beyond their historic footprint.²⁹

Further, the combination of anonymous bidding and packaged bidding will be particularly detrimental to smaller competitive carriers.³⁰ CCA often touts the benefits of meaningful price discovery, and how anonymous bidding frustrates these carriers' ability to predict availability of potential roaming partners and access to devices. Like in other proceedings, the minimal justifications for employing anonymous bidding do not appear to outweigh the heavy costs. Accordingly, CCA encourages the Bureau to refrain from adopting anonymous bidding procedures for Auction 96.

²⁶ See RDL Management Comments at 16-18; U.S. Cellular Comments at 18-20.

²⁷ U.S. Cellular Comments at 19.

²⁸ *Id.* at 20-21.

²⁹ C Spire Wireless Comments at 3.

³⁰ *Id.* at 23-24.

D. The Commission Should Complete its Mobile Spectrum Holdings Proceeding As Soon As Possible

The Commission hopes to conduct this auction as early as January 14, 2014.³¹ This is an admirable goal, and one that CCA fully supports. Indeed, CCA is in favor of putting the H Block, and all other spectrum addressed in the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”), up for auction as quickly as is feasible. But it is vital that clear rules of the road regarding spectrum aggregation limits be instituted sufficiently in advance of this auction. The Commission has recognized that “provid[ing] clarity” before the incentive auction goes forward is desirable,³² but H Block bidders would benefit from that same clarity as well. Potential auction participants need time to prepare for an auction, including time to analyze where they and other potential competitors will be eligible to bid on particular licenses. CCA has previously advocated in the Mobile Spectrum Holdings proceeding that the Commission should complete its review of its spectrum aggregation policies before the end of this year, specifically so that the Commission can apply those rules for use in the H Block auction and other upcoming spectrum auctions.³³ CCA here again renews this request. The uncertainty caused by a failure to do so would only further chill bidding, negatively impacting essential funds for FirstNet and other budget priorities laid out in the Spectrum Act.

³¹ *Public Notice* at ¶ 1.

³² *Oversight of Incentive Auction Implementation: Hearing before the Subcomm. On Commc’ns and Tech. of the H. Comm. On Energy and Commerce*, Preliminary Transcript at 85 (July 23, 2013), <http://democrats.energycommerce.house.gov/sites/default/files/documents/Transcript-CT-Incentive-Auction-Implementation-2013-7-23.pdf>.

³³ *See, e.g.*, CCA, Policies Regarding Mobile Spectrum Holdings at 12, attached to Letter from Matthew A. Brill, Counsel for CCA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (filed Feb. 15, 2013).

CONCLUSION

Auction 96 is an important auction. It is likely the first in a line of upcoming auctions directed under the Spectrum Act, and will inform how the Commission can maximize the participation in and revenues derived from each of those future auctions. CCA therefore encourages the Commission to be mindful of how geographic license size impact auction participation, to disregard its hierarchical package bidding and anonymous bidding proposals based on the harm they will cause to competitive carriers, and to finalize its Mobile Spectrum Holdings proceeding sufficiently in advance of Auction 96. Taking these steps will go a long way in promoting the universal objective of maximizing participation in the H Block auction, which in turn will maximize revenues for the benefit of FirstNet and other critical public interest priorities. CCA looks forward to working with the Commission to ensure that these goals are achieved.

Respectfully submitted,

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