

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

In the Matter of)	
)	
Amendment of the Commission's Rules with)	GN Docket No. 13-185
Regard to Commercial Operations in the 1695-)	
1710 MHz, 1755-1780 MHz, and 2155-2180)	
MHz Bands)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 07-195
in the 2155-2175 MHz Band)	(Terminated)
)	
Services Rules for Advanced Wireless Services)	WT Docket No. 04-356
in the 1915-1920 MHz, 1995-2000 MHz,)	(Terminated)
2020-2025 MHz, and 2175-2180 MHz Bands)	
)	
Applications for License and Authority)	WT Docket No. 07-16
to Operate in the 2155-2175 MHz Band)	(Terminated)
)	
Petitions For Forbearance Under 47 USC § 160)	WT Docket No. 07-30
)	(Terminated)

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

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COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) hereby submits comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued in the above captioned proceedings.¹ CCA is the nation’s leading association of competitive wireless carriers. CCA’s membership comprises over 100 competitive carriers ranging from small, rural providers serving fewer than 5,000 customers to regional and national providers serving many millions of customers. CCA also represents over 200 Associate Members, consisting of small businesses, vendors, and suppliers that serve carriers of all sizes.

INTRODUCTION AND SUMMARY

CCA strongly supports the Commission’s efforts to unleash additional spectrum for commercial mobile wireless services. CCA agrees with the NPRM’s assertion that wireless broadband “represents a critical component of economic growth, job creation, and global competitiveness because consumers are increasingly using wireless broadband services to assist them in their everyday lives.”² The NPRM also correctly recognizes that increasing demand for wireless broadband services has led to a tremendous concomitant increase in the demand for spectrum, an indispensable input in the provision of such services.³ As a result, the commercial wireless industry faces a critical need for additional spectrum resources.⁴ The NPRM takes an

¹ *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, et al.*, Notice of Proposed Rulemaking and Order on Reconsideration, GN Docket No. 13-185, *et al.*, (rel. July 23, 2013).

² NPRM ¶ 4.

³ *Id.*

⁴ *See, e.g.*, Keynote Presentation by Alcatel-Lucent, Quenching the Thirst for Data: Maximizing Your Most Precious Asset, Spectrum at 4 (Sept. 17, 2013) (presented at CCA’s 2013 Annual Convention), available at <http://www.slideshare.net/Alcatel->

important step forward to introduce AWS-3 spectrum into the marketplace for commercial wireless services, and CCA supports many aspects of the NPRM.

First, the Commission should license spectrum in a manner that promotes the availability of spectrum for commercial wireless services. The Commission's first priority should be to facilitate the clearing of the 1755-1780 MHz band, and pair it as an uplink with the 2155-2180 MHz AWS-3 downlink band. The NPRM correctly recognizes that the 1755-1780 MHz band has a variety of characteristics that make it especially appealing for commercial wireless use, and that it could be paired effectively with the 2155-2180 MHz band to deliver wireless broadband. Currently, there are federal incumbents in the 1755-1780 MHz band, and the Commission should prioritize the clearing of federal users to maximize the efficient use of the spectrum. The Commission also should target the 2095-2110 MHz band as the additional 15 MHz of spectrum to be allocated for commercial wireless use pursuant to Section 6401 of the Spectrum Act.

Second, the Commission's auction and service rules should be designed to promote competition in the wireless industry, and should not implicitly favor the largest carriers. For example, multiple carriers have indicated that they will face challenges participating in auctions if the Commission licenses spectrum using Economic Areas ("EAs") as the geographic unit. The Commission instead should use smaller geographic license sizes, such as Cellular Market Areas ("CMAs"), which will (i) enable a broader array of bidders to participate, (ii) increase auction revenue, and (iii) maximize the amount of spectrum available for auction by minimizing federal protection zones. Furthermore, the Commission should adopt performance requirements for auctioned licenses, but should incentivize deployment by adopting a "keep what you build" rule at the final construction milestone, rather than the much harsher automatic termination of

[Lucent/cca-annual-convention](#) (noting growth trends in mobile devices data consumption).

licenses, which could strand investments and cut off service to existing customers. The Commission also should rapidly conclude its mobile spectrum holdings proceeding to put in place a meaningful spectrum screen for this and all other auctions.

Finally, CCA agrees that the Commission should conduct any auction of AWS-3 spectrum under its Part 1 competitive bidding rules. However, the Commission should update its definition of “small business” and “very small business” for determining bidder credit eligibility because the current definitions are decades old and exclude many entities that should be eligible for credits. CCA also agrees that Sprint should be reimbursed for its costs incurred in clearing the 2020-2025 MHz band.

DISCUSSION

I. THE COMMISSION SHOULD ALLOCATE SPECTRUM IN A MANNER THAT BEST ENABLES THE COMMERCIAL DEPLOYMENT OF WIRELESS BROADBAND SERVICES

The NPRM proposes to allocate several spectrum bands, referred to as AWS-3, for commercial mobile voice and broadband services. CCA supports the Commission’s efforts to unleash additional spectrum for such services.

A. The Commission Should Clear the 1755-1780 MHz Band and Pair It with the 2155-2180 MHz Band

The Commission’s top priority with respect to the AWS-3 spectrum should be to clear the 1755-1780 MHz band, so that it can be paired for auction with the 2155-2180 MHz band. As the NPRM recognizes, the 1755-1780 MHz band is uniquely situated to extend and enhance existing AWS spectrum because it is adjacent to the AWS-1 uplink band and is regionally and internationally harmonized for mobile broadband.⁵ The most efficient use of this spectrum is to pair it with the 2155-2180 MHz band to symmetrically extend the existing AWS-1 band, and, as

⁵ NPRM ¶ 33.

the NPRM notes, the National Broadband Plan favors this pairing.⁶ Congresswoman Doris Matsui (D-CA), co-chair of the House Energy & Commerce Communications and Technology Subcommittee’s Spectrum Working Group, has also come out in favor of this pairing, noting that “pairing the 1755-1780 band with the 2155-2180 band makes sense not only for revenue purposes, but also for spurring innovation in our ever-growing digital economy.”⁷

Commissioner Rosenworcel has recognized that 1755-1780 and 2155-2180 are “a more valuable resource auctioned together” and supports clearing 1755-1780 MHz for commercial mobile broadband use.⁸ Commissioner Pai similarly testified recently that pairing these two bands is necessary “to maximize the value” of the 2155-2180 MHz band.⁹

The only impediment to such a pairing is the presence of incumbent federal users in the 1755-1780 MHz band. The Commerce Spectrum Management Advisory Committee (“CSMAC”) is studying the feasibility of federal/non-federal sharing of the band, but the Commission’s priority should be on attempting to clear the band altogether and to re-allocate it for commercial uses. The results of clearing federal users from the AWS-1 band demonstrate why clearing should be the priority. As the FCC’s National Broadband Plan (“NBP”) notes, auction proceeds attributable to the former federal spectrum (the 1710-1755 MHz portion of the AWS-1 band) amounted to \$6.85 billion (or half of the total net winning bids of \$13.7 billion),

⁶ *Id.*

⁷ Congressional Spotlight: Congresswoman Doris Matsui, The CCA Voice Fall Winter 2013 at 69, available at <http://www.nxtbook.com/naylor/RCAB/RCAB0213/index.php>.

⁸ *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, et al.*, Statement of Commissioner Jessica Rosenworcel, GN Docket No. 13-185, *et al.*, (rel. July 23, 2013).

⁹ Statement of Ajit Pai, Commissioner, Federal Communications Commission, Hearing Before the Appropriations Subcommittee on Financial Services and General Government, at 2 (Sept. 11, 2013), available at <http://www.fcc.gov/document/commissioner-pai-statement-appropriations-committee>.

while total relocation costs totaled approximately \$1 billion.¹⁰ The NBP notes, “the experience of AWS-1 and [the Commercial Spectrum Enhancement Act (CSEA)] proves that relocation can be a win-win-win: for incumbents, for the U.S. Treasury, and, most importantly, for the American public, which benefits from increased access to the airwaves.”¹¹ The 1755-1780 band is likewise an eligible block of frequency under CSEA, which should further help to facilitate clearing federal users from the band. The Commission should therefore focus on working with NTIA and others to transition federal users to alternative bands and help federal incumbents to use alternative spectrum resources as efficiently as possible. The sharply increasing demand for commercial services means that the spectrum will be put to its greatest potential through commercial services, and the Commission can have an important role in translating that potential into reality.

B. The Commission Should Identify the 2095-2110 MHz Band as the Additional 15 MHz of Spectrum Required By Section 6401 of the Spectrum Act

As the NPRM notes, Section 6401 of the Spectrum Act requires the Commission, among other things, to identify an additional 15 MHz of spectrum for commercial use.¹² The NPRM acknowledges the possibility that this requirement could be exceeded by timely making the entire 95 MHz at 1755-1850 MHz available for commercial wireless use via phased transition,¹³ and CCA of course agrees that the spectrum across this band could be effectively used for commercial mobile voice and data services. CCA urges the Commission, NTIA, and other stakeholders to continue to work towards clearing this spectrum (including the 1755-1780 MHz band) at the earliest opportunity. Realistically, however, it is unlikely that an additional 15 MHz

¹⁰ Connecting America: The National Broadband Plan at Recommendation 5.5.

¹¹ *Id.*

¹² *See* NPRM § II.D.

¹³ NPRM ¶ 37.

above and beyond the 1755-1780 MHz can be cleared from the 1755-1850 MHz spectrum range for auction by February 2015, as required by the Spectrum Act.

CCA agrees with CTIA—The Wireless Association that the 2095-2110 MHz band is the prime candidate to satisfy the requirement of Section 6401 to identify an additional 15 MHz of spectrum for commercial use.¹⁴ That spectrum, part of the Broadcast Auxiliary Service, is ideally suited for mobile broadband services, is contiguous and adjacent to existing allocations, and is the most efficient candidate for pairing with the 1695-1710 MHz band.¹⁵ While the NPRM has identified some concerns from NASA and others with commercial use of the 2095-2110 MHz band,¹⁶ these concerns should be viewed with some discern based on the amount of information available on the use of this spectrum, and should not be an impediment to its prompt auction and introduction into the marketplace for commercial use. The Commission can and should in parallel continue to work with interested parties to study the feasibility of commercial use, to ensure that the spectrum is put to its most effective and efficient use through a commercial allocation.

II. THE COMMISSION SHOULD ADOPT AUCTION AND SERVICE RULES THAT PROMOTE COMPETITION IN THE WIRELESS INDUSTRY

As the Commission is aware, the choices it makes regarding auction and service rules for the AWS-3 spectrum will affect competitive conditions in the wireless industry. CCA has previously documented the rising concentration that has impeded wireless competition and

¹⁴ See NPRM ¶ 20.

¹⁵ See *id.*

¹⁶ *Id.* ¶¶ 21, 39.

harmful consumers.¹⁷ The Commission’s auction and service rules should be attentive to such rising concentration and should aim to improve the competitiveness of the marketplace.

A. The Commission Should Use CMAs as Geographic License Areas for AWS-3 Spectrum

The NPRM proposes to use Economic Areas (“EAs”) as the geographic area for licensing the AWS-3 bands.¹⁸ CCA previously has explained that many smaller carriers, including some of CCA’s smaller members, will be unable to participate in auctions that use EAs as geographic units.¹⁹ In other proceedings (such as the incentive auction docket), several carriers have submitted statements expressing that they either know they will not participate²⁰ or expect to be deterred from participating²¹ in upcoming auctions should licenses be issued on an EA basis.

¹⁷ See, e.g., Comments of Competitive Carriers Association, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 13-135 (filed June 17, 2013).

¹⁸ NPRM ¶¶ 50-52.

¹⁹ See, e.g., Supplemental Comments of Competitive Carriers Association Regarding the 600 MHz Band Plan, Docket No. 12-268, at 7-10 (filed June 14, 2013).

²⁰ 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.”); 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.”) (Cellcom Aug. 5 Ex Parte).

²¹ 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

Many smaller carriers focus on providing service in rural areas. If the Commission uses EAs, those smaller carriers might be forced to bid on multiple EAs, each of which includes significantly more populated areas, to acquire spectrum that covers their footprint. Such carriers may lack the financial capability to bid on these large and populous spectrum blocks.

By contrast, Cellular Market Areas (“CMAs”) will attract the broadest participation among bidders and give competitive carriers a meaningful opportunity to provide services over this spectrum. CMAs also will promote auction revenues. In Auction 73, nearly 100 smaller or rural carriers participated in the auction, predominantly bidding on spectrum allocated by CMA. In addition to the almost \$2 billion competitive carriers paid for licenses in Auction 73, these small entities also bid \$1.2 billion for licenses that larger providers ultimately paid \$1.6 billion to win—driving an additional \$400 million in revenue that most likely wouldn’t have materialized had these carriers not participated and increased bid amounts.²² The Commission accordingly can promote participation in the AWS-3 auction, and maximize value for AWS-3 spectrum, by using CMAs as the geographic coverage units for AWS-3 licenses. Alternatively, the FCC should consider licensing the spectrum in a variety of geographic sizes, much like it did for the AWS-1 spectrum.

Finally, smaller license sizes can help to maximize the amount of spectrum available for auction by minimizing the effect of federal exclusion zones, should they prove necessary. The NPRM recognizes the possibility that exclusion zones or protection zones may be necessary in

regional carriers, as well as new entrants, to provide an important source of competition.”).

²² Note that, while smaller carriers have bid on (and sometimes won) licenses in spectrum blocks based on EAs as well as CMAs, continued aggregation of spectrum by the largest carriers and other market conditions have diminished competitive carriers’ abilities to bid on these larger spectrum blocks going forward. *See* Cellcom Aug. 5 Ex Parte at 1.

certain bands to protect federal incumbents.²³ Smaller license sizes may result in a larger number of licenses that lack such encumbrances, and thus facilitate the rapid deployment of more spectrum for advanced wireless services.

B. The Commission Should Adopt a “Keep What You Build” Rule at the Final Construction Milestone

The NPRM proposes aggressive performance requirements, as well as steep penalties for failure to meet the relevant build-out milestones, including automatic termination of the licenses for each license area in which the licensee fails to meet the final construction requirement.²⁴ Automatic termination would apply even to licensees that make good faith efforts to comply with the milestones, yet narrowly miss the build-out requirement.

CCA supports the implementation of strong performance requirements to ensure the rapid deployment of the AWS-3 spectrum and to prevent the warehousing of scarce spectrum resources. However, the NPRM’s proposed penalty of automatically terminating the licenses of carriers who fail to meet the final build-out requirement is more severe than necessary to promote the rapid deployment of the spectrum. Such a harsh rule would risk cutting off service to customers who may already be using the spectrum, and would risk stranding millions of dollars of investment in network deployment.

By contrast, a “keep what you use” rule would provide sufficient incentives for licensees to meet the build-out requirements, without the risk of cutting off consumers. As the Commission recognized when it established rules for the 700 MHz band, rigorous performance requirements coupled with “keep what you use” rules will provide rapid service to the public,

²³ See, e.g., NPRM ¶¶ 58, 75

²⁴ NPRM ¶¶ 126-130.

particularly in rural areas.²⁵ In addition, “keep what you use” rules “provide additional methods for making smaller license areas available, thus promoting access to spectrum and the provision of service, especially in rural areas.”²⁶ Such rules also will likely make it easier for carriers to access capital markets to obtain financing for network deployment, as investors may be reluctant to back major capital expenditures if the entire license is at risk of being automatically terminated despite the licensee’s good faith build-out efforts.

C. The Commission Should Rapidly Conclude the Mobile Spectrum Holdings Proceeding So That It Can Apply a Meaningful Spectrum Screen to the AWS-3 Auction

Before the Commission launches any auctions for AWS-3 spectrum, it should act promptly to conclude its review of its spectrum aggregation policies and develop an improved spectrum screen. As CCA has explained, the blunt, single-trigger screen that the Commission adopted a decade ago (before the recent wave of consolidation) fails to advance the Commission’s stated goals in today’s marketplace.²⁷ Among other things, the current screen fails to account for important differences between high and low frequency spectrum bands,²⁸ and largely ignores the competitive effects of spectrum aggregation at the national level, which the Commission now recognizes is a critical component of the competitive dynamic in the wireless industry.²⁹ The current screen also results only in more *detailed* analysis of a proposed transaction’s competitive effects, but not necessarily a more *stringent* or *critical* analysis. CCA

²⁵ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, etc.*, Second Report and Order, 22 FCC Rcd 15289, ¶¶ 153-154 (2007).

²⁶ *Id.* ¶ 156.

²⁷ See Comments of the Competitive Carriers Association, *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269 (filed Nov. 28, 2012).

²⁸ *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 ¶ 35 (2012).

²⁹ See, e.g., *Verizon-SpectrumCo Order*, ¶¶ 54-58.

urges the Commission to amend its screen to better reflect today's competitive realities, and in any event to conclude its mobile spectrum holdings proceeding by the end of the year.

III. THE COMPETITIVE BIDDING PROCEDURES SHOULD EMPLOY THE COMMISSION'S PART 1 RULES BUT SHOULD UPDATE THE ELIGIBILITY CRITERIA FOR BIDDING CREDITS

CCA supports the NPRM's proposal to use the Commission's Part 1 competitive bidding rules to auction the AWS-3 bands.³⁰ The wireless industry has ample experience navigating these rules, and they have proven effective in prior auctions.

However, the Commission should amend the bidding credit provisions to better fulfill the purposes of Section 309 of the Communications Act.³¹ The NPRM proposes to establish bidding credits for any AWS-3 auctions, and proposes to use the same small business size standards that were used in prior AWS auctions.³² CCA strongly supports the use of bidding credits as a critical way to promote participation by a broad array of carriers and prevent the aggregation of market power in the hands of the two super-carriers, AT&T and Verizon. But the Commission's thresholds for defining small and very small businesses are now decades old, and have failed to keep pace with the realities of today's marketplace. The definitions have the effect of excluding carriers that may have no ability, or a limited ability, to participate absent the credits. For example, the generally applicable small business size standard for cellular or other wireless telecommunications entities as defined by the Small Business Administration is firms having

³⁰ NPRM ¶ 148.

³¹ 47 U.S.C. § 309.

³² NPRM ¶ 152.

1,500 or fewer employees (including affiliates).³³ The Commission should reevaluate its standards when determining eligibility for bidding credits for this upcoming auction.

Finally, CCA agrees that Sprint should be reimbursed for its costs to clear the 2020-2025 MHz Band when the Commission reallocated the band from the Broadcast Auxiliary Service (“BAS”). As the NPRM notes, entrants had obligations under the Commission’s rules to relocate incumbents, and the Commission’s traditional cost-sharing rules apply to this spectrum.³⁴ To satisfy the Commission’s long-standing intent that entrants bear a proportional share of BAS relocation costs, CCA supports the NPRM’s proposal to ensure Sprint’s reimbursement of its costs.

CONCLUSION

CCA strongly supports the Commission’s efforts to unleash additional AWS-3 spectrum for commercial mobile voice and broadband uses and encourages the FCC to adopt auction rules that promote the greatest participation in the auction, thereby fostering competition in the marketplace. CCA looks forward to working with the Commission to maximize the amount of available spectrum for commercial use and establishing usage rules that promote competition in the wireless industry.

³³ Size Standards of the Small Business Administration, <http://www.fcc.gov/guides/size-standards-small-business-administration>.

³⁴ See NPRM ¶ 163.

Respectfully submitted,

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